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Abstract

This paper evaluates how “tough on crime” sentencing policies have influenced California's prison population. Several laws which make up the state's strict criminal justice practices were passed over the course of forty years without consideration for their impact on the state's budget and safety. Beginning with the Uniform Determinate Sentencing Act of 1976, the state has created an unsustainable prison system that will dissolve without increased public funding. However, California's depleted economic condition has forced policymakers to reevaluate the state's criminal justice agenda, while complying with the three- judge court order to reduce its incarcerated population to 137.5 percent of design capacity by June 2013.

Keywords

prisons, overcrowding, corrections, incarceration, reduction

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Abstract

This paper evaluates how “tough on crime” sentencing policies have influenced California's prison population. Several laws which make up the state's strict criminal justice practices were passed over the course of forty years without consideration for their impact on the state's budget and safety. Beginning with the Uniform Determinate Sentencing Act of 1976, the state has created an unsustainable prison system that will dissolve without increased public funding. However, California's depleted economic condition has forced policymakers to reevaluate the state's criminal justice agenda, while complying with the three-judge court order to reduce its incarcerated population to 137.5 percent of design capacity by June 2013.

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According to the California Department of Corrections and Rehabilitation (CDCR) (2010), California's recidivism rate for 2005 was 67.5 percent, indicating that over 73,000 inmates were re-incarcerated within three years of release from prison. In comparison, the national three-year recidivism rate was 43.3 percent for inmates released from state prisons in 2004 (PEW Center on the States, 2011, p. 11). Recidivism is based on the number of offenders who reengage in criminal activity despite previous punishment, and it is measured on re-arrests, additional

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convictions, and technical violations of conditional release. Nearly forty years of “tough on crime” rhetoric has caused California to lose control of its correctional system, and the problems facing the state can no longer be solved with increased public funds (Little Hoover Commission, 2007). In 2006, when California's prison population was at about 160,000 inmates, the levels of overcrowding in California's prisons were deemed cruel and unusual punishment under the controversial 5-to-4 United States Supreme Court decision in the case of *Brown, Governor of California et. al v Plata et. al (Plata)* (Rogan, 2012). Under the Prison Litigation Reform Act of 1995, the US Supreme Court upheld the decision of a three-judge court, which ordered California to decrease its prison population to 137.5 percent of design capacity by June 2013 (California Department of Corrections and Rehabilitation, 2011). Although the design capacity of the CDCR is 83,219, the court order would require the state's prison population to drop from the current estimate of 144,000 to approximately 110,000 inmates (Little Hoover Commission, 2007, p. 19). With failed “tough on crime” policies still in place, California cannot meet the court mandate.

California's failed criminal justice policies include determinate sentencing, which encompasses confinement sentences that have fixed or minimum durations depending on the crime committed. Determinate sentencing limits both prosecutorial and judicial discretion in regard to charging and sentencing respectively; as a result, more people are being convicted with mandatory minimum prison terms. The varying availability of correctional resources prevents determinate sentencing from accomplishing its goal of sentencing uniformity. Due to mandatory minimum prison terms, law violators who would have been effectively reprimanded without incarceration

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are sentenced to the state's most costly and most often prescribed method of punishment. The punishment does not fit the crime. Each inmate costs over \$45,000 per year to be detained within the state prison system (California Department of Corrections and Rehabilitation, 2011). Nevertheless, "tough on crime" rhetoric and the policies it has produced have reduced the availability of less costly options at the local level. The California corrections budget is primarily used for detaining inmates, rather than providing rehabilitation opportunities in order to empower prisoners to escape the revolving door of the state's prisons. California must implement evidence-based crime prevention recommendations to establish a long-term process for reducing the state's incarcerated population, therefore enhancing public safety and protecting limited public resources.

Empirical and Theoretical Evidence

When California passed the necessary criminal justice reforms to transform the state's indeterminate sentencing practices into determinate sentencing policies in the late 1970s, politicians promoted the new sentencing provisions as the solution to decrease crime. According to Vitiello and Kelso, (2004), "Despite compelling evidence to the contrary...ardent belief has prevailed over empirical analysis" (p. 908). Thirty-five years after California's Uniform Determinate Sentencing Act went into effect, inmates discharged from an indeterminate sentence recidivated at a rate much lower (12.8 percent) than those who served a determinate sentence (65.1 percent) (California Department of Corrections and Rehabilitation, 2011, p. 27). However, lawmakers continue to formulate hard-on-crime policies in hopes of securing voter support by exploiting the public's fear during election years. Based on the findings

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from Krieger's (2011) evaluation of four California state elections during 1992 to 2000, there is no evidence to support the myth amongst legislators that voters support politicians with stringent criminal justice agendas over so-called "soft on crime" candidates. California Governor Jerry Brown, who had originally signed determinate sentencing into law in 1976, called the policy "an 'abysmal failure'" (Warren, 2003). To alleviate California's prison overcrowding, costs, and recidivism, Assembly Bill (AB) 109 and AB 117 went into effect on October 1, 2011. The legislation aims to achieve the court-ordered inmate population reductions, despite mandating that all prisoners currently in state prison will serve their entire sentence. Some California inmates have been relocated to out-of-state prison facilities to relieve overcrowding; this practice can be harmful for offenders with social support and family within local communities. Moreover, the Assembly Bills seem to transfer the problems of the state prison system to county jails or out-of-state prisons, but the effects of the Public Safety Realignment will not be wholly understood until its entire implementation is achieved in 2015 (California Department of Corrections and Rehabilitation, 2011). The California Governor and Legislature must move past "tough on crime" rhetoric and implement new evidence-based policies to be "smart on crime."

Even with political will from some California lawmakers, attempts to amend the state's broken correctional system have been thwarted by lobbying organizations such as the California Correctional Peace Officers Association (CCPOA). The CCPOA is a powerfully influential union for prison guards in California that annually collects approximately \$21.9 million from its 31,000 members (Cavanaugh, 2011). Although the CCPOA recognizes a need for change due to prison

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overcrowding, the group has opposed all serious state sentence reforms despite the threat that crowded prisons pose to the guards (Cavanaugh, 2011, p. 94). In 2004, Governor Arnold Schwarzenegger attempted to put a new parole model into fruition, hoping to expand the availability of community and locally based punishment alternatives, but the CCPOA aired television advertisements accusing the new reforms of putting the public at risk. More specifically, the advertisements indicated that the changes would keep “murders, rapists and child molesters on [the] streets” (Little Hoover Commission, 2007, p. 3). In reality, the parole reforms were intended for low-level parole violators and were estimated to save the state approximately \$150 million over two years (Little Hoover Commission, 2007). The CCPOA's opposition to sentencing alternatives will make it more difficult for California to meet the state's court-mandated prison population reduction of up to 46,000 offenders within two years (Rogan, 2012). The union's malicious campaign against political initiatives to reduce the state's prison population is detrimental. The CCPOA has an indirect influence on the state's criminal justice policies, including California's infamous three-strikes policy amongst other current, strict sentencing laws.

In 1994, California passed the “Three Strikes and You're Out” law. The three-strikes ballot initiative, also known as Proposition 184, doubled the penalty for any second felony if the first offense was serious or violent in nature. Also under the three-strikes statute, an offender is subject to a mandatory minimum prison sentence of 25 years to life for a third felony conviction, if previously convicted of a serious felony. A similar three-strikes bill proposed by Assemblyman Richard Rainy would have saved the state billions because it “required the third

strike to be a violent or serious felony (excluding burglary)” (Krieger, 2011, p. 150). By the end of 2010, “California prisons held 32,271 Second Strikers, and 8,727 Third Strikers (40,998 inmates total)” (California Department of Corrections and Rehabilitation, 2011, p. 24). Rainy's three-strikes initiative would have reduced the duration of incarceration for about 19 percent of the third-striker population who were convicted of drug crimes (California Department of Corrections and Rehabilitation, 2011). In 2012, California passed Proposition 36 to amend its three-strikes law to reduce prison costs and sentences for some third strikers with current offenses that are not serious and non-violent felonies, as well as resentencing some third strikers serving life sentences for non-serious, non-violent felonies (Legislative Analyst’s Office, 2012). Proposition 36 fails to address the real problem that is the very three-strikes law it alters, but the implementation of the law is too recent for its effects to be entirely understood.

Although Proposition 36 is progress, it addresses the plight of third strikers while ignoring the excessive punitive consequences inflicted on the second-striker population. Thinking long-term, it would be more beneficial for society if drug abusers entered treatment programs instead of prison cells.

California's three-strikes law treats all offenders alike; the legislation represents a series of sentencing policies that fail to take a comprehensive approach to the use of prison space.

Although the three-strikes statute aims to deter criminals while incapacitating repeat offenders, the findings of the Justice Policy Institute (1999) reveal that California's three-strikes policy has had no measurable impact concerning deterrence and selective incapacitation on the legislation's targeted population. Cesare Beccaria, the father of classical criminal theory, believed that

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punishment was necessary to deter people from violating the law (Conklin, 2010). However, Beccaria concluded that it was critical that the punishment fit the crime because too insignificant of a punishment can be harmful to society by encouraging crime, while too harsh of a punishment can perpetuate disregard for the law.

In California, law violators are incarcerated with the intent to remove the threat of victimization they pose to law-abiding citizens. Incapacitation as the focus of penology has “reduce[d] the effects of crime in society not by altering either offender or social context, but by rearranging the distribution of offenders in society in such a way that probabilities and risks are altered in the general population” (Auerhahn, 1999, p. 705). However, determinate sentencing release is certain, but success upon release is unlikely when offenders have no incentives to improve themselves while imprisoned. About 40,000 of an estimated 144,000 inmates in California's state prison have benefitted from an academic or vocational program (California Department of Corrections and Rehabilitation, 2011). Due to prisoner apathy or a lack of correctional resources to accommodate interested inmates, 104,000 offenders are in prison waiting for release without the skills to maintain a legitimate lifestyle. The government reports analyzed by Piotrowski and Lathrop (2012) revealed that “without access to prison-based programs the standard rates for recidivism would range between 60-70 percent” (p. 686). Even with limited access to programs in Californian prisons, the state has a recidivism rate fluctuating between 60-70 percent.

Offenders without access to prisoner programs are hindered from assimilating back into society. In-prison educational and literacy programs have had a “substantial positive impact in

reducing recidivism” (Piotrowski & Lathrop, 2012, p. 686). In-prison vocational programs are effective moderately when an inmate's needs and skills are matched with a particular program type (Piotrowski & Lathrop, 2012). Ex-convicts have more trouble securing a legitimate occupation than law-abiding citizens due to poor employment records and their criminal history, but some community-based job training programs cost less than \$500 per individual while reducing the likelihood of recidivism by 4.6 percent (Bushway & Apel, 2012). Although approximately two-thirds of inmates in California seriously need drug treatment, only 2 percent receive professional treatment during incarceration, and aftercare funding is only available for half of those offenders (Little Hoover Commission, 2007). Post-release drug programs are proven to reduce recidivism rates and enhance employability because of the high association between drug use and criminal activity (Little Hoover Commission, 2007). In 1997, 33 percent of state prisoners indicated that they had been under the influence of an illegal substance when arrested for the offense for which they were imprisoned (Conklin, 2010). At the very least, the state should offer prisoners information about services and opportunities in local communities before release to ensure offenders reenter society successfully. Without advancement of education and job skills and treatment for substance abuse, desistance from crime is improbable.

With such high recidivism rates in the state, California tax payers should wonder how public funds are spent and if the money is distributed appropriately. For the 2012-2013 fiscal year, the CDCR received almost \$11 billion to continue warehousing prisoners within state facilities; corrections accounts for 7.8 percent of California's state budget (Brown,

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2012). Second and third strikers comprise about 42,000 of California's total prison population of approximately 144,000 offenders (CDCR, 2011). In other words, considering CDCR estimates that each inmate costs the state over \$45,000 per year, nearly \$1.9 billion of California's 2011-2012 correctional budget of \$11 billion is allocated for the selective incapacitation of repeat offenders (CDCR, 2012; CDCR, 2013). Spelman (2000) admits that there is an initial link between lower crime rates and increased prison capacity, but the relationship is so marginal that the warehousing of prisoners simply is not cost-effective, and over time, the benefits of incapacitation have a diminished effect. Rosenfeld (2000) elaborates on the cost effectiveness of mass incarceration: The inmate population had to increase by 670 individuals in the 1990s at an expenditure of \$20,000 per inmate for a total of \$13.4 million to prevent a single homicide. While mandatory sentences and incapacitation guarantees chronic offenders will not commit crimes while incarcerated, the monetary cost is high, considering release is imminent.

In contrast, only \$400 million of the \$11 billion were granted to programs known to reduce rates of recidivism, such as adult activities, educational, vocational, and substance abuse programs (Brown, 2012). "Tough on crime" agendas are tough on taxpayers. From 2002-2007, the CDCR budget increased by 52 percent; however, there are no more public funds to relinquish prison system problems frivolously (Little Hoover Commission, 2007). California's costly correctional system financially affects every other state government program, including education, health care, and public transportation. The recent economic hardships affecting California's budget provides an opportunity to reevaluate failed policies. Of the 149,976 offenders to depart from state prison in 2010, 119,941 were paroled, and only 2,537

of the felons were discharged without conditional release (California Department of Corrections and Rehabilitation, 2011). More than 50 percent of offenders in California who return to prison are re-incarcerated due to parole violations, which include missing parole appointments, consuming alcohol, and other noncriminal behavior for the ordinary citizen (Fischer, 2005). The CDCR should allocate post-release supervision resources based on factors that influence recidivism risk, such as age, gender, education level, employability, social support, religious affiliation, substance abuse, and mental health. The most resources should be applied to repeat-offenders with high recidivism risks, and little to no supervision should be given for non-serious offenders least likely to re-offend. The CDCR must redirect prison-warehousing funds to evidence-based recommendations for greater agency efficacy.

Evidence-based Recommendations

California must learn from its failed experiment with “tough on crime” policies, and evaluate the fiscal appropriations and resources necessary for sentencing laws before implementation of similar legislation in the future. Voters should be provided with the necessary policy evaluations to make informed decisions. If the California governor and legislature cannot act immediately to mitigate California's prison crisis adequately, a non-political sentencing commission must be established. The sentencing commission would be accountable for the impact of its sentencing laws and relies on evidence-based research to best allocate resources. Indeterminate sentencing practices should be adopted to allow for prosecutorial and judicial discretion when there are special circumstances. With indeterminate sentencing, offenders will have motivation to complete in-prison programs

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by increasing their likelihood of early release. Reentry programs furthering the educational and vocational skills of offenders should be court mandated before release, and treatment programs must be required when necessary. The CDCR should form state-agency partnerships to combine limited public resources, thus enabling offenders to assimilate back into society successfully. Of the \$11 billion corrections budget, more funds should be redirected to locally based punishment alternatives for the purpose of increasing local jail capacity, expanding probation opportunities, enforcing electronic monitoring, and creating day-reporting and aftercare drug treatment centers. Non-criminal parole revocations should not lead to time served in prison. Furthermore, parole supervision should only be used when an offender has a high risk to recidivate. California needs to adjust its distribution of correctional resources to guide offenders away from the prison entrance.

Conclusion

California must change its correctional policies to establish a sustainable state prison system founded on evidence-based research proven to reduce the inmate population, improve public safety, and preserve public resources. To stop the revolving prison door, correctional reform must overcome politics. The high rate of offenders returning to prison underscores the need for California to implement strategies guaranteed to effect crime prevention, while simultaneously holding offenders accountable for their actions and self-improvement. The reevaluation of the state's failed policies was initiated by the three-judge court, but change is long overdue. California has neither the budget nor the time to build more prison facilities; immediate and long-term reforms are necessary for the state to comply with the court's

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decision and prevent future court intervention. However, public and elected officials must endorse the permanent and effective changes California direly needs before the state can regain control of its prison system.

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