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Parole in California: It's a crime

By Joan Petersilia and Robert Weisberg

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CALIFORNIA'S prison system is reeling. The corrections chief and his acting replacement have both quit in the last two months. But a major cause of the Department of Corrections and Rehabilitation's growing dysfunctionality has nothing to do with how it runs its prisons and administers parole. Rather, it's the state's laws that determine the lengths of prison terms and inmate-release policies. Only the Legislature can fix that problem.

Many say the system doesn't work because California puts too many people in prison, especially nonviolent offenders. The facts state otherwise. On any given day, 456 out of every 100,000 people are behind bars in California, compared with an average of 432 per 100,000 for the nation generally.

This ratio is not disproportionately high, given the state's crime rate. The chance that a person who is arrested for a serious crime will end up in prison is about 5%, close to the national average. And the special consequences of our three-strikes law — a sentence of 25 years to life for a third conviction — notwithstanding, prison terms in California are no longer, on average, than those imposed in other states for similar crimes.

Nor do nonviolent drug offenders account for recent increases in the state's inmate population. A snapshot view of our prisons shows that the proportion of prisoners serving time for possessing and selling drugs is lower than it was in the 1990s. Two-thirds of the overall growth in the prison population since 1994 stems from such violent crimes as robbery, assault and homicide. Drug crimes account for only 10% of the increase.

And California's spending on prisons — about \$7 billion annually, or 8% of the general fund — is not disproportionately higher than that of other states.

So what's the real crisis?

It's this: More parolees return to prison in California than in any other state.

The Department of Corrections and Rehabilitation released data last week showing that recidivism rates declined last year. But the figures were only for prisoners released the first time. When all parolees are considered, the picture is much bleaker. Of the approximately 115,000 inmates annually released, about 70% of them are back behind bars within 24 months — nearly twice the national average. Worse yet, about 10% of these prisoners will repeatedly return — six or more

times over a seven-year period, according to one study. No other state reports such a high inmate-churn rate.

Prisoners call it "doing life on the installment plan."

The result is that many dangerous prisoners on parole receive too little monitoring, are released from parole too early and commit serious new crimes, while many non-dangerous ex-convicts stay on parole too long, wasting the state's resources, and are sent back to prison for trivial reasons.

There are three main reasons for California's high recidivism rate: illconceived sentencing laws, rigid parole practices and an inexcusable neglect of programs to help prisoners adapt to life on the outside.

Judges in California used to decide which sentences to impose on defendants, and the parole board had near-absolute discretion to decide when inmates were released. This system pleased neither liberals (it was too capricious) nor conservatives (it wasn't tough enough).

So, in the 1970s, the Legislature adopted determinate sentencing. Judges handed out prison terms according to a fixed formula tied to the crime. For example, a robbery conviction translates into two, three or four years in prison. Inmates no longer have to earn their release because they are automatically freed once their set time is up. Even if a prison offers rehabilitation programs, inmates lack any incentive to enter them because they know when they're getting out.

Parole for ex-cons usually runs three years, and nearly everyone is on it for the same length of time regardless of risk to society. But when the Legislature took away the parole board's discretion in deciding release dates, it left in place the old scheme of parole supervision. The problem with that is that everrising parolee-related spending — about \$4,100 a parolee — has no connection to recidivism risk.

By contrast, in Florida, North Carolina and Ohio, nearly half of all released inmates receive no supervision after prison, which allows these states to concentrate their scarce parole dollars on high-risk ex-cons.

This is not to suggest that California should release huge numbers of prisoners and not supervise them. Nor is it to deny that determinate sentencing fixed some grievous flaws in the ways judges used to dispense justice. But when the Legislature required that virtually all ex-convicts receive parole supervision, it created the conditions for the state's high recidivism rate.

For example, California routinely orders near-universal drug testing for parolees. Because two-thirds of them have substance abuse histories, and because few receive any treatment while in prison, parolees invariably fail the tests and return to prison. In all, nearly two-thirds of parolees are sent back to prison because of similar technical violations, not because they were convicted of a new crime.

The governor-appointed parole board can do something about this problem by altering the criteria for technical violations. But because the Legislature sets the basic rules for when parolees are released and what conduct can send them back to prison, only it has the power to affect the recidivism rate significantly.

By way of example, Colorado passed legislation in 2003 that limits reincarceration for technical violations to 180 days, and most parolee violators do the time in privately run community centers.

Colorado officials estimate that the law has saved the state nearly \$30 million and allowed them to keep a closer eye on ex-cons who pose a greater risk of repeat criminal conduct.

But more selective supervision of parolees also requires more effective rehabilitation programs. Studies show that for some prisoners, enrollment in drug- or alcohol-abuse treatment programs, education classes or job training will substantially lower their chances of committing new crimes. Unfortunately, California is woefully inadequate in providing such programs. Nearly two-thirds of its inmates are addicts, yet just 2% of them are professionally treated while in prison.

Can anything be done? Just finding physical space in which to conduct a rehab program is a challenge in a prison system operating at 200% of capacity. And prison gangs often discourage participation in these programs.

The Department of Corrections and Rehabilitation can do some things on its own. It could allow inmates wanting and able to enroll in rehab programs to be housed together. It could better identify and train officers to run the programs. And it could work to lessen the hostility between management and prison guards, thereby motivating officers to help conduct rehab programs.

Given the inefficiencies of how we sentence and imprison our criminals, the wonder is that our inmate population and prison costs aren't greater. But there's no denying that our high recidivism rate wastes human opportunity and disrupts family life in unquantifiable ways. New leadership at the Department of Corrections and Rehabilitation will help some. Reforming the state's determinate sentencing law will do even more.

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