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Correcting justice

Doing time for every crime has led to California's overcrowded prisons. Now, many people believe it's time to try a different approach.

By Roger K. Warren -

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There is no responsibility that judges take more seriously than sentencing criminal offenders. The principal purpose of government and the rule of law is to ensure public safety and security. It is to judges that the authority and responsibility to sentence those whose crimes undermine public safety is entrusted. Serious crimes result in unspeakable injury and loss to the victims most directly affected, and threaten the entire community. The stakes for the offender and for the offender's family are equally high. Judges are never more mindful of how grave a responsibility it is to act as a single judge on behalf of an entire community than when carrying out their sentencing responsibilities.

Criminal cases dominate the workload of California judges, who sentence more than 135,000 felony offenders a year. The hardest cases are not those of the most violent or dangerous criminals, or the sexual predators. Those offenders belong in prison and constitute only about 10 percent of the cases. Cases where the law mandates a prison sentence under circumstances that a judge considers unjust are hard, but they are also rare. For many judges the most difficult and frustrating aspect of handling felony cases is dealing with the crushing volume of repeat offenders, most charged with nonviolent crimes, who constitute the vast majority of felony cases. Year after year, California judges sentence repeat offenders to jail and probation, and finally prison, with little hope for success in changing an offenders' future criminal behavior. Over time, many judges grow increasingly cynical and discouraged. Every day, judges see that our current sentencing policies aren't working and question whether there isn't a better way.

California's sentencing policies aren't working because, more than any other state, California relies overwhelmingly on incarceration as the answer to every crime rather than invest in meaningful adult probation services and effective community corrections programs to reduce crime. We need to put the concept of "corrections" back into the corrections profession.

California has the highest recidivism rates in the country and, as a result, the most overcrowded prisons. About half of those sentenced to prison every year are nonviolent offenders previously sentenced to prison but never for a violent crime.

Although criminal records of California prisoners reflect no greater violence than inmates in other states, their records are longer and California inmates are more likely to have been on parole when they committed a new offense. Two thirds of parolees are returned to prison

within three years -- twice the national average. Eighty-eight percent of those parolees are returned because of new criminal activity.

As California criminologist Joan Petersilia observed, "California epitomizes revolving-door justice in the United States."

In California, basic sentencing reform is long overdue. In recommending a plan for prison reform, Gov. Arnold Schwarzenegger noted that thousands of low-level offenders in California today are serving prison sentences with little opportunity for rehabilitation and that implementation of an effective strategy to reduce prison overcrowding and offender recidivism will require a partnership between state and local corrections agencies. His most recent proposal to address the state's prison overcrowding crisis calls for bipartisan cooperation to achieve essential sentencing reforms and reduce California's high recidivism rates. He has outlined a promising, but still incomplete, vision of the path to true prison reform and improved public safety for the citizens of California.

The governor's principal sentencing reform proposal is to create a California sentencing commission. California is indeed out of step with state-of-the-art sentencing structures across the country in failing to have a bipartisan, professional and independent sentencing commission. In 20 other states sentencing commissions are responsible for reviewing proposed sentencing legislation, making population and financial projections, conducting research, coordinating the collection and dissemination of relevant data and making recommendations to policy-making bodies. Sentencing commissions ensure that policy makers have accurate and credible data needed to make well-informed decisions.

Commendably, the governor's proposal budgets \$50 million this year and \$100 million in following years to improve adult probation services for youthful offenders. But the governor's proposals to reduce recidivism still focus on prison inmates and parolees, and do very little to promote the development and funding of local corrections programs to reduce recidivism among more of the 35,000 offenders sentenced to prison every year for nonviolent offenses. In the long run, the most cost-effective way to slow prison growth and improve public safety is to develop effective community corrections and treatment programs that reduce recidivism -- especially among nonviolent offenders -- before offenders are imprisoned.

Unlike many other states, California provides almost no support for the provision of rehabilitation services to offenders in communities where they and their families live. It is one of only two states where adult probation services are primarily a local responsibility. As a result, adult probation services are drastically underfunded; more than half of the 300,000 adult offenders on probation are not actively supervised. The state has yet to act upon the recommendation made by the bipartisan Little Hoover Commission more than 15 years ago to implement community corrections programs. The California State Sheriffs' Association and California State Association of Counties also have called for implementation of such programs.

Thirty years ago, when California's current sentencing policies were written, there was a great deal of skepticism about whether rehabilitation really works. But today there is a voluminous body of rigorous research that has proven that well-implemented treatment programs targeting appropriate offenders do work and reduce offender recidivism by 10 to 20 percent. The same research also proves that without treatment incarceration does not work to reduce recidivism (beyond the period of incarceration) and in fact increases the likelihood of recidivism.

Unlike California, many other states, including Arizona, Oregon and Washington, are already committed to these evidence-based practices to reduce recidivism. Arizona courts use

offender risk assessment tools in sentencing. Oregon courts require sentencing judges to consider the likely impact of potential sentences on reducing offenders' future criminal conduct. The Oregon Legislature has required the state's criminal justice agencies to collect and share sentencing data to determine the effect of various sentences on offenders' future criminal conduct. The state's Legislature also required that 50 percent of funding provided for corrections programs in 2007 be spent on evidence-based programs and 75 percent of the funding in 2009.

Facing the need to construct new prisons, the Washington Legislature called for a study of the existence of any evidence-based corrections alternatives. The study identified a number of evidence-based programs that reduce recidivism by up to 20 percent and found that implementation of the evidence-based options would reduce Washington's crime rates, avoid future prison construction and save taxpayers \$2 billion.

Evidence-based community corrections programs promote public safety by reducing recidivism by known offenders and by freeing prison bed space for long-term imprisonment of more dangerous and serious offenders. They allow offenders to be in the work force and pay restitution to the victims of their crimes. They are not soft on crime. They target offenders who present a high risk of reoffense but not violent, dangerous or the most serious criminals for whom long-term incarceration is clearly more appropriate. In addition to providing services to reduce recidivism, the programs can control the risk of offender misbehavior through, for example, local incarceration, intensive supervision, electronic monitoring, day or evening reporting responsibility, testing and surveillance.

For many of these offenders a community treatment program with behavioral controls is a tougher and more effective sentence than imprisonment. For many offenders the responsibility to change their own anti-social behaviors is a lot tougher than doing time. Most nonviolent offenders don't serve long prison sentences anyway. Nonviolent offenders in California serve a median of less than 10 months in prison before being paroled.

Sentencing reforms now enjoy broad public support. Although public safety is a top public concern, the public believes in rehabilitation and doesn't see punishment and rehabilitation as either/or propositions. When asked in a recent nationwide survey by the National Center for State Courts whether they think that once offenders turn to crime, very little can be done to turn them into productive, law-abiding citizens or that under the right conditions many offenders can turn their lives around, almost 80 percent of 1,502 people surveyed say that people can turn their lives around. Eighty-eight percent believe that rehabilitation and treatment programs should often or sometimes be used as alternatives to prison. Seventy-seven percent say they would prefer to see their tax dollars spent on programs to help offenders find jobs or get treatment rather than on building more prisons. The public favors a balanced approach to public safety: an approach that is tough, especially on the most violent, dangerous or threatening offenders, but that also encourages less serious offenders to turn their lives around.

The Little Hoover Commission, which over the past 15 years has published a number of reports on California's correctional system, is planning this week to release its latest report on opportunities for sentencing reform. The commission's report may further guide California along the path that the governor has outlined and may provide a more complete vision of prison reform and improved public safety for the citizens of California.

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