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## Punishing prisoners at all costs

**California's prisons are in crisis because of harsh sentencing laws that don't treat violent and nonviolent criminals much differently.**

By Joe Domanick

JOE DOMANICK, author of "Cruel Justice: Three Strikes and the Politics of Crime in America's Golden State," is senior fellow in criminal justice at the USC Annenberg Institute for Justice and Journali

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IN 1977, CALIFORNIA made a momentous decision that is still sending shock waves through the state's prison and parole systems. In response to the public's rising fear of crime, the Legislature changed the goal of incarceration from "rehabilitation" to "punishment." To that end, lawmakers over the next decade passed more than 1,000 bills toughening and lengthening prison sentences. They also instituted "truth in sentencing" policies that required prisoners who committed certain crimes to serve 85% of their sentence before they were eligible for parole. Then, in 1994, voters overwhelmingly approved a three-strikes law mandating a sentence of 25 years to life for a third felony conviction and a doubling of a sentence for a second strike.

Criminal justice experts estimate that as much as 25% of California's — and the nation's — decade-long crime decline is attributable to this punish-all-criminals strategy. But the approach has come at a huge cost. The longer sentences have swelled the inmate population far beyond the capacity of our prisons and contributed to the rise of an older criminal class, especially in California. In Los Angeles County, for instance, felony arrests and incarceration of 40- to 59-year-olds have jumped dramatically, a stunning development given that criminals tend to commit fewer crimes as they reach their mid-20s and fewer still as they grow older. But in L.A. County, 40- to 59-year-olds are incarcerated at a rate 1,200% higher than in 1980. Many return to prison because of technical violations — failing drug tests or missing a parole appointment.

As a result, the medium age of a prisoner in California is 36, up five years from 1984. About 20% of the state's inmate population is now 45 and older. More older prisoners means higher healthcare costs. Currently, the medical bill is \$1.5 billion a year, and the prison healthcare system is so dysfunctional that a federal judge has placed it under his direct control.

Although many older, violent inmates may deserve long prison sentences, such treatment for substantial numbers of nonviolent, repeat offenders who make up the underbelly of California's criminals — petty thieves, small-time drug dealers, speed freaks, crack heads, winos, junkies and the mentally ill — has been counterproductive.

Inside prison, little is done during their years of incarceration to help these older inmates shed their street-hustler values or kick their addictions. As criminologist Joan Petersilia recently wrote in a report for the California Policy Research Center, "Almost one-quarter of all California inmates are completely idle during their prison stay, never participating in any treatment programs, despite an unusually high need for drug and alcohol counseling."

About 42% of California's inmates, according to research done by Petersilia, have a "high need" for alcohol treatment, but only 7.5% receive it. The numbers are even more glaring for drug addicts: 56% have a high need for treatment, but only 9% are treated. Opportunities for educational or vocational training are similarly limited.

"If someone is locked up in prison for 12 years for a crime that previously would have gotten him a four-year sentence and fails to get any treatment or rehab," said Todd Clear, a professor at John Jay College of Criminal Justice, "they'll just return to their old habits."

The problem, Clear said, is that men "don't age out" of their criminal behavior simply by sitting in prison. As a result, when released, they have the "same probability of getting rearrested as do younger parolees," he said.

The state's parole and probation systems, which reinforce the "punish 'em" approach, also have fostered an older prison population. Rather than provide psychological, social and rehab support for ex-cons, the parole system has become a surveillance and control mechanism geared to catching parolees doing something — often anything — wrong, then quickly sending them back to prison. Parole officers, for their part, often have to choose between ignoring a parolee who fails a drug test — because there's no state money for treatment — or sending him back to prison, the more expensive option. Ignoring a violation is a risky choice for them. All it takes to tarnish a career is a sensational media story about how a parole officer's decision to give a parolee another chance was followed by the parolee committing a horrible crime.

Dumped back onto the streets untreated, with no rehabilitation and with nothing but \$200 "gate money," ex-cons must also contend with laws denying them public housing, food stamps, driver's licenses, access to their children and federal assistance for education. If they've been convicted of a drug crime, they are barred for life from receiving federal assistance. Further, once out, parolees receive little follow-up attention to ensure that they find appropriate residences, positive associations, employment and treatment.

As a result, California has the worst parolee failure rates in the country. Roughly 66% of parolees return to prison within three years.

The increasing lack of job opportunities for ex-cons exacerbates the situation. Thirty years ago, an ex-prisoner could often melt back into society by finding a decent blue-color job at a factory. Today, by contrast, manufacturing jobs are scarce in California, and available unskilled jobs are often filled by illegal immigrants. In addition, ex-cons are subject to electronic background checks by potential employers that often eliminate them from job consideration.

"Research has shown that an arrest record is associated with high unemployment, less income over time, high rates of family breakup and arrests," Clear said. "The arrest record in itself is a precursor to future failure."

The prospect of producing another generation of middle-age, often violent criminals and drug addicts is near 100%. "Two-thirds of the overall growth in [California's] prison population since 1994," Petersilia said, "is due to crimes against persons — especially robbery, assault and homicide."

At the beginning of his tenure, Gov. Arnold Schwarzenegger talked a good game about instituting comprehensive treatment and education programs that could make a difference in ex-cons' lives. He added rehabilitation to the official name of the Corrections Department, appointed reform-minded people to run the prison system and promised to fund rehab programs. But he retreated at the first signs of political opposition from the guards union, falling back on the old, failed bromide of building more prisons on top of the 22 the state has built since 1980 and, to the state's shame, proposing to outsource some prisoners to other states to relieve overcrowding.

What Schwarzenegger needs to do is put state money and his considerable political capital where his mouth is and lead a charge to rewrite the state's sentencing laws in conjunction with using any savings to fund rehab programs. California's prison system is in crisis because of the public's desire to punish all criminals, above all else, instead of treating nonviolent and violent criminals differently.

