

Why Prison Reform Doesn't Happen

The California prison crisis is like a ship slowly taking on water. We know where the leaks are and we know they have to be plugged, or eventually the ship will sink. Plans to plug the holes have been drawn up in detail. Unfortunately, the ship is not under the command of a captain who can unify the crew to get the work done. Consequently, the ship is dangerously close to sinking. In real terms, the bow goes up in June 2007 when the overcrowded prison is forced to tell counties it can no longer accept new commitments.

It would truly be a tragedy of failed leadership if the June 2007 shut down order is issued.

It is already a bureaucratic embarrassment that the bold steps of prison management reform have been mere tiptoes, even though the path to be taken was mapped out in the 2004 Deukmejian Report and most recently in Professor Joan Petersilia's document, Understanding California Corrections.

Here is a quick thumbnail on the key reforms needed to keep our prison system afloat:

ONE. Reduce overcrowding by ending the practice of recycling inmates who commit purely technical parole violations; send incarcerated illegal immigrants to other states; move non-violent, low risk women to community correctional facilities. Put the severely mentally-ill in

facilities separate from the general prison population. Put the sickest inmates in a prison hospital designed to provide care.

TWO. Employ high technology in the parole system, as Florida has done, to reduce crime and recidivism by requiring certain parolees and to wear a GPS anklet or bracelet that allows them to be monitored 24 hours per day. We could probably save \$1 billion per year within a few years simply by adopting the Florida reforms. My legislation last year, SB 619, authorized the use of GPS surveillance of parolees and probationers. I followed up this year with SB 1178, which mandates the use of GPS on all high-risk sex offenders. The Governor signed the bill last month, so we are moving forward.

THREE. Given that 95 percent of inmates will be released from prison within five years, it is critical that rehabilitation efforts affect as many inmates as possible. But, only seven percent of inmates receive alcohol treatment although 42 percent have a high need for treatment. Worse yet, only 2.5 percent of inmates with a serious need for drug treatment actually receive treatment during their time in prison. Again, California recycles rather than rehabilitates men and women who have broken the law. The Governor signed my SB 1453 last month—this bill provides realistic incentives for inmates to enroll in in-prison drug treatment programs and to keep their treatment going during parole. Again, we are going in the right direction. But it is a small step.

Why haven't most of the reforms needed taken place?

I would remind you that I appeared before this Commission on January 27, 2005 to state rather flatly that the Governor's proposed reorganization plan for the Department of Corrections "wasn't ready for prime-time." It was a change in name only.

Secretary Hickman and his successor, Secretary Woodford, both resigned this year. And that is unfortunate, because they experienced all the birth pains without the birth of true reform.

I would like to remind you of the insights of Judge Steve White, the former Inspector General, who stated the following at a 2004 Senate hearing on prisons: *The Department of Corrections is an immense organic entity with no center to it, no leadership, no structure that stands on principle. It has an organization that doesn't work except in ad hoc and informal and let's-make-it-go-aways that have been largely managed on local levels—that is to say in the respective prisons—by virtue of collaboration between the wardens and the CCPOA.*

The CCPOA has a mission of its own, and it has a fairly narrow scope. The department has a very large mission. It's statutory and it's constitutional. It's a very wide scope. The CCPOA has managed, through its leadership talents, its ability to amass political monies, and its sheer competence to move the department off of its larger comprehensive role and refocus the department on the CCPOA's ground.

Unless you do something different than what normally is done in the wake of these events, is that there will be great focus, there will be great saber rattling, there will be sincere

commitments. Heads will roll, butts will get kicked, and three months later, when you're not looking, it will be back to the way it was. I know this to a certainty.

Commissioners: the lack of a management center cited by Judge White has worsened since 2004. We still have the CCPOA and CDCR at odds. But now we Robert Sillen, the federal receiver in charge of a \$1.2 billion prison health care system as well as the added pressures from several federal court orders.

The Schwarzenegger Administration prison team has been unable to centralize control. The current management system is frayed by the following eight pressure points:

1. As just noted, a court-ordered federal receiver has taken over control of the prison health care system. The system suffers from high vacancy rates among medical personnel; a lack of computerized medical records and pharmaceutical controls; poor morale; professional incompetence; unsanitary work conditions; poor facilities; questionable medical contracts with outside providers; lack of disease control measures in overcrowded living quarters; and a negative commingling of inmates that counters good care efforts (mentally ill mixed with level III and IV inmates; geriatric inmates mixed with young inmates, etc.).
2. Treatment of mentally-ill inmates is also subject to a federal court order that, among other things, dictates the hiring of competent professional who will receive appropriate compensation.

3. Judge Thelton Henderson is threatening to slap sanctions on the department if it does not regain control of its prisons.

4. The Administration and the union (CCPOA) are negotiating an expired labor contract that has a dramatic effect on prison operations. Currently, in the vast majority of cases, it is the union, not the prison warden, who determines what officer works where and when. The contract provides for constant shut downs through the work-grievance process. And the lucrative contract ensures that guards earn more than college professors.

5. The CDCR says it will run out of space in June 2007 and, as a result, will be forced to refuse commitments from county jails. Legislative efforts to relieve overcrowding failed for political reasons. Overcrowding could lead to riots, or a disease outbreak. Overcrowding increases inmate-guard tensions and that leads to lockdowns which, in turn, cause rehabilitation programs to be shut down. The Governor has set into place a procedure to send inmates to prison in other states, an emergency effort to reduce overcrowding. This move may help if it survives legal challenges. In fact, I understand that as many as 19,000 inmates want to leave California, presumably for private prisons where they hope conditions will not be as bad as they are here.

6. Reform progress is hampered by the lack of automated data systems and comprehensive analytical models to help CDCR be more efficient in managing inmates and resources.

7. The federal court mandates and overcrowding are fueling spending at the department at record levels. Health care is \$1.2 billion and rising. The specter of building more prisons could add \$3 billion more in costs. The Correctional Budget is the greatest threat now confronting California taxpayers. But let me interject this key point on the need to spend money. Prison expert Professor Joan Petersilia has already identified the steps that need to be taken to get CDCR spending under control. But Joan Petersilia has thrown up her arms...having done all that she can do....to show us the way...I will deliver her message to you today: WE DON'T NEED TO THROW MORE MONEY AT THE OVERCROWDING PROBLEMS...SIMPLY PUT...DON'T RUSH TO BUILD MORE PRISONS UNTIL WE EMBARACE THE ALTERNATIVE SOLUTIONS AT HAND! I will repeat them: parole reform and rehabilitation directed at those inmates who can be helped. Stop the recycling of inmates.

8. The CDCR suffers from decades of poor morale that has manifested itself in a work culture that embraces the status quo rather than the pursuit of excellence. The department is a like a baseball team on a 20-game losing streak. The players expect to lose. However, I believe the will to win is still alive, we just need a few well placed home runs. There were some hits yesterday at a hearing I chaired involving several department whistleblowers connected with the department's Office of Substance Abuse Programs. They had provided me with information that I subsequently turned over to the Inspector General. Next week there will be full disclosure about how contracting practices at this program were in violation of state contracting law. Perhaps, as much as \$6 million was misspent at this very small arm of CDCR. More significantly, the department overall

spends \$2.6 billion annually on contracts in a manner than may be inconsistent with state contracting rules. My sense is that Secretary Tilton will follow through on making immediate corrections. The whistleblowers are giving a thumbs up to management reforms that are less than a month old. It's an important start.

As I have stated, the core elements of corrective actions to reduce overcrowding and lower recidivism are identified in Professor Petersilia's Understanding California Corrections (May 2006, California Policy Research Center). But there is no political will to push for the reforms in the Petersilia plan and instead, we are confronted with the following typical scenario:

Two years ago a work group of legislative staffers and CDC director Jeanne Woodford and her top medical people and met several times to identify actions needed to stabilize medical costs.

Woodford said it was critical to...

- construct a geriatric prison near a major metropolitan area to house the oldest and sickest inmates, especially those with chronic health care needs;
- separate the mentally ill from the general prison population.

Same old story. We know what to do, we just don't do it unless a federal court order is involved.

One of the Deukmejian Report's top recommendations was the formation of a citizen's commission to oversee progress on prison reform. The former governor believed, and rightly so, that if the public eye was not focused on what needed to be done, it would not get done...and he was right...we've turned a blind eye to date on prison reform.

The chief blinder is fear! Elected officials are afraid of appearing to be weak on crime...that is, any effort to help an inmate, whether it be sentencing reform, the establishment of clean medical facilities, or the use of taxpayer funds to erase illiteracy, anything positive for the inmate can be viewed as negative for the victims of crime. Punishment still dominates the majority of legislative rhetoric.

I have been a victim of a violent crime. But even with this calling card, I have to be prepared to defend myself against criticism that reform proposals make me soft on crime.

If I am not attacked on the right, I'm sure to be hit on the left. When I proposed that men convicted of rape and murder be sent to other states if they committed their crime while they were in California illegally, I had to defend myself from charges that I was committing a social injustice. And that is why for some legislators, it is easier to do nothing.

In the world of prison reform there many lines to be crossed. Some crossings invoke the ire of the prison guards' powerful union, the CCPOA, or the CCPOA-related group, Crime Victims United. Some reforms anger the ACLU or the Coalition for Public Safety.

Commission members: We need leadership, not lip service. It is unacceptable that we have allowed the federal courts to take over much of our state prison system. But the only noticeable changes in prison reform over the last three years have come from these federal mandates and the

fearless work of Judge Thelton Henderson, Special Master John Hagar and Reciever Robert Sillen. They cross lines every day.

As proposed by former Governor Deukmejian, we need a public commission to make certain that California's leaders are up to the task of restoring sound management practices to the business of incarceration and rehabilitation. And I applaud the Commission for helping cast a public eye on this failed prison leadership. Yes, a few bills have been signed and an emergency proclamation has been issued, but as of a few days ago, a record number of adults were in state prisons—more than 173,000. I ask you, what will it take for California leaders in the public and private sectors to grasp the severity of the California prison crisis? It affects us all. Thank you.
