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## The Story of Four States Which Reduced Their Prison Populations

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April, 2010

Criminal Justice

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### The Story of Four States Which Reduced Their Prison Populations

#### *Introduction*

California continues to have a crisis regarding the number of people who are held in custody in both the State and local institutions. In this *Criminal Justice* column we have discussed this crisis and potential solutions several times.

Last year, our Legislature made a feeble effort to do something about the problem. Some compromise reform legislation was passed. Yet, in the couple of months, the practical effect of that legislation was rendered insignificant by the judicial branch.

The problem lies in the anachronistic concept that extended incarceration has some effect on crime rate. And, though the legislators and their staffs know that extended incarceration is not an effective remedy, the lure of popular acclaim leads them to adopt - or, at least, not oppose -- "tough on crime" bills. Those bills, with the mindless appeal to the politics of fear and hatred have simply jammed our prisons and jails.

## ***Sentencing Reform in California***

“Sentencing reform” in this state is an oxymoron. Despite the crisis in the prisons and the jails, Sacramento was unable during its regular session last year to pass any significant sentencing reform bill. In the Third Extraordinary Session, the legislature passed a very modest amendment to Penal Code Section 4019 to slightly and temporarily relieve some pressure on overcrowded penal institutions. It wasn’t something like ~~like~~ the creation of a Sentencing Commission - still too much politics for such a sensible approach. It wasn’t a revision to the ~~ridiculous~~ three strikes law that imposes a life sentence on a third conviction that is not a serious or violent felony. It wasn’t a reduction in outrageous enhancements and mandatory minimums. It was simply a law to give 50% credits, instead of 33.33% credits, for county jail inmates for some crimes. The credit still had to be earned by the inmate based on good conduct and willingness to work.

But even this modest attempt to decrease the population in jails and prisons was undermined by the courts. In the case of Sacramento County Deputy Sheriffs Association v. County of Sacramento, Judge Loren McMaster of the Sacramento Superior Court held that the language of the amended statute ~~meant that it~~ ~~only~~ applied only to prisoners. It made no sense to construe the statute that way since, ~~logically,~~ Penal Code Section 4019 ~~could only~~ applies to county jail time. ~~Of course, the language, including~~ and the word “prisoners,” was not changed from the prior language of the statute; ~~only the amount of the conduct credits was changed.~~ As of this writing, this Sacramento litigation has been emulated in other counties but no reported decisions have yet taken on this issue directly.

Meanwhile, the Court of Appeal in (People v. Rodriguez (2010) --- Cal.Rptr.3d ----, 2010 WL 682459, Cal.App. 5 Dist., 2010, March 1, 2010) held that the conduct credits under Penal Code Section 4019 are not retroactive. Interestingly, the Court assumed without deciding that 4019 applied to county jail time. ~~However, this court decided that the increased credits under 4019 would be prospective only.~~ So the effect was muted.

But, it is obvious to the most casual observer that even a fully retroactive increase in county jail conduct credits will have only a slight effect on the enormous population of incarcerated people in California. Furthermore, the perceptible immediate effect on county jail populations would only make a small impact on prison populations. This legislation does not address the real problem that California politicians have found that using the politics of fear and hatred to increase penalties prolongs their careers and allows them to run for even higher office.

## ***The Experience of New York, Michigan, New Jersey and Kansas***

The prison population in the United States has increased by four times over the population 25 years ago. In the last ten years, 1999 through 2009, the prison population in this country has increased by 12%. Some states increased their population by as much as 57% with six states exceeding 40% increases. So, the “tough on crime” politics of fear and hatred has prevailed nationally, not just in California. Yet, with all this, the crime rate has remained relatively constant. ~~However, while the national average increase in prison population was 12%,~~ The United States imprisons more people per capita than any other country in the world and far more than any other democratic nation. Last year we reached our “personal best” (or worst) and now incarcerate 754 people for every 100,000.

However, a new study from the Sentencing Project in Washington, D.C., found that four states, New York, Michigan, New Jersey and Kansas, made serious efforts to decrease their populations and actually achieved reductions of from 5 to 20% during the last few years. New York leads with a 20% reduction from 1999 to 2009; New Jersey, a 19% reduction for the same period; Michigan, a 12% reduction from 2006 to 2009; and Kansas, a 5% reduction from 2003 to 2009. These decreases are all the more impressive in light of the increases throughout the rest of the country.

~~Furthermore,~~ At the same time, crime statistics for these same four states showed a decrease in crime. In other words, the causal relationship touted by “tough on crime” politicians between longer sentences and reduction of crime or public safety is simply false. This, of course, makes perfect sense. The people of the United States are not different in kind from those of the rest of the world. Americans are not more ~~are so~~ inclined to crime here that we have to incarcerate exponentially more people than any other nation. In fact, we are a relatively civilized nation of laws and of educated individuals. Of course, it makes no sense that we just have so many more misfits than any other country that locking people up is the only remedy to save ourselves from each other.

### ***Cost of Incarceration***

The cost of incarceration is substantial nationwide. The average cost to house one inmate a year is now close to \$40,000, about what it costs to send a student to Harvard University for a year. More importantly, this expense drains the states’ resources for other activities, including health, public safety and education. California has the most expensive incarceration system in the United States in absolute terms and spends a greater percentage of its budget on incarceration than all but four states. 9.4% of our state budget goes to incarceration whereas the national average is 6.3%.

It is well known that the California Correctional and Peace Officers Association (CCPOA) is the most powerful union in the State. Their influence extends far beyond fighting for pay and benefits for correctional officers - resulting in the highest pay in the nation - but extends to creation of jobs, construction of new prisons, and support

for “tough on crime” (read, increased sentences) legislation. The result is that, although our state prisons are at 200% of physical capacity, the staffing is at 100%.

Although New York, for instance, is one of the four states which have decreased prison populations, they have also fought the same battle with their prison lobby. Until this last year, ~~although~~ despite a decrease of prison ~~their population decreased by of 20%, they were~~ the state was not able to close any prisons. And, although they the prisons had empty beds, ~~they~~ the state continued to carry the overhead ~~and, in particular~~ including the payroll expense, of these facilities. Only last year ~~were they~~ was the state able to close three small prisons and reallocate those resources to other ~~state~~ needs.

~~One of the challenges facing California has been and will be to confront the “prison lobby” which keeps our costs so high. Even if correctional officers should be well paid -- many earn well over \$100,000 a year -- we have to not only decrease the prison population but we have to reduce the size of facilities and spend the money elsewhere.~~

While New York, New Jersey, Michigan and Kansas invoked a number of methods to decrease prison population, which we will review below, it is important to put the cost of incarceration in context. If we spend \$40,000 a year (or more) on incarcerating one person, we should make very sure that such ~~very~~ expensive treatment is what is really required by the circumstances. We should ask if there are other means that we can use to supervise and rehabilitate that person or ~~are there~~ other means to avoid having that person come into the criminal justice system itself. Just as a reality check, if you hired one probation officer whose entire case load consisted of no more than three probationers at any one time, the cost of that officer would be defrayed by the savings of not putting those same three people on prison. And, if the case load were, say, six, the direct savings would be \$120,000 a year. In addition, those direct savings would be multiplied by the fact that intensive supervision ~~of that sort~~ would reduce recidivism, increase community cohesion, improve the quality of life in the community and save numerous potential victims of future loss of property and life.

~~Increased probation staffing is not the only or maybe best answer and may not be the best to the crisis we face answer but it provides a dramatic illustration of the folly of locking everyone up so that legislators get the bragging rights of being “tough on crime” and the CCPOA can continue to feed its own empire. Yes, there are people who really need to be segregated from society and some who deserve to be locked up for heinous crimes but our prisons are full of people who do not need to be there, are learning how to survive under brutal conditions of confinement and who return to the community bitter, hardened and more likely to not succeed. This message is communicated to the rest of the community and the “us vs. them” mentality sets in on both sides resulting in the belief that large parts of our society will never have a vested interest in the dominant society. This, of course, leads to more criminality~~

~~and the counter-culture of gangs. And, of course, this leads to more and more incarceration.~~

It isn't working. What can we do? We have written about this in this *Criminal Justice* column off and on for years. The Little Hoover Commission studied it. Dr. Petersilia studied it. Our own Sheriff Bill Brown and his Blue Ribbon Commission studied it. But the legislature and Governor of California is not doing anything about it. Now we have even more evidence from these four states that something can be done.

### ***What Did the New York, New Jersey, Michigan and Kansas Do to Decrease Prison Populations?***

The Sentencing Project in its new publication, *Downscaling Prisons* (2010), analyzed the particular devices that these four states invoked over the last few years which resulted in a decrease in prison population while the national trend was still on the increase. ~~What is actually working is pretty much what we have urged in this *Criminal Justice* column and what has been urged by the studies. It turns out that evidence based decisions are superior to the politics of "tough on crime," fear and hatred and self promotion that has driven our correctional choices over the last 25 years.~~ The Sentencing Project Report broke the changes down in general categories.

#### *Sentencing Reforms*

New York , Michigan and Kansas all engaged in significant sentencing reforms, particularly with regard to drug offenses. Mandatory minimums were reduced or eliminated, including excessive enhancements based on arbitrary drug quantities. Community corrections alternatives were provided to give judges more statutory discretion I sentencing.

#### *Alternatives for "Prison Bound" People*

New York and New Jersey increased alternatives to incarceration by expanding treatment programs and allowing people a way to get out of the correctional model and into treatment. This decreased the number of people going into the system and also decreased the recidivism rate.

#### *Reducing Time Served in Prison*

New York created conduct credits and rewards for participating in educational and vocational training and treatment.

### *Parole Release Rates*

New Jersey and Michigan implemented risk assessment procedures to determine which inmates could be released early. This occurred in conjunction with re-entry programs and day treatment reintegration programs.

### *Reducing Revocation*

New Jersey, Michigan and Kansas made concerted efforts to improve reintegration of prisoners into society upon release and more enlightened sanctions for technical parole violations.

### *Conclusion*

The fact is that we have proof that you can reduce prison populations intelligently and with positive results. The crime rate has not increased in these states, in fact, it appears to have decreased slightly. The monetary savings have yet to be realized because these new programs cost money and because the prison industry interests are so strongly rooted. But that will come not only in direct costs but in the societal savings resulting from keeping people out of the revolving door. Will California break away from the “tough on crime” sound bite mentality that fuel the personal agendas of politicians? Will we continue to spend almost 10% of our annual budget on corrections? Will we continue to ignore education and community services so we can spend that money? Will we rise to the occasion and do the intelligent thing? Stay tuned.