



State of California

LITTLE HOOVER COMMISSION

January 25, 2007

The Honorable Arnold Schwarzenegger
Governor of California

The Honorable Don Perata
President pro Tempore of the Senate
and members of the Senate

The Honorable Fabian Núñez
Speaker of the Assembly
and members of the Assembly

The Honorable Dick Ackerman
Senate Minority Leader

The Honorable Michael Villines
Assembly Minority Leader

Dear Governor Schwarzenegger and members of the Legislature:

California's prisons are out of space and running out of time.

The State already has ceded control to the federal courts for prison mental health, juvenile justice and the prison health system. In December, a federal judge ordered the State to fix the overcrowding problem within six months, or face the prospect of a prison population cap.

The State is past the point for assigning blame. The urgency of the crisis demands we look now to those who can produce a solution. That responsibility lies with the Governor and the Legislature. You have the authority and, as California's leaders, must share the duty of fixing California's failed corrections system.

A default strategy of waiting until federal judges order needed changes is not governing. The Governor and Legislature need to take the initiative away from federal courts by demonstrating you have a better plan. That way, the Governor and Legislature can regain the confidence of the courts as well as the Californians they govern.

You must assess your options frankly and move forward together on a solution. The Governor has taken a first step with proposals that acknowledge the key issues and signal willingness to engage in the process of developing solutions. But proposals have been made before only to stop short of full implementation. The Governor and Legislature need to lay out plans that include strategies and timetables for major milestones. And you need to deliver on your commitments.

The Governor and Legislature must find the political will to move past rhetoric and address ways to solve the prison population crisis and make good on promises to improve public safety. "Tough on Crime" sentencing laws have to be judged by outcomes and matched with fiscal responsibility. To ensure public safety, reforms will have to jettison posturing to make room for smart on crime policies.

You must act decisively on the problem or turn it over to an independent body, insulated from politics, that can. Our recommendation and preference is for you to do it yourselves.

The problem does not need further study. The State knows what the answers are, thanks to nearly two decades of work by such groups as the Blue Ribbon Commission on Population Management, the Corrections Independent Review Panel and a series of reports by this Commission. Despite ample evidence and recommendations, policy-makers have been unwilling to take on the problem in a purposeful, constructive way.

The consequences of failing to act aggressively now leave the State open to losing control of the State correctional system and with it, control of the state budget. The debacle developed over decades. Solutions, likewise, will be years in the making. But making a start now is essential.

The bare facts have earned California's Department of Corrections and Rehabilitation an ignoble distinction for systemic failure. Inmates have swelled prisons far past capacity. With cells already full, new inmates camp out in hallways, gyms and classrooms. The goals of punishment and confinement have left little room, or budget, for rehabilitation. The bulk of the State's prisoners are not succeeding once released. California's recidivism rate, at 70 percent, is near the highest in the nation. The ranks of correctional officers have not kept pace with the rising prison population. The department has thousands of openings, resulting in huge overtime bills and mounting stress for correctional officers.

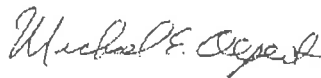
These are some of the problems you must solve.

During the past five years, the Department of Corrections and Rehabilitation budget has surged 52 percent. California taxpayers legitimately can ask what return they are getting in increased public safety and question the trade-offs the State implicitly makes in spending an increasing portion of its general fund dollars on corrections.

The status quo is not acceptable. But even federal court intervention, a special legislative session and a Governor's emergency proclamation have yet to generate a level of alarm that reflects the size of the crisis.

The choices are stark. The price of failure is unimaginable. It is not too late to act.

Sincerely,



Michael E. Alpert
Chairman

Executive Summary

California's correctional system is in a tailspin that threatens public safety and raises the risk of fiscal disaster. The failing correctional system is the largest and most immediate crisis facing policy-makers. For decades, governors and lawmakers fearful of appearing soft on crime have failed to muster the political will to address the looming crisis. And now their time has run out.

State prisons are packed beyond capacity. Inmates sleep in classrooms, gyms and hallways. Federal judges control inmate medical care and oversee mental health, use of force, disabilities act compliance, dental care, parolee due process rights and most aspects of the juvenile justice system. Thousands of local jail inmates are let out early every week as a result of overcrowding and court-ordered population caps. The State may soon face the same fate.

The Governor declared a state of emergency. But even that didn't bring action, only more reports to federal judges that underscore the fact that the State's corrections policy is politically bankrupt. As a result, a federal judge has given the State six months to make progress on overcrowding or face the appointment of a panel of federal judges who will manage the prison population.

For years, lawmakers and government officials have failed to do their jobs. This failure has robbed the State of fiscal control of the correctional system and placed it in the hands of federal courts.

The court-appointed receiver for inmate medical care has threatened to "back up the truck to raid the state treasury" - if that is what it will take to bring the system into constitutional compliance.¹

The receivership has set up a parallel management structure between the courts and the California Department of Corrections and Rehabilitation (CDCR) that impedes the State's ability to attract and retain the exceptional leadership required to guide the State out of the quagmire. In 2006, the department saw two secretaries resign abruptly before the current secretary was appointed in November. In testimony before a federal judge, both former secretaries stated that politics trumped good policy in correctional reform efforts. A nationally recognized correctional administrator told the Commission that no one

with the competency and leadership skills required to succeed as secretary would be willing to take the job under these circumstances.

Unlike other states, California relies almost completely on CDCR to improve correctional outcomes. It fails to tap the resources of other agencies that could assist in reducing crime and improving chances for offenders to improve themselves before they are released.

Despite the rhetoric, thirty years of "tough on crime" politics has not made the state safer. Quite the opposite: today thousands of hardened, violent criminals are released without regard to the danger they present to an unsuspecting public.

Years of political posturing have taken a good idea - determinate sentencing - and warped it beyond recognition with a series of laws passed with no thought to their cumulative impact. And these laws stripped away incentives for offenders to change or improve themselves while incarcerated.

Inmates who are willing to improve their education, learn a job skill or kick a drug habit find that programs are few and far between, a result of budget choices and overcrowding. Consequently, offenders are released into California communities with the criminal tendencies and addictions that first led to their incarceration. They are ill-prepared to do more than commit new crimes and create new victims.

Not surprisingly, California has one of the highest recidivism rates in the nation. Approximately 70 percent of all offenders released from prison are back within three years - mostly due to parole violations, many of which are technical in nature. California's parole system remains a billion dollar failure.

If the problems are not fixed, the consequences will be severe. While many Californians and their policy-makers have heard or read about the corrections crisis, few are aware of how serious the crisis has become and what the consequences will be. The fiscal ramifications will affect funding for virtually every other government program - from education to health care.

Governor Schwarzenegger proposed an ambitious plan in December 2006 to increase the number of prison cells, expand space in county jails and establish a sentencing commission. That is an encouraging start, but insufficient given the seriousness of the situation that requires immediate action and demonstrable results.

Once, policy-makers had ample opportunities to make choices that could have put the State on a different path. Now, policy-makers are down to just two:

- The Governor and the Legislature can summon the political will to immediately implement reforms to improve the corrections system to ensure public safety and eliminate federal involvement.
- Or, they must turn over the task to an independent commission – free from political interference – with the authority to fix this broken system.

It will not be easy and change will not happen overnight. It will require cooperation and courage on the part of the Governor and the Legislature. And the solutions will require skillful and determined implementation.

The top priority should be to take back control of the prison medical system, by developing a plan to work with an organization such as Kaiser Permanente or a university that can run the system for the State. This is a critical step in restoring confidence that the State can run the entire system and demonstrate the professional competence needed to attract top managers.

The State must immediately take action to improve its management of the correctional population and implement the recommendations made by this and other commissions, including expanding in-prison programs, improving prisoner reentry, and reallocating resources to community-based alternatives. The State must use all of its human resources, not just the personnel of the Department of Corrections and Rehabilitation.

The State must re-invent parole, moving to a system of post-release supervision for certain prisoners to ensure public safety.

At the same time, the State should begin a comprehensive evaluation of its sentencing system by establishing an independent sentencing commission to develop guidelines for coherent and equitable sentencing guided by overarching criminal justice policy goals. This is not a short-term solution, but a way to create rational long-term policy. Critics who suggest that a sentencing commission is code for shorter sentences are misinformed. Other states have used sentencing commissions to lengthen sentences for the most dangerous criminals, develop community-based punishment for nonviolent offenders and bring fiscal responsibility to criminal justice policies.

As they start the process, the Governor and Legislature should set goals and targets and insist on performance management to meet them. These reforms must not be allowed to fail in implementation, as they have

before. From start to finish, policy-makers must provide consistent support and oversight. In doing so, they can demonstrate progress to the public and the courts and begin to rebuild confidence in the State's ability to manage this critical responsibility.

Each of these proposals presents opportunities to fix a portion of California's corrections system. But they must be undertaken together, guided by a comprehensive strategy. Each reinforces the others as California embarks on changing the culture of its corrections system and restoring its status as a national model of success.

Recommendation 1: The Governor and Legislature should immediately implement a comprehensive strategy to reduce prison overcrowding and improve public safety in California communities. Specifically, the Governor and the Legislature should:

- Implement prior reform recommendations.*** Policy-makers do not need to further research solutions. They must immediately implement the evidence-based recommendations made by this Commission and others over the past two decades in order to regain control of major areas of prison operations where court intervention exists and avoid additional court intervention. To improve the performance of the correctional system, policy-makers must re-invent parole; expand educational, vocational and substance abuse treatment programs in prisons; reallocate resources to expand local punishment alternatives; and, expand judicial discretion.
- Establish a corrections inter-agency task force.*** The State should establish an inter-agency task force to develop partnerships with CDCR to bolster in-prison and reentry programs with a goal of reducing recidivism and improving public safety. The inter-agency task force should include all government entities that currently or potentially could assist offenders in improving their education, getting a job, finding housing, getting photo identification or a driver's license or treating an addiction or mental health problem.

Alternative Recommendation: If the Governor and Legislature are unwilling or unable to advance these critical correctional reforms, they should turn the job over to a board of directors with the power and authority to enact reforms. Specifically:

- The board should be an independent entity modeled after the federal Base Realignment and Closure Commission with members appointed by the Governor and legislative leaders.

- ❑ The board of directors should have the authority to enact criminal justice policies that become law unless rejected by the Governor or two-thirds of the Legislature.
- ❑ The secretary of CDCR should report to the board of directors and should be accountable for implementing the policies of the board.

Recommendation 2: To improve public safety and make the best use of correctional resources, the State must immediately implement evidence-based policies to reduce overcrowding and hold offenders accountable for improving themselves. Specifically, the State should:

- ❑ **Re-invent parole.** For determinately sentenced offenders, the State should eliminate parole and implement a system of post-release supervision for certain offenders based on a validated risk and needs assessment tool. Specifically, the State should:
 - ✓ Apply the greatest resources in post-release supervision to those offenders who pose the greatest risk of re-offending and who are the most serious, violent and dangerous.
 - ✓ Waive post-release supervision for certain low-risk offenders with no history of violence.
 - ✓ Provide opportunities for former offenders to earn discharge from supervision by maintaining employment, going to school, completing drug treatment or achieving other goals that reduce recidivism.
 - ✓ Authorize a grid of community-based sanctions, including jail, for offenders who violate the terms of post-release supervision.

**Expanding Community-based
Punishment Options**

The State should reallocate resources to assist communities in expanding community-based punishment options for offenders who violate the terms of post-release supervision. Working with communities, the State should reallocate resources to establish a continuum of alternatives to prison, including electronic monitoring, day reporting centers, drug treatment, jail time and other community-based sanctions.

- ❑ **Try offenders who commit new crimes.** Offenders on post-release supervision who commit a new, serious crime should be charged and tried in court, and if found guilty, sentenced to a new term.
- ❑ **Shift responsibility.** The State should shift post-release supervision and responsibility, and accountability for offender reintegration, to communities. It should begin with three or four willing counties and develop agreements and provide funding for sheriffs or probation departments in those counties, in partnership with community agencies, to provide supervision, services and sanctions for parolees.
- ❑ **Expand programs and create incentives for completing them.** The State should expand programs that research shows reduce recidivism. As programs are increased, the State should establish incentives for offenders to participate, including:

LITTLE HOOVER COMMISSION

- ✓ Linking credits toward early release to completion of education and job training programs, as well as plans for a job and housing.
- ✓ Requiring inmates to make progress toward educational or drug treatment goals before becoming eligible for work assignments.
- **Expand local capacity.** The State should reallocate resources to assist counties in expanding local capacity including jail space, drug treatment programs, day reporting centers and other locally-based punishment options. The State also should reallocate resources to assist counties in expanding intensive probation as an alternative sanction to jail or prison and to enhance crime prevention.
- **Expand the role of judges.** Guided by an offender risk assessment tool prior to sentencing, judges should be empowered to set goals that offenders should achieve, whether they are put on probation or sentenced to jail or prison. Additionally, the State should assist willing counties in establishing reentry courts where judges oversee the reentry of selected offenders back to the community.

Recommendation 3: California should establish a sentencing commission to guide the State's criminal justice sentencing policies to enhance public safety. Specifically, the sentencing commission should be:

- **Protective.** The Governor and the Legislature should establish a sentencing commission whose primary goal should be to enhance public safety and use public resources wisely. A sentencing commission is not a vehicle to revisit indeterminate sentencing, but a way to ensure sentencing laws match sentencing goals. Consideration should be given to successful strategies of sentencing commissions in other states.
- **Independent.** The sentencing commission should be permanent and independent from all branches of government with dedicated funding to support a small staff that would include criminologists, statisticians, legal experts and policy advisors.
- **Diverse.** The sentencing commission should be geographically and culturally diverse and its members must have demonstrated leadership capabilities. Members could include judges, district attorneys, public defenders, local law enforcement officials, academic experts, including an expert in gender responsive strategies for female offenders, victims' rights representatives, correctional leaders, former offenders or families of offenders and members of the public.

- **Authoritative.** The sentencing commission should have the authority to develop sentencing guidelines, as well as post release supervision and revocation guidelines that become law unless rejected by a majority vote of the Legislature.

- **Data-oriented.** The sentencing commission should be the State's clearinghouse for all sentencing and offender data. Policy-makers should immediately task and fund one or more California universities to perform this function for the commission.

- **Accountable.** The sentencing commission should assess all proposed sentencing law changes for their potential effect on criminal justice policies and correctional system resources.