

PRISON REFORM – REBUILDING CORRECTIONS

The California Coalition on Corrections

Summary

We are a group of retired correctional executives, managers, and staff specialists who have examined the correctional system during the past year. The California system¹ has devolved from being one of the best systems in the country to a sub-par, dysfunctional system that trails all other large states. Our review showed, as other studies have revealed, numerous correctional system problems and issues that should be addressed to rebuild that which is today a fragmented, overly expensive correctional system.

One issue stands out as *the major correctional system problem*:

- **The lack of a correctional agency responsible for systemwide independent planning and monitoring has been a crippling impediment to dealing with system deficiencies.**

Without central planning for the total correctional system, significant policy decisions are made on an ad hoc basis to satisfy individual state or county correctional needs. None of the individual county and state correctional agencies has the responsibility, authority, or capacity to lead or coordinate the total system. There is no source of independent, unbiased policy advice that the governor and legislature can rely on for objective advice on how to deal with the statewide correctional system.

The absence of a strategic planning and monitoring process is a major cause of correctional system problems. The California corrections system, a \$16.6 billion per year system, lacks direction. For instance, the state is investing many billions for additional prison beds without consideration of the source of prison overcrowding, the shortage of county jail beds.

We respectfully offer the following recommendations:

Recommendation 1:

¹ The statewide correctional system includes holding facilities, county jails, probation services, prisons, parole agencies, and numerous public and private nonprofit and for-profit agencies.

The state should create a permanent, independent correctional system planning and coordinating agency responsible for strategic correctional system planning. This planning agency would become the major source of correctional system information for state and local government. The Correctional Standards Agency (CSA),² if made an independent agency with the added responsibility for strategic system planning and coordination, could fulfill this role.

Recommendation 2:

Correctional beds have a life span of 30 years or longer. Prior to any construction of additional prison or jail beds, the state must conduct an analysis of the correctional system, beginning with population and crime estimates for future years and starting system analysis at the front end, the point of arrest, and proceeding "downstream" to probation, county jails, and the prison system. It should be noted that an analysis means an analysis of readily available data and not another study of the correctional system.

Correctional system data is readily available, both in the form of routine system data maintained by the Department of Justice and the Correctional Standards authority and in studies of various parts of the system by blue ribbon and professional groups. Such an analysis requires days or a couple weeks at most. There is no legitimate reason for such an analysis not being conducted and published.

The analysis has to deal with all significant correctional system issues including, above all, the huge shortage of county jail beds noted in a recent study by the California State Sheriffs' Association, which states: "California is short 66,385 jail beds statewide right now to meet current public safety demands."³ In 2005, 233,388 individuals *avoided incarceration or were released early* from jail sentences due solely to lack of jail space. That study did not deal with the major issue of the shift of short-term offenders to prison, where they now occupy about 38,000 prison beds and cause prison overcrowding.

Consideration must be given to the facts that prison overcrowding would not be an issue if adequate county jail capacity were available,

² For a description of the CSA, formerly the Board of Corrections, see <http://www.cya.ca.gov/DivisionsBoards/CSA/index.html>.

³ *Do the Crime, Do the Time? Maybe Not, in California* (California State Sheriffs' Association, June 2006), http://www.calsheriffs.org/Documents/do_the_crime_do_the_time.pdf.

and that county jail operating costs are usually lower than state prison operating costs. The Department of Corrections and Rehabilitation (DC&R) consistently reports that institutions and camps operate at about 200% of design capacity. Design capacity is a California definition based on one inmate for each cell and does not reflect American Correctional Association (ACA) national standards requiring single cells “for inmates assigned to maximum custody.” DC&R should indicate the number of inmates housed in facilities not in compliance with ACA standards, particularly the number of inmates housed in gyms, libraries, etc., and how many maximum security inmates are housed two per cell.

Recommendation 3:

For the short term, the DC&R needs to implement strategies to manage the size of the prison population to match prison capacity. The common and usual strategy of most correctional systems is to cut length of stay (LOS) by a few days to bring capacity into line with demand. Managing length of stay is a commonly used strategy for dealing with overcrowding primarily because there is no relationship between LOS and offender behavior after release.⁴ County jails release about 20,000 inmates early per month to match capacity with population. This strategy has been utilized by previous administrations.

Additional bed capacity can be created by reducing the current average 587-day prison LOS, a strategy used by many correctional systems (including California in the past). Reducing LOS from 587 to 543 days would reduce bed space needs by 15,000 beds and save \$450,000,000 annually in prison operating costs.⁵ Reductions in LOS can be achieved by several strategies, ranging from adjustments in the good time credits program to employment release programs.

Recommendation 4:

The state should fund probation services to assure effective supervision of offenders at the local level and reduce reliance on the state prison system due to inadequate probation services.

⁴ See a review of 12 studies on LOS and parole outcome: Lin Song with Roxanne Lieb, *Recidivism: The Effect of Incarceration and Length of Time Served* (Washington State Institute for Public Policy, September 1993), <http://www.wsipp.wa.gov/rptfiles/IncarcRecid.pdf>.

⁵ Ibid.

Currently, the supervision and surveillance of probationers and county jail parolees are at a severely reduced level. California and Indiana are the only states that do not fund probation services and depend on counties for financing.⁶ Regular probation is a cost-effective alternative to a sentence of probation with a jail sentence. A sentence of probation and a jail commitment of up to a year is a cost-effective alternative to commitment to prison.

Recommendation 5:

The state should fix the parole system, particularly the revocation system. Failing to fix the revocation system costs one-quarter to a half billion dollars annually in added prison operating costs.

For several years the DC&R operated two programs/strategies. If reinstated, one could reduce prison bed space demands and the other could provide reasonable alternatives to returning parolees with minor parole violations to prison.

- A. Substantial bed saving can be achieved by reinstating a parolee employment program operated successfully in the 1960s and 1970s.⁷ The parolee employment program allowed for release on parole at any time during the last 120 days of the term of selected inmates, providing they had a legitimate employment offer and residential program. In addition to ensuring that most parolees being released to the community have residence and legal employment, substantial cost savings would result.
- B. Another strategy is to provide substantial funding to increase contracts with public, nonprofit and for-profit agencies and groups for a variety of residential and community services and programs. These contracts would provide cost-effective alternatives to return to prison for a revocation term. The state currently has the authority under the Penal Code to contract with local agencies and organizations for work furlough facilities⁸ and community corrections centers.⁹ A few of these

⁶ For a detailed description of this issue, see *Probation Services Task Force Final Report* (Probation Services Task Force, June 2003),

<http://www2.courtinfo.ca.gov/probation/documents/new/executivesummary.pdf>.

⁷ The Release Upon Approved Parole Plan (RUAPP).

⁸ See California Penal Code sections 6260-6266: <http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=pen&codebody=6260-6266&hits=10>.

are currently in operation. More locally operated facilities are needed both to deal with overcrowding and to assist in the transition of offenders back to their communities.

Savings in the institutional budget from the above-noted parolee employment program could be used to fund community program contracts. The DC&R has used the strategy of funding parole programs from savings in institutional costs resulting from bed savings. In order for this strategy to work, there must be contracts for sufficient community residential capacity. If pursued appropriately, such a strategy could save substantial funds because brief stays in a contract facility would be less costly than a revocation term served in prison.

C. In order to fix the parole revocation system permanently, the state should establish a community corrections program with features similar to successful community corrections programs operated by Minnesota and Oregon since the early 1970s.

Under a community corrections act, counties contract with the state to provide parole supervision. Parole violations would be handled in the same manner a violations by felony probationers by the courts. It is very probable that parole violation rates would return to normal/expected levels under the counties.

The state successfully contracted out parole supervision to a few small rural counties in the 1970s to reduce the cost of parole supervision for a few parolees living in areas remote from a parole unit office. The community corrections program could be piloted with a couple small and midsize counties and, if successful, gradually phased in with other counties willing to participate.

Recommendation 6:

Direct the Division of Adult Parole Operations to monitor and comply with Penal Code section 3001 requiring the discharge of certain parolees from parole supervision at the end of one, two, or three years unless ordered retained on parole by the Board of Parole Hearings (BPH) for good cause. Good cause should be based on arrests or a

⁹ See California Penal Code sections 6250-6259 regarding community corrections centers: <http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=pen&codebody=6250-6259&hits=10>.

documented behavioral pattern showing the parolee continues to present a danger to the community.

The BPH should revise Title 15 Section 2535 Discharge Review to define good cause to retain an offender on parole on the basis of arrests or a documented behavioral pattern showing parolee continues to present a danger to the community.

Penal Code section 3001 mandates discharging most parolees at the end of their minimum term of supervision unless otherwise ordered retained by the Board of Prison Terms for good cause. Retaining offenders on parole who no longer require supervision reduces resources for the supervision of higher risk offenders. The Division of Adult Parole Operations appears not to comply fully with Penal Code section 3001. As a result, California discharges offenders from parole at about half the national rate (20% versus the national average of 40%) and at a far lower rate than other large states which discharge about 55% of their parole population. This is a management issue and requires routine monitoring and quality control by management and unit supervisors.

Go to www.rebuildcorrections.lincal.com for the full report.

The California Coalition on Corrections

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REBUILDING CORRECTIONS
The California Coalition on Corrections
02/27/2007



Dedication

This report is respectfully dedicated to the late Richard A. McGee, the first Director of the California Department of Corrections (1944–1961) and Youth and Adult Corrections Agency administrator from 1961 to 1967.

It was his distinguished leadership, vision, foresight, and integrity which made California a national leader in the field of corrections in the 1940s, '50s, '60s, and early '70s.

He started his correctional career in Minnesota, followed by assignments in the State of Washington, and in 1944 he was selected by Governor Earl Warren to reorganize and improve California's then mediocre correctional programs. He served with unparalleled distinction until his retirement in 1967, and served four California governors.

At the time of his retirement in late 1967, he was widely recognized for the unique contributions which this extraordinarily talented gentleman had made—not just to California corrections, but to the field of corrections nationally. California was, indeed, fortunate to have had the services of so distinguished a leader in corrections for so many years.

MISSION STATEMENTS:

1. To increase correctional system effectiveness and reduce costs
2. To support the re-configuration of a California correctional system for the 21st century
3. To encourage the development of a 21st century California system
4. To support the establishment of a rational correctional planning process and provide means and opportunities for assessing new correctional opportunities
5. To provide independent correctional system information

INTRODUCTION

The California correctional system has devolved from being one of the best systems in the country to a sub par, dysfunctional system that trails all other large states. Various aspects of the correctional system, particularly the prison system, have been examined by several blue ribbon commissions and other very competent groups,¹⁰ but most of their recommendations for improvement have not been adopted. The findings of these groups are not in question.

We are a group of retired state, county, and private correctional agency and department managers and executives¹¹ who believe the statewide correctional system¹² is in urgent need of repair. We believe our knowledge and familiarity with the system enables us to present a different perspective, namely the perspective of insiders and practitioners. Previous commissions and studies do not adequately address the total correctional system and its downstream impact on the jail and prison system.¹³ We believe this is critical in order to deal with any part of the correctional system, including the prison system. We examined the statewide correctional system, which includes both local and state correctional facilities and programs, and we respectfully offer the following recommendations.

We do not, in any way, intend to be critical of the thousands of dedicated, hardworking individuals who labor in the vineyards of California corrections, at either the state or local levels. These folks are, in our judgment, to be commended for their efforts. The problem does not lie in the performance of California's correctional professionals; the problem lies in the fact that we have a dysfunctional nonsystem.

This paper presents factual information about the state of the correctional system and recommendations for both long-range and immediate actions that can substantially improve the effectiveness and

¹⁰ For example, see "Executive Summary," *Beyond Bars: Correctional Reforms to Lower Prison Costs and Reduce Crime* (Little Hoover Commission, January 1998), <http://www.lhc.ca.gov/lhcdir/144/Es144.html>.

¹¹ See roster of coalition members above.

¹² The statewide correctional system includes holding facilities, county jails, probation services, prisons, parole agencies, and numerous public and private nonprofit and for-profit agencies.

¹³ See *The Justice System* (U.S. Department of Justice, Bureau of Justice Statistics, 1997), <http://www.ojp.usdoj.gov/bjs/pub/pdf/cjsflowco.pdf>, for an illustration of the many decision points that directly impact correctional system program and facility requirements.

quality of California's correctional system. These actions, if implemented, will help restore public confidence in our correctional agencies. As an independent coalition beholden to no person or organization, we have no reason to present anything other than an objective analysis of the system and realistic recommendations. We have no vested interest in the subject, aside from the common interest shared by all Californians—namely, that an effective correctional system benefits everyone.

The term “correctional system” as applied to current operations in California is used herein solely as a semantic convenience. In reality, California does not have a correctional system. Rather, it has a “non-system,” a point which was first underscored in a 1971 report by the California State Board of Corrections.¹⁴

The incredible size of the statewide correctional system and the nature of its operations would present a challenge to leaders and management even if it were operating at an ideal level.

The California correctional system, with 120-plus state and local agencies, is the largest in the country; it has over 800,000 individuals under correctional control, more than 70,000 full-time personnel, and an annual budget of about \$16.6 billion. There are over 500,000 adult offenders under community supervision,¹⁵ 250,000 adults in correctional facilities,¹⁶ and an additional 83,000 juveniles in the correctional system.¹⁷ There are also a significant number of public and private contract correctional facilities and programs.

The California incarceration rate is about average compared to other large states, although substantially higher than New York, as shown by table 1. Given that there is no systemwide strategic planning or coordination process, major system problems and deficiencies are predictable and expected.

¹⁴ *Coordinated California Corrections* (California State Board of Corrections, Sacramento, July 1971).

¹⁵ About 370,000 probationers and 150,000 parolees.

¹⁶ About 167,000 inmates in prison and 83,500 in county jails.

¹⁷ About 66,500 under community supervision and 17,000 in various facilities.

Table 1. Incarceration Rates for Prisoners under Jurisdiction by Comparable States 6/30/2005¹⁸

State	Total Incarceration Rate	Prison Incarceration Rate	Jail Incarceration Rate	Percent in Private Facilities
California	682	456	227	1.5%
Texas	976	703	291	9.0%
Florida	835	492	358	6.2%
New York	482	327	153	0.0%
Average Rate	676	433	252	5.6%

The correctional system flows downstream from the point of law enforcement contact to local custody, court decision, and sentencing to either state or local control in correctional programs or facilities. A correctional system flowchart shows numerous decision points, each of which has correctional program and cost consequences. Changing any part of the system requires analysis of its potential impact on other parts of the system. This is particularly important in dealing with physical facilities such as jails, camps, and prisons, where the program and cost implications are very high. Physical facilities, mainly county jails and prisons, are the dominant feature of any correctional system. Prisons and jails are very expensive to build and are even more expensive to operate; they consume about 80% of the correctional system operating budgets. For this basic reason, California should be very concerned with the apparent intent of the state to build more prison beds without conducting a normal systemwide planning process.

Although it might sound counterintuitive to anyone not familiar with the correctional system, a glance at available data clearly indicates that more jail beds, not prison beds, are needed to eliminate prison overcrowding. There may very well be a need for specialized prison beds (e.g., medical beds), but it is irrational to spend huge sums of money building more prisons when data clearly indicate that the substantial county jail bed shortage is the major reason for prison overcrowding.

¹⁸ Source: Paige M. Harrison and Allen J. Beck, *Prison and Jail Inmates at Midyear 2005* (U.S. Department of Justice, Bureau of Justice Statistics, May 2006): tables 2 and 12, <http://www.ojp.usdoj.gov/bjs/pub/pdf/pjim05.pdf>.

Correctional services in California have deteriorated drastically and dramatically during the past 30 years.

Until the late 1970s, the Division of Juvenile Justice (DJJ), formerly the California Youth Authority, was recognized nationally, if not internationally, as one of the finest, most progressive and innovative juvenile corrections agencies in America. The DJJ had an outstanding research unit whose findings were widely quoted in various journals. It repeatedly and consistently received awards for its work with troubled youth. Today, the DJJ is frequently the subject of justifiable criticism by the press, by politicians, and by other organizations. There are calls to eliminate it as a youth correctional agency. In at least one instance, the agency was the subject of intense scrutiny by the federal courts and agreed to a consent decree regarding the operation of one of its facilities.

Until the late 1970s the California Department of Corrections and Rehabilitation (DC&R) also enjoyed a very enviable reputation. Along with the corrections agencies in Michigan, Wisconsin, and a few other jurisdictions, the DC&R was readily recognized as one of the nation's best state-operated corrections departments. Today, the DC&R is readily criticized by the press, by politicians, by citizen groups, and by other organizations. Like the DJJ, now in the DC&R, it has also incurred close scrutiny by the federal courts, especially in the area of medical care for inmates.

Until the late 1970s, California's county-operated probation departments were similarly recognized as having developed some of the most innovative and progressive probation programs in the nation. Several California counties, including Los Angeles and Sacramento, won national awards. Today, the supervision and surveillance of probationers is hardly extant. Most county-operated departments simply do not supervise most offenders assigned to them by the courts. Rather, the majorities of such cases are merely consigned to filing cabinets and are euphemistically referred to as "banked caseloads."¹⁹

As of March 2006, the Chief Probation Officers of California reported that, statewide, only 48% of the probationers assigned are actually subject to supervision and surveillance.²⁰ The remaining 52%, many of whom are convicted felons, are consigned to the banked caseloads. In

¹⁹ *Banked caseload* is a euphemism for a case that is "banked" in a filing cabinet, where it is likely to remain until such time as the unsupervised offender commits a new crime.

²⁰ *Probation Services in California* (Chief Probation Officers of California, March 2006).

one large county, 12% to 14% of the cases are supervised.²¹ To be sure, probation departments try to supervise those cases which portend the greatest public safety risk, but for the most part, the supervision of most probationers in California no longer exists. A 1996 article by Professor Joan Petersilia of the University of California–Irvine readily illustrates the situation.²²

One might well speculate as to the reasons for the deterioration of state-operated correctional services in California. Some observers have suggested the infusion of partisan politics, because prior to the 1970s DC&R directors frequently remained in office for many years despite changes of power in the governor’s office. Other observers have suggested the increased influence of organized labor. With respect to probation, there can be no doubt as to the cause of the deterioration of services. Simply stated, it has been the lack of funds, due in part to Proposition 13 being passed by the voters in June 1978. There is, however, another especially damaging element. In many counties, probation departments were not viewed as politically important or of high priority and thus were not deserving of the same financial support as was bestowed on the sheriff and the district attorney. Several studies at the state and local levels have illustrated this phenomenon.²³

Just as it is an irrefutable fact that corrections in California has deteriorated during the past 30 years, it is also an irrefutable fact that corrections costs to Californians have skyrocketed and that citizens are not getting the biggest bang for the buck. Expenditures for corrections range from a low of about 27% of criminal justice expenditures in California in FY 1982/83 to a high of 46% in FY 1994/95. Corrections currently consumes about 38% of total statewide criminal justice expenditures.

Why has the correctional system deteriorated to such an extent?

²¹ Crystal Carreon, “Threat to Rural Life,” *Sacramento Bee*, November 19, 2006.

²² Joan Petersilia, “A Crime Control Rationale for Reinvesting in Community Corrections,” *Critical Criminal Justice Issues* (American Society of Criminology, 1996), <http://www.ncjrs.gov/pdffiles/158837.pdf>.

²³ For example, see *ibid.* or Joan Petersilia (ed.), *Community Corrections: Probation, Parole, and Intermediate Sanctions* (Oxford University Press, 1998); Sacramento County Grand Jury Final Report for 1988-1989; and Alan M. Schuman, “Executive Summary,” *California Six County Probation Sites* (Probation Task Force, California Administrative Office of the Courts, September 2000), http://www2.courtinfo.ca.gov/probation/documents/executive_summary.pdf.

The lack of total system leadership is the biggest factor in the system's deterioration. Lack of system leadership applies to the statewide correctional system and not to any of the 120-plus county and state correctional agencies that constitute that system. None of the individual agencies has the responsibility, authority, or capacity to lead or coordinate the total system. Of course there have been many changes during past decades that have affected the landscape of corrections, as all public services have been affected.

During the golden years of the correctional system (from the 1950s through the 1970s) there was no actual appointed leader as such; an outstanding and able Director of Corrections and corrections agency administrator, Richard A. McGee, was the de facto leader of the system. He was, as are all great managers and leaders, a consummate planner who was able to influence and guide the development of an outstanding correctional system. It was reported many times that when he made presentations to the legislature, he was held in such high esteem that his proposals were accepted without reservation. It is widely believed that he was responsible for the establishment of the Board of Corrections, with the intention for the board (now the Correctional Standards Authority) to operate as quasi-independent system-wide correctional planning and coordinating agency.

Additionally, the California Youth Authority, now the Division of Juvenile Justice in the DC&R, was closely involved in setting and enforcing standards for probation and in designing and managing subvention programs. The probation subvention program entailed the state's funding of selected probation supervision cases, providing that the counties did not make inappropriate commitments to the state and juvenile facilities. The program succeeded in its purposes, but was attacked politically and was eventually terminated for a variety of reasons. The end of state funding for local probation programs was one of several reasons for the decline in probation services. Today, California is one of only two states in which probation services are funded, in whole or in part, by local government, except for occasional grants.²⁴

An inadequate investment in local corrections for several years has resulted in a huge and inappropriate shift of offenders to prison. Coun-

²⁴ *Adult Probation in the United States* (Probation Services Task Force, California Administrative Office of the Courts, September 2000)
http://www2.courtinfo.ca.gov/probation/documents/adult_cover.pdf.

ty jail bed space did not increase to meet the need. As reported by the California State Sheriffs' Association in June 2006:

"In California's local adult system, jail facilities are bursting at the seams. Twelve percent of our jails are more than 60 years old, and nearly half are 30 years old or older. Dangerous crowding is a daily fact of life in many of the state's 460 jails. Simply put, California does not have enough local detention capacity or adequate program space to meet public safety demands."²⁵

An additional factor that contributed to the shift is the fact that while county jails were under court-ordered population caps, the state prison system—which must accept all commitments—was not. This shift and the resulting overcrowding of the state prison system probably would not have occurred if there had been an agency actually monitoring and coordinating the total system. Failure to establish such leadership has resulted in a flawed and very expensive correctional system that is not providing a full measure of public protection at a reasonable cost. Passage of California's collective bargaining law resulted in significant changes to California corrections, at both the state and local level. At the state level, it is sometimes alleged that labor organizations have undue influence on management decisions.

What are the major California correctional system problems?

There are major structural problems that require solutions before program reforms can even be considered. In summary, the most significant problems are:

- 1. The lack of a central, systemwide correctional agency responsible for independent planning and monitoring has, for many years, been a crippling impediment to dealing with system deficiencies. It is the most significant problem of the correctional system.**

Without a central point of leadership for the total correctional system, significant policy decisions are made on an ad hoc basis rather than on the basis of rational planning. It should be clear that the lack of leadership applies to the statewide correctional system and not to any of

²⁵ *Do the Crime, Do the Time? Maybe Not, in California* (California State Sheriffs' Association, June 2006): 6, http://www.calsheriffs.org/Documents/do_the_crime_do_the_time.pdf.

the county and state correctional agencies that constitute that system. None of the individual agencies has the responsibility, authority, or capacity to lead or coordinate the total system.

There is no counterweight to state bureaucrats or independent sources of expert opinion that the governor, state legislature, and legislative analyst can rely upon to provide rational, unbiased advice on how to deal with the statewide correctional system. The lack of a strategic planning and monitoring process is probably a major cause of the serious and costly correctional system problems. The California corrections system is a \$16.6 billion per year system lacking direction. Without any consideration of actual need, the state is poised to invest additional billions in additional prison beds to deal with overcrowding, without conducting a systemwide analysis.

Correctional beds have a life span of 30 years or longer. Prior to any construction of additional prison or jail beds, the state must conduct an analysis of the correctional system, beginning with population and crime estimates for future years and starting system analysis at the front end, the point of arrest, and proceeding “downstream” to probation, county jails, and the prison system. It should be noted that an analysis means an analysis of readily available data and not another study of the correctional system.

Correctional system data is readily available, both in the form of routine system data maintained by the Department of Justice and the Correctional Standards authority and in studies of various parts of the system by blue ribbon and professional groups. Such an analysis requires days or a couple weeks at most. There is no legitimate reason for such an analysis not being conducted and published.

Available data clearly indicate that the shortage of county jail beds is the major cause of prison overcrowding. The front end of the correctional system at the local level²⁶ directly impacts the size of the state prison system. Prior to any actions (particularly any construction) to improve the state prison system, analysis must start at the front end of the system, the point of arrest and the county jail system.²⁷ To

²⁶ Local corrections include jails, juvenile facilities, probation departments, and public and private contract facilities and programs.

²⁷ See *Michigan Task Force on Jail and Prison Overcrowding Final Report* (March 2005), http://www.michigan.gov/documents/report_119595_7.pdf, for an example of a systemwide approach to dealing with corrections. Also see “Agency Strategic Plan for

quote from a Michigan Task Force on Jail and Prison Overcrowding: “There is a relationship between jail and prison overcrowding: the actions taken by one system ultimately affect the other; they are not mutually exclusive.”²⁸ Failure to monitor and respond to changes and problems at the local level is the direct cause of overcrowding in both state and county facilities.

As previously indicated, the California correctional “system” was described as an ineffective “non-system” as early as 1971 in a Board of Corrections study.²⁹ Almost 30 years later, the Little Hoover Commission 1998 report on Corrections noted that the problems of California correctional programs are the “product of an ad hoc correctional policy that has evolved over time—influenced more by high-profile and isolated crimes than by reason and analysis.” This circumstance continues to be the major problem with the statewide correctional system and will continue to dim chances of improving it.

2. There is a huge shortage of county jail beds, resulting in a massive shift of short-term offenders to prison.

Adding the number of beds occupied by short-term offenders in prison to the county bed shortage reported in a recent county jail study reveals a statewide shortage of about 100,000 county jail beds.

According to a California State Sheriffs’ Association report on county jails:

“It would take an additional **4,953 beds** to house all the inmates in today’s ADP. ... During times of peak demand for jail space, the state is short at **least 12,800 jail beds**. In 2005, 233,388 individuals *avoided incarceration or were released early from jail sentences due solely to lack of jail space*. It would take **18,471 additional beds** to eliminate these pre-trial and early releases. There are over 285,000 unserved felony warrants and over 2,391,000 unserved misdemeanor warrants in California annually. If only 10% of the felony warrants resulted in someone being incarce-

the Fiscal Years 2005-09” (Texas Department of Criminal Justice, June 28, 2004), http://www.tdcj.state.tx.us/publications/finance/TDCJ_Strategic_Plan_2005-09.pdf.

²⁸ *Michigan Task Force on Jail and Prison Overcrowding Final Report* (March 2005): 18, http://www.michigan.gov/documents/report_119595_7.pdf.

²⁹ *Coordinated California Corrections* (California State Board of Corrections, Sacramento, July, 1971).

rated, **another 28,522 beds** would be needed to house these felons.” (bold emphasis added)³⁰

The chronic shortage of county jail beds has resulted in the shift of short-term offenders to prison, where they now occupy about 30,000 to 40,000 prison beds. **These data clearly illustrate the fact that the county jail bed shortage is a major cause of prison overcrowding.** Short-term offenders constituted 75% of the inmates paroled from prison in 2005. Only 25% of the prison releases served more than 12 months. This latter group constitutes the serious offender population that prisons are designed and intended to hold for a year or longer. Most of the short-term offenders should serve their short terms in county jails, which are designed and intended to hold offenders serving terms of less than 12 months.

If a normal planning process were conducted, the actual number of additional jail beds required could easily be determined. According to the California State Sheriffs’ Association, “California is short 66,385 jail beds statewide right now to meet current public safety demands. Looking to the future, California’s inexorable population growth will require 40,943 new beds by 2050 to address population growth alone.”³¹ Their cost estimate for needed jail beds is “nearly five billion dollars (\$4,913,160,000) between now and 2050 to construct just the new jail space needed to stay abreast of California’s projected population growth.”

A strategic plan to fund and build sufficient jail beds could be developed and implemented during the next decade. Responsibility for short-term offenders could be gradually returned to the local level. The prison overcrowding problem would be eliminated. California would have a prison system with about 125,000 inmates and a jail system with about 125,000 inmates, returning the system to the reasonable 50%-50% prison-county jail split that existed from the 1960s to the mid-1980s.³² Building more prison beds would just push the system further out of balance.

³⁰ *Do the Crime, Do the Time? Maybe Not, in California* (California State Sheriffs’ Association, June 2006): 5-6, http://www.calsheriffs.org/Documents/do_the_crime,_do_the_time.pdf.

³¹ *Ibid.*: 6.

³² For prison and jail populations, 1952-2005, see “Adult Supervision, 1952-2005” (Criminal Justice Statistics Center), <http://ag.ca.gov/cjsc/publications/candd/cd05/tabs/2005Table43.pdf>.

3. There were almost 2.7 million unserved warrants (285,000 felony and 2,400,000 misdemeanor warrants) as of December 2005.

Although the law enforcement community is well aware of this issue, most Californians would be surprised by the number of unserved warrants. The incredible number of unserved warrants is further evidence of the extent of the serious county jail bed space shortage.³³ As noted in the 2001 Correctional Standards Authority jail survey: "If even a small percentage of the unserved felony warrants were served and a small percentage of those warrants resulted in someone being incarcerated, there would not be enough space to house those additional individuals. There are currently about a quarter of a million unserved felony warrants in California; this number has remained fairly constant since 1995."

The acute county jail bed shortage already requires release of over 20,000 inmates monthly due to lack of bed space.³⁴ There are over 285,000 unserved felony warrants and over 2,391,000 unserved misdemeanor warrants in California annually. According to the California State Sheriffs' Association's June 2006 report, if only 10% of the felony warrants resulted in someone being incarcerated, another 28,522 beds would be needed to house these felons.

This problem was predictable, and was in fact predicted by the CSA in its annual "Jail Profile Survey Report of 2001," which stated: "The (County Jail) ADP continued to increase to a record high of 80,000 inmates in the 2nd Quarter of 1998, with no significant increase in the number of beds. The result was overwhelming crowding problems, thousands of inmates being released early due to lack of space, and a large backlog of unserved felony warrants. Obviously, if this trend was to continue, more and more individuals who normally would be confined to jail would be released, undermining the criminal justice system and raising serious public-safety concerns." This has happened!

³³ For a general description of the unserved warrant issue, see Kenneth Howe and Erin Hallissy, "When Justice Goes Unserved," *San Francisco Chronicle*, June 22, 1999, <http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/1999/06/22/MN09FRO.DTL>.

³⁴ See "Jail Profile Survey, 2005, 4th Quarter Survey Results" (Corrections Standards Authority), http://www.cdcr.ca.gov/DivisionsBoards/CSA/fsod/jail%20profile%20summary/2005/quarter_4/full_report.pdf.

The unserved warrant problem obviously raises very serious questions that should be addressed by agencies and groups such as the CSA, Peace Officers Standards & Training Commission (POST), the California State Sheriffs' Association, the California Police Chiefs Association, and others who speak for law enforcement and corrections in California.

4. Probation services are so underfunded that most offenders placed on probation are assigned to "banked" or unsupervised caseloads.

In California, probation has traditionally been responsible for supervision and control of the largest portion of the offender population in the community. There is an offender population of about 360,000 probationers (about 72% felony probation and 28% misdemeanor probation) compared to 150,000 parolees in the community. Regular probation is a cost-effective alternative to a sentence of probation with a jail sentence for the offenders who can be safely supervised in the community. A sentence to probation and a jail commitment of up to a year is a cost-effective alternative to commitment to prison.

County probation departments currently operate under a ratio of about 1 probation officer to every 120 probationers, with the bulk of the offenders unsupervised in banked caseloads. Diminished probation services and the lack of adequate county jail beds places judges in the unenviable position of sentencing many offenders (commonly referred to as "wobblers"³⁵) either to probation, where the offender may well be unsupervised in a banked caseload, or to prison to serve a short term. Neither alternative is appropriate, the first leaving offenders who constitute a threat to the community without supervision, and the second leaving offenders in prison at a higher bed cost, wasting a great deal of money. Prison bed operational costs are estimated to be about 10% to 20% higher than county jail bed costs.

During the 1960s, probation received state funding via probation subsidies which first appeared nationally on an experimental basis in Saginaw, Michigan, in the late 1950s or very early 1960s. The results were considered to be so successful that similar programs developed in other states. California's probation subsidy law was enacted in 1965 and signed into law by Gov. Edmund G. "Pat" Brown, a former district attorney and attorney general. While the legislation enjoyed widespread support from a variety of statewide organizations, hindsight

³⁵ *Wobblers* are individuals convicted of offenses that can be punished by either felony probation and up to one year in county jail or by imprisonment in state prison.

suggests that sufficient care was not taken to address some local issues and state-local issues which would, in the course of the program, create substantial dissatisfaction at the local level. On the other hand, the law did succeed in reducing the real or potential populations of state-operated facilities.

One of the shortcomings is that the funds channeled to local probation departments were dependent upon a reduction in the number of persons committed to the state system; another shortcoming is that the reimbursement rate to counties was not increased to reflect inflation, so that by the mid 1970s local governments no longer supported the program and some local officials noted that, once again, the State of California had been untrustworthy in state-county financial relationships—a view which, even today, some local officials still support, noting that in several areas, including criminal justice, the state has not been a trustworthy financial partner. Essentially, it was this dissatisfaction at the local level which killed the program.³⁶

Clearly, any state reimbursement to counties for the probation supervision of felons or the construction and operation of local jails should take great care to avoid the pitfalls of 1965-1977.

5. About 90,000 short-term offenders who should be serving terms in county jails occupy about 38,000 state prison beds, creating an “overcrowding crisis.”

There appears to have been little or no notice given to the trend of committing many less serious offenders to the state prison system rather than county jail, thus overcrowding state institutions. As shown by table 2, about 90,000 short-term offenders who should be serving their terms in county jails now occupy about 30,000 to 40,000 state prison beds. Prison bed operating costs are an estimated 10% to 20% higher than county jail costs.

³⁶ For a discussion of the widespread unhappiness with the program by local officials, see *Coordinated California Corrections* (California State Board of Corrections, Sacramento, July 1971).

Table 2. Estimated Prison Beds Occupied
 by CY 2005 Releases to Parole Serving Less Than One Year³⁷
 (Based on DC&R Data Analysis Unit report, March 2006)

Months Served	New Admin-PV-WNT ³⁸	PV-RTC/Pend Rev	Total Releases	Months Served	Est. Avg. Days LOS	Prison Beds Occupied	Cum. Total Beds
1	922	12,348	13,270	1	15	545	545
2	1,139	5,984	7,123	2	45	878	1,424
3	1226	10,131	11,357	3	75	2,334	3,757
4	1,622	9,479	11,101	4	105	3,193	6,950
5	2425	7,817	10,242	5	135	3,788	10,738
6	3,358	4,339	7,697	6	165	3,479	14,217
7	5,540	2,029	7,569	7	195	4,044	18,261
8	5,802	1,370	7,172	8	225	4,421	22,682
9	2,169	1,330	3,499	9	255	2,445	25,127
10	2,902	1,431	4,333	10	285	3,383	28,510
11	4,253	792	5,045	11	315	4,354	32,864
12	4,268	1,673	5,941	12	345	5,615	38,479
Subtotal	35,626	58,723	94,349³⁹	77%	—	38,479	38,479
OVER 12 Mos.			28,458	23%	—		
TOTAL			122,807	100%			

From a normal and widely held public correctional policy viewpoint, this is an irrational situation. Prisons everywhere (except apparently California) are intended and designed to house and provide programs for offenders serving sentences of a year or longer—county jails are designed to house offenders serving sentences of a year or less. Historically in California, about 50% of all offenders were held in county jail and 50% were held in prison. The current ratio is about 33% (80,000) in county jail and 67% (160,000) in prison. This shift should not have occurred, offers no benefits, and results in increased costs.

There are now more “county jail inmates” serving their short terms in prison and being paroled than there are felons serving more than a year in prison and being paroled. In CY 2005, about 77% of all releases from prison to parole served less than 12 months in prison (see table 3). Only 23% of all releases served more than 12 months in

³⁷ Excludes releases to other states.

³⁸ Includes about 900 inmates placed directly on parole without physically reporting to prison.

³⁹ Includes 35,626 new and parole violators with new felony commitments and 58,723 parole violators.

prison.⁴⁰ These short-term offenders occupy 30,000 to 40,000 prison beds. County jails are required to release about 20,000 inmates monthly due to lack of bed space. This jail bed shortage is the major cause of the shift of so many less serious offenders serving short terms to the state prison system. It appears to be a self-imposed crisis.

Table 3. Time Served by Adult Parolees
 Paroled During CY 2005 WHO SERVED ONE YEAR OR LESS
 BY RETURN STATUS AND MONTHS SERVED
 (Based on CDC&R Data Analysis Unit report, March 2006)

Months Served by Quarters	First Parole	Re-parole	Cum. Percentage	Cum. Prison Beds Occupied
0-3 Months	3,287	28,463	26%	3,757
4-6 Months	7,405	21,635	50%	14,217
7-9 Months	13,511	4,729	65%	25,127
10-12 Months	11,423	3,896	77%	38,479
Subtotal	35,626	58,723	77%	38,479
Over 12 Months	27,652	0	23%	—
Total	63,278	58,273	100%	—

6. The parole supervision system is simply broken compared to other states (and compared to the parole system of the 1970s and 1980s), with artificially high parole revocation rates that are over three times the expected rate.⁴¹

The artificially high technical violation rates add about \$500,000,000 (\$.5 billion) to annual state prison operating costs. The high violation rate reflects, not increased rates of parolee criminal behavior, but is the result of sustaining a dysfunctional parole revocation system. What is disturbing about the parole revocation problem is that it is a fixable problem that has been allowed to continue for many years. Fix this problem and return violation rates to normal levels, and the annual prison system budget would be reduced by a half billion dollars. The three-year parole revocation rate for Texas, for example, was about half the California rate, 31.2% compared to 60.5% for CY 2000 releas-

⁴⁰ Source: Report: “Time Served by Adult Parolees Who Paroled During Calendar Year 2005 Who Served One Year or Less” (DC&R Data Analysis Unit, March 2006).

⁴¹ *Expected* refers to what would occur if the system were operating correctly.

es to parole.⁴² Although there has been a slight recent decline in the rate of felon parolees returned to California prisons, the return rate remains extraordinarily high.⁴³

The California parole system has been broken for many years. It lags most other state parole systems in terms of parole success/failure rates as indicated by the following tables.⁴⁴

Table 4A. Parole Success and Failure Rates

	% Successful Parole Discharges		% Parole Violators Admitted to Prison	
	1990	1999	1990	1999
States	1990	1999	1990	1999
All	44.6	41.9	28.8	34.8
NY	48.9	54.9	20.8	31.5
Florida	61.2	56.5	5.3	6.9
Texas	35.1	54.9	37.1	21.0
Minnesota	73.3	55.7	23.1	32.1
Oregon	27.9	50.6	48.0	25.1
CA	19.4	21.3	58.1	67.2

⁴² See *Statewide Criminal Justice Recidivism and Revocation Rates* (Legislative Budget Board, January 2005),

http://www.lbb.state.tx.us/PubSafety_CrimJustice/Recidivism_Report_2005.pdf.

⁴³ See *Rate of Felon Parolees Returned to California Prisons, Calendar Year 2004* (Department of Corrections, Data Analysis Unit, Sacramento, May 2005),

<http://www.cya.ca.gov/ReportsResearch/OffenderInfoServices/Annual/PVRET2/PVRET2d2004.pdf> to view return rates for the past 30 years.

⁴⁴ Data derived from Michael Jacobson, *Downsizing Prisons: How to Reduce Crime and End Mass Incarceration* (New York University Press, 2005) and Timothy A. Hughes, Doris James Wilson, and Allen J. Beck, *Trends in State Parole, 1990-2000* (U.S. Department of Justice, Bureau of Justice Statistics, Bureau of Justice Statistics, October 2001), <http://www.ojp.usdoj.gov/bjs/pub/pdf/tsp00.pdf>.

Table 4B. Percent of Successful Parole Discharges

Year	California	All Other States
1995	22.7	52.8
1996	23.8	56.6
1997	22.8	55.9
1998	23.3	54.3
1999	25.2	53.3

Parole outcome data, which is usually at least two or three years in arrears of current operations and is an indirect measure of returns to prison, is one of several ways to assess parole program effectiveness and cost. The ratio of returns to prison for technical violations (PV-RTC) to returns for new felony convictions (PV-WNT) is another useful indicator to show the relative cost of PV-RTC returns to prison. These ratios have ranged from 1:1 in the 1970s to 4:1 in the last nine years as indicated by the following:

Table 5. Ratios of PV-RTC to PV-WNT

YEARS	AVG. RTC/WNT RATIO	CY 05 RTC Costs based on various ratios
1974-1981	1:1	\$389 million less
1982-1985	2:1	\$190 million less
1986-1996	3:1	\$590 million (actual cost)
1997-2005 ⁴⁵	4:1	\$206 million more

The increase in these ratios is the result of a meltdown of the parole revocation process and is not the result of any massive change in parolee behavior. The parole revocation process collapsed primarily because of the lack of adequate county jail beds and local program alternatives. The financial consequences of the increase in RTC/WNT ratios are enormous. Each parolee returned to prison for a technical

⁴⁵ CY 2005 RTC/WNT ratio was 3.0.

parole violation (PV-RTC) for the average of 4.01 months⁴⁶ costs an additional \$10,053.⁴⁷

In CY 2005, at the RTC/WNT ratio of 1:3, the 59,229 PV-RTC returns to prison cost about \$590 million. If the ratio of the mid-1980s applied, these technical parole violators would have cost about \$396 million, about \$190 million less. If the 1:1 RTC/WNT ratio were achieved, a savings of about \$390 million would have been realized. These costs do not include any construction costs for an estimated additional 25,700 prison beds occupied by the PV-RTC parolees.

Is it realistic to expect to return the parole revocation process to the violation rates of the 1970s and 1980s? If local alternatives to return to prison for many technical parole violations could be developed at the local level, it is likely that reasonable violation rates could be achieved.

The increasing difficulty of conducting the parole violation process under the executive branch compared to dealing with felony probation violations under the courts must be noted. Politicians, groups, and individuals increasingly criticize or attack violation decisions after the fact. It is much easier to simply revoke parole for almost every violation, no matter how minor, than to recommend continuation on parole and a community program placement. This problem was one reason for wide support of the Determinate Sentencing Law (DSL). It was evident that it was becoming increasingly difficult to deal with term setting in the executive branch. Every release decision was subject to second-guessing. There was a lot of support and little opposition to the law when it was proposed in the 1970s.

The parole system currently focuses exclusively on parole violation and revocation procedures, ignoring its basic charge under Penal Code section 3000 of preventing and reducing crime. The parolee employment rate is lower on parole than it was at commitment to prison. It is believed that the unemployment rate among parolees is 70% or higher at release and during parole. At one time, parole agents were expected to have parolees employed at the same level as other residents in their community. Parolees without a reasonable residential and employment program present a continuing threat to the community. It

⁴⁶ Based on current available length of stay data for PV-RTC parole violators, DC&R Data Analysis Unit, January 2002.

⁴⁷ The FY 06-07 cost is the difference between annual per bed institution costs (\$34,150) and parolee supervision cost (\$4,067).

is not rational to return offenders to their home communities without a job and place to live.

7. Juvenile and Youthful offender issues and recommended actions under review and development.

ACTIONS TO REPAIR STRUCTURAL PROBLEMS THAT WILL REQUIRE SEVERAL YEARS:

- 1. The state should establish a permanent, independent correctional system planning and coordinating agency which would be responsible for the development and maintenance of a strategic correctional system plan and establishing and enforcing correctional facility, staffing, and program standards.**

This action is absolutely required in order for there is to be any real improvement in either state or local corrections. It is critically important that the governor, the legislature, and the various stakeholders have a source of unbiased and expert guidance and advice for dealing with correctional issues.

The total state correctional system has operated without a systemwide plan for many years. Failure to establish and maintain such a plan has resulted in an unbalanced and uncoordinated correctional system with major problems. The state should establish an independent correctional system planning agency responsible for the development and maintenance of a strategic correctional system plan and establishing and monitoring correctional facility, staffing, and program standards. Such an agency could easily be established by separating the Correctional Standards Authority (CSA) from the Department of Corrections & Rehabilitation, establishing a strong CSA executive director position, and assigning the CSA responsibility for strategic planning and related functions for the total state correctional system. The current composition of the CSA could be expanded to include nationally recognized correctional experts and members from the corporate world and academia to bring other expertise and thinking into the California correctional system. The CSA, which already sets and enforces standards for jails, should establish and enforce correctional facility and program standards for both state and local corrections, including county probation and the prison system.

A strong executive director position should be established to lead the CSA. Nationally recognized correctional experts from the academic and private sector should be added to the current board. An inspector general function should also be included in the CSA.

The CSA executive director would be the leader of the correctional system but with no direct operational authority or responsibility. The position's authority would be based on expertise and the support of the legislature and governor. The CSA would develop and maintain a strategic plan for the total statewide correctional system, a critical guide for the orderly design and development of the system. It would serve as an independent expert resource for the legislature and governor, coordinate the orderly growth and functioning of the statewide correctional system, and serve as a resource for technical expertise for all parts of the correctional system.

It should continue establishing and enforcing standards for local correctional facilities but the role should be expanded to include the state prison and parole system and local nonpublic correctional facilities. State and local correctional programs and institutions should seek accreditation and training when appropriate from both the American Correctional Association and the American Probation and Parole Association, as well as from other appropriate organizations. CSA could also include the independent inspector general function for the DC&R and critical staff expertise that is lacking and needed for both state and local corrections.

The total annual cost of the statewide correctional system is probably about \$16.6 billion annually.⁴⁸ It is doubtful that many other large states operate a statewide correctional system without access to adequate research, planning, and other staff with technical expertise required to deal with major problems. Consideration should also be given to establishing access to needed technical staff resources at an independent CSA.

It is of the utmost importance that the position of CSA executive director not be politicized. Accordingly, it is important that the executive director be selected only after a national search and after the applicant has been determined to have appropriate academic and experiential credentials.

⁴⁸ The DC&R FY 2005-06 budget was \$7.4 billion; counties reported an annual cost of \$3.5 billion for detention and corrections in the State Controller's FY 2003-04 report.

It is suggested that the executive director be chosen by a special commission, to include the following:

- Chief Justice of the California Supreme Court (chair)
- A high-ranking representative from the American Correctional Association
- A sheriff, to be designated by the California State Sheriffs' Association
- A sheriff, to be designated by the National Sheriffs' Association
- A high-ranking representative from the American Probation and Parole Association
- A chief probation officer, to be designated by the Chief Probation Officers of California

The executive director would be appointed by the governor and subject to confirmation by the legislature.

2. If supported by a systemwide analysis, the state probably will need to develop and fund a plan to construct a sufficient number of additional county jail beds during the next decade to return responsibility for housing less serious offenders from the state prison system back to the county jail system.

There is a proposal to build more prison beds to deal with prison overcrowding. It is obvious that any commitment to construct additional jail or prison beds must be based on a complete analysis of the total correctional system and the development of a strategic plan. (A correctional bed has a life span of 30 to 50 years.) Failure to follow a normal planning process and to understand the demands of future years will likely not improve things and may result in a system with more flaws.

Before considering construction of additional beds anywhere, the state needs to conduct a normal planning process that includes reviewing alternatives available for creating bed space without construction. In some cases, these alternatives can save money and increase system effectiveness.

It should be noted that the DC&R consistently reports that institutions and camps operate at about 200% of design capacity. Design capacity is a California definition based on one inmate for each cell and does not reflect American Correctional Association (ACA) standards requiring single cells "for inmates assigned to maximum custody." DC&R should indicate the number of inmates housed in facilities not in compliance with ACA standards, particularly the number of inmates housed in gyms, libraries, etc., and how many maximum security inmates are housed two per cell.

Some obvious, commonly used steps are indicated in the section on short-term remedies recommended below.

For many years, there was a 50-50 split between the state prison and county jail systems of the offender population in custody. Jails are designed and intended to hold suspects awaiting disposition and convicted offenders serving terms of one year or less. Prisons are designed and intended to hold offenders serving terms of over 12 months.⁴⁹ The shortage of county jail beds, the availability of a large number of new prison beds, and the fact that prisons cannot reject commitments has resulted in the unintended shift of a major portion of the county jail population to prison with no apparent benefit and the major drawback of overcrowding the state prison system at a 10% to 20% higher cost per bed than the county system. The combination of credit for time served in county jail awaiting trial and prior to transfer to state prison combined with good time credits has reduced the prison LOS to less than 12 months for the majority of the prison releases. Almost 38,500 prison beds are occupied by offenders serving short terms in prison as illustrated by table 3.

There is currently about a 67-33 split of offenders in custody between state and local corrections, with an estimated 94,000 inmates serving

⁴⁹ According to a definition used by the U.S. Bureau of Justice Statistics in its report, *Prison and Jail Inmates at Midyear*, jails are locally operated correctional facilities that confine persons before or after adjudication. Inmates sentenced to jail usually have a sentence of one year or less. Jails also incarcerate persons in a variety of other categories, such as persons being held pending arraignment, trial, conviction, or sentencing; those who have been returned to custody following violation of the terms of their release on probation or parole; and persons being transferred to the custody of other criminal justice or correctional authorities. Prisons are operated by either a state or the federal government, and they confine only those individuals who have been sentenced to one year or more of incarceration. Generally, persons sentenced to prison have been convicted of a felony offense. View *felpro2.pdf* at <http://www.nicic.org/Library/Default.aspx?Library=017748>.

their short terms in prison who could (and probably would) serve their terms in county facilities if additional local facility beds were available. This shift is illustrated by tables 6 and 7.

Table 6. DC&R/COJ Institution Population Split
(BY PERCENTAGE)

YEAR	1966	1976	1986	1990	1992	1994	1996	1999	2005
COJ	50%	54%	48%	42%	39%	35%	33%	32%	33%
PRISON	50%	46%	52%	58%	61%	65%	67%	68%	67%

Table 7. CDC&R/COJ Institution Population Split
CY 2005 APPROX. POPULATION & PERCENTAGE SPLIT

Level	Population	% Split
COJ	83,500 ⁵⁰	33%
PRISON	166,700	67%
TOTAL	250,200	100%

If this shift from the counties to the state prison system had not occurred, the state prison system would have a current population of about 125,000 inmates and the county jail system, if additional COJ beds had been available, would have about an equal number of offenders, 125,000, in custody. See table 8.

Table 8. Estimated CDC&R/COJ Institution Population Split
(IF SHIFT HAD NOT OCCURRED)

Level	Population	% Split	Difference
COJ	125,000	50%	+ 41,700
PRISON	125,000	50%	- 41,700
TOTAL	250,000	100%	

Despite this major shift from county jails to state prisons, *counties still have to release over 20,000 jail inmates monthly because of an acute jail bed shortage.* There are also about 2.5 million unserved warrants which would require bed space if served. Current county jail bed capacity and use are shown by tables 9 and 10.

⁵⁰ Average October to December, 2005 population was 82,779.

Table 9. County Jail Populations
DATA BASED ON CSA 4th QUARTER, 2005 JAIL SURVEY

SECURITY LEVEL	NUMBER OF INMATES
Minimum Security Inmates	17,721
Medium Security Inmates	38,236
Maximum Security Inmates	24,768
TOTAL	80,721

Table 10. County Jail Beds by Type
DATA BASED ON CSA 2001 Jail Profile Survey⁵¹

TYPE II	TYPE III	TYPE IV	TOTAL
68,338	4,421	839	75,598

3. Probation services must be repaired in order to restore public confidence in community supervision. The state should fund felony probation services to assure that less serious offenders are not committed to jail or prison due to inadequate local correctional services.

The probation system is responsible for the bulk of the offender population in the community. There are about 360,000 probationers (about 72% felony probation and 28% misdemeanor probation) compared to 150,000 parolees in the community. The state funded some probation services during the 1960s and 1970s, but it is now one of only two states where local government is the only source of funding. (Indiana is the other state.) All other states either fund probation exclusively by state government or a combination of state and local government.

The first recommendation of a very broad and intensive analysis of probation services by the Judicial Council was: "Probation departments must have stable and adequate funding to protect the public and

⁵¹ Does not include Type I facilities. See CSA 2001 Jail Survey for definitions at http://www.cdcr.ca.gov/DivisionsBoards/CSA/Jail%20Profile%20Survey/jail_profile_survey.htm.

ensure offender accountability and rehabilitation.”⁵² Restoring state funding for probation services would probably save money in the aggregate. Information provided by the Chief Probation Officers of California reveals that probationers may be adequately supervised in the community at a cost of only \$499 per defendant per year.⁵³ This figure is in stark contrast to a cost of \$34,150 per year per state prison inmate and \$49,200 per year per juvenile in state custody. While common sense would certainly suggest that the effective supervision and surveillance of offenders by probation departments would decrease commitments to state institutions, there is also abundant research and literature which demonstrates this fact.^{54,55}

While it is a major recommendation of this report, and is in keeping with a modern correctional philosophy, dealing with more offenders at the local level creates some readily acknowledged, significant state and local issues which are not resolved. For example, what incentive is there for a sheriff, who already has major jail problems, to increase problems and legal liability by taking inmates who are now in state prison? Already, the sheriff is likely being sued by prisoners’ rights organizations, the ACLU, and others while being criticized by the local media and by the grand jury! The same situation, perhaps to a lesser degree, applies to the chief probation officer. In all likelihood, the CPO is regularly reprimanded by some judge who is unhappy because a pre-sentence report is late or because probationers are not being supervised. The department is undoubtedly the subject of several lawsuits, based upon real or perceived miscarriages of justice. The department is consistently underfunded. The CPO may have trouble with the unions who represent staff members. And the department may be criticized by the local media. Given this situation, what incentive is there for the CPO to take on additional state workload?

Using expensive correctional beds rather than community programs reduces local pressure. The huge shift of less serious offenders from more appropriate and less expensive county jails to prison results from

⁵² Adult Probation in the United States: A White Paper Prepared for the Probation Services Task Force, California Administrative Office of the Courts (American Probation and Parole Association, September 2000), http://www2.courtinfo.ca.gov/probation/documents/adult_cover.pdf.

⁵³ *Probation Services in California* (Chief Probation Officers of California, March 2006).

⁵⁴ Joan Petersilia, “A Crime Control Rationale for Reinvesting in Community Corrections,” *Critical Criminal Justice Issues* (American Society of Criminology, 1996).

⁵⁵ John Worrall, Pamela Schram, Eric Hays, and Matthew Newman, *Does Probation Work?* (CICG, September, 2001), <http://www.csus.edu/news/probation.pdf>.

the lack of sufficient county jail beds and insufficient probation staffing and funding. The cost of such a shift is very high, far higher than just the difference between prison and county jail bed costs, given very high parole violation rates compared to the much lower felony probation failure rates. The monetary cost is undoubtedly several hundred million dollars annually; and it is all cost and no benefits. No large corporation, even a nonprofit, could allow such a condition to exist for any period of time without going out of business. This circumstance has existed for many years without much reaction from the public.

Courts are faced with unacceptable alternatives in sentencing less serious offenders:

- Placing offenders on felony probation with the probability that they will be placed in banked or unsupervised caseloads.
- Sentencing offenders to jail and felony probation with the probability they will be released from jail early because of the jail bed shortage.
- Sentencing offenders to serve their short terms in prison and contributing to prison overcrowding.

4. Fix the broken parole revocation system and reduce prison costs by up to \$.5 billion annually.

The parole system obviously has major problems—the revocation system being the most apparent. It has operated for several years with a revocation rate that is about two to three times the historical rate and the rates of other major states. Additionally, parolee unemployment rates are reportedly over 70%. This rate is high compared to historical rates and probably higher than rates for other large states. It is likely higher than the employment rate at commitment to prison.⁵⁶ The parole division appears not to be in compliance with Penal Code section 3000, which requires the state "...to provide educational, vocational, family and personal counseling necessary to assist parolees in the transition between imprisonment and discharge."

As might be expected, correcting such entrenched and long-term deficiencies requires more than cosmetic changes. The parole system can be fixed (and \$.5 billion in annual prison costs potentially avoided)

⁵⁶ The DC&R apparently no longer tracks employment rates at commitment to prison. None of the staff asked about this information could provide it.

but it will require major changes and substantial time for implementation. These changes could probably reduce the violation rate to a normal level:

A. Construction of sufficient county jail bed space.

Historically, parolees who committed less serious violations of the Conditions of Parole were routinely maintained in county jail while a parole agent and parole unit supervisor decided how to handle the violation. Many less serious violations resulted in assignment to a local program or even release back to the community with a warning and/or change in supervision level.

The shortage of jail bed space and court-imposed population caps resulted in the immediate transfer of parolees to prison pending a revocation hearing. Once back in prison, a finding of guilt and commitment to a revocation term in prison was almost certain. The state needs to conduct the necessary planning and analysis before committing to any construction. The estimated savings of up to \$.5 billion in prison costs annually could be applied to the cost of constructing additional jail beds.

Repair a troubled parole supervision system by reintroducing or expanding existing community based programs that have demonstrated effectiveness in reducing criminal behavior and return to prison in the past. Among these are job placement, outpatient psychiatric and psychological services and substance abuse treatment.

The parole division should be directed to comply with Penal Code 3000 by assuring that all inmates are released to suitable residential and employment programs.

Substantial savings can be achieved by reinstating a parolee employment program operated successfully for many years, the Release Upon Approved Parole Plan (RUAPP). The RUAPP program allowed for release on parole during the last 180 days of the inmate's term providing he or she had a legitimate employment offer and residential program. In addition to ensuring that most parolees being released to the community have residence and legal employment, substantial cost savings would result, depending on how widely the program was implemented. As indicated by table 11, annual real savings in prison operating costs would range from \$10 million to \$250 million depending on how many parolees participated in the program.

Table 11. Annual Budget Savings Under Employment Release Program

Program Savings	PERCENT OF PRISON RELEASES PARTICIPATING				
	10%	20%	30%	40%	50%
- 10 day LOS	\$10.3 Million	\$20.6 Million	\$30.8 Million	\$41.1 Million	\$51.4 Million
- 20 day LOS	\$20.6 Million	\$41.1 Million	\$61.7 Million	\$82.2 Million	\$102.8 Million
- 30 day LOS	\$30.8 Million	\$61.7 Million	\$92.5 Million	\$123.3 Million	\$154.2 Million
- 40 day LOS	\$41.1 Million	\$82.2 Million	\$123.3 Million	\$164.5 Million	\$205.6 Million
- 50 day LOS	\$51.4 Million	\$102.8 Million	\$154.2 Million	\$205.6 Million	\$257 Million

A current program, Parole Employment Program (PEP), offers employment services to parolees via community service-providing agencies under contract to the state. PEP could be a vehicle for obtaining jobs for inmates eligible for the RUAPP program.

Another strategy is to provide substantial funding to increase contracts with public, nonprofit, and for-profit agencies and groups for a variety of residential and community services and programs. These contracts would provide cost-effective alternatives to return to prison for a revocation term.

The state currently has the authority under the Penal Code to contract with local agencies and organizations for work furlough facilities⁵⁷ and community corrections centers.⁵⁸ A few of these are currently in operation. More locally operated facilities are needed both to deal with overcrowding and to assist in the transition of offenders back to their communities.

Savings in the institutional budget from the above-noted parolee employment program could be used to fund community program placements. The DC&R has used this approach previously, but in the absence of adequate access to jail beds, it needs to be expanded to

⁵⁷ For details included in Penal Code sections 6260-6266, see <http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=pen&codebody=6260-6266&hits=10>.

⁵⁸ For Penal Code sections 6250-6259, Community Corrections Centers, see <http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=pen&codebody=6250-6259&hits=10>.

include contracts for equivalent residential capacity. If pursued appropriately, such a strategy could save substantial funds, because brief stays in a contract facility would be less costly than a revocation term served in prison.

It should be noted that contracting with local public and private groups and agencies for facilities and programs for correctional services is much preferable to state construction and operation of program facilities and programs. The department operates a couple small community program facilities, and operated community residential drug treatment programs many years ago. Aside from much higher costs, it is more difficult for the state to deal with local entities to directly establish and operate local programs, and once established, it is very difficult to end a program or close a facility. On the other hand, it is relatively easy for the state to enter and terminate local correctional program contracts if not effective or no longer required. Costs can readily be negotiated.

Parole programs can be improved by instituting program changes that are probably standard in most large states, and were successful in California for many years. One obvious parole program initiative that could be reintroduced into parole operations is:

- Require the parole division to comply with Penal Code section 3000, which directs parole agents “to provide educational, vocational, family and personal counseling necessary to assist parolees in the transition between imprisonment and discharge.”

In plain language this Penal Code section traditionally meant assuring that parolees had a place to live and a job. Parolee *unemployment* rates are now reportedly 70% to 80%⁵⁹ or higher. It is probably not a coincidence that current parole violation rates are dramatically higher compared to the 1970s when parolees were required to either have a job or be looking for a job. Years ago, parolee employment and residential living arrangements were a high priority. Parolee employment was reported on a routine basis, with a headquarters manager responsible for monitoring and reporting on employment rates.

While there is room for different opinions regarding various correctional “treatment” programs, everyone understands the need for parolees to work. It is not reasonable to release a felon to a community without

⁵⁹ Contact with the Parole Division indicated that unemployment information is not routinely collected.

a legitimate source of income and residence. The parolee unemployment rate has to be reversed to the point where their unemployment rate reflects the community where they are released.

5. Fix the parole revocation system.

The cost for failing to fix the revocation system probably costs one-quarter to a half billion dollars annually in added prison operating costs. Below are two short-term strategies that were operated for several years by the DC&R that could reduce prison bed space demands and provide reasonable alternatives to returning parolees with minor parole violations to prison. There is also a proposed long-term permanent structural change that would very likely make parole supervision a viable, effective system again.

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Establish a community corrections program with features similar to successful community corrections programs operated by Minnesota and Oregon since the early 1970s to fix the California parole system.

Under a community corrections act, counties contract with the state to provide parole supervision. Parole violations would be handled in the same manner as violations by felony probationers by the courts. It is very probable that parole violation rates would return to normal or expected levels under the counties.

A recommendation to contract with counties for parole supervision was included in the last major study of the California correctional system in 1971.⁶⁰ The recommendation was seriously considered by the state in the 1990s but not passed into law.⁶¹ It should at least be tested on a

⁶⁰ *Coordinated California Corrections* (California State Board of Corrections, Sacramento, July 1971).

⁶¹ Open http://www.lao.ca.gov/analysis_2003/2003_pandi/pandi_2003.pdf, page 151, to view the LAO proposal to shift parole from the state to the counties.

pilot basis to determine if community-operated corrections would make parole supervision viable again.

Potential cost savings from these changes are very substantial; up to \$.5 billion will be saved annually if a Community Corrections Act is implemented statewide and a parolee employment program with RUAPP features would, depending on how widely it was implemented, immediately save many millions.

6. Comply with Penal Code section 3001.

Direct the Division of Adult Parole Operations to monitor and comply with Penal Code section 3001 requiring the discharge of certain parolees from parole supervision at the end of one, two, or three years unless ordered retained on parole by the Board of Parole Hearings (BPH) for good cause. Good cause should be based on arrests or a documented behavioral pattern showing the parolee continues to present a danger to the community.

The BPH should revise Title 15 Section 2535 Discharge Review to define good cause to retain an offender on parole on the basis of arrests or a documented behavioral pattern showing parolee continues to present a danger to the community.

Penal Code section 3001 mandates discharging most parolees at the end of their minimum term of supervision unless otherwise ordered retained by the Board of Prison Terms for good cause. Retaining offenders on parole who no longer require supervision reduces resources from the supervision of higher risk offenders. The Division of Adult Parole Operations appears not to comply fully with PC 3001. As a result, California discharges offenders from parole at about half the national rate (20% versus the national average of 40%) and at a far lower rate than other large states which discharge about 55% of their parole population. This is a management issue and requires routine monitoring and quality control by management and unit supervisors.

**Table 12. Comparison of Parole Discharge Rates
Among Various States**

States	% Successful Parole Discharges		% Parole Violators Admitted to Prison	
	1990	1999	1990	1999
All	44.6	41.9	28.8	34.8
NY	48.9	54.9	20.8	31.5
Florida	61.2	56.5	5.3	6.9
Texas	35.1	54.9	37.1	21.0
Minnesota	73.3	55.7	23.1	32.1
Oregon	27.9	50.6	48.0	25.1
CA	19.4	21.3	58.1	67.2

See the full report at <http://www.rebuildcorrections.lincal.com>.