

AB 109: Public Safety Realignment Act

Katie Corda

Jeff Lupo

Lael Wagneck

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## I. Executive Summary

When the real estate bubble peaked in 2007, California had its own unique housing bubble of 173,312 state penitentiary inmates that could not burst under the forces of a free market economy. The amount of inmates was over twice the amount (216%) of occupancy the prisons were designed to hold. Following a decision by the U.S. Supreme Court in 2010 that required California to reduce its prison population, the state legislature passed the Public Safety Realignment Act. Also known as AB 109, this bill directs state prisons to place non-violent and low-level recidivism offenders in county jails.

This report will examine the policies that led to the prison housing bubble and the status of the mandatory burst directed by the Supreme Court. Provisions of public safety realignment began implementation on October 1, 2011. While a Department of Corrections and Rehabilitation (DOC) report (2012) shows a decrease of over 27,000 prisoners since realignment implementation, the DOC must reduce the population by an additional 17,000 by December 2012 and another 17,000 by June of 2013 (REF). While California has met all targets to date, continued success will be very difficult unless alternatives to incarceration are also implemented. Some of these alternatives include improving the quality of life in impoverished communities, increasing mental health services, reducing wrongful imprisonment, decreasing sentence lengths based on the possibility of recidivism, and increased implementation of the death penalty. Based on our findings, we recommend a two-tiered approach focused on improving the bail system and the legalizing and regulating illicit drugs. An improved bail

system would decrease the number of inmates awaiting trial in county jails while decriminalizing drug use and manufacturing would decrease the current number of inmates by nearly 30,000.

## II. Problem History

Imagine a California State prison with every cell filled that they have had to make a once used gymnasium where inmates played basketball into additional living space to accommodate more inmates. The gymnasium floor is crowded with prisoners and bunk beds because there is no room anywhere else inside the prison to put them. The 33 California prisons have been exceeding their design capacity for many years now. Prisons were originally designed to fit 80,000 inmates, however, the number of inmates housed today has almost doubled and are currently holding around 143,000 inmates (Hidalgo, 2011).

With massive overcrowding inside the prisons, it is extremely difficult for the staff to keep up on the individual needs of each inmate in a timely manner. “Correctional facilities across the country are chronically overcrowded and short-staffed, with prisoners jammed into dormitories or doubled up in tiny cells designed for a single person” (Dolovich, 2009, p. 887). With prisons understaffed and overcrowded, the inmate’s health care has become so inadequate that unnecessary suffering and death is frequent. One federal court judge in California recently found that, on average, “an inmate in one of California’s prisons needlessly dies every six to seven days due to constitutional deficiencies in California’s Department of Corrections and Rehabilitation’s medical delivery system” (p. 889) With some legitimate shortages in the California Department of Corrections and Rehabilitation’s medical delivery two class action lawsuits were filed to address this issue; *Coleman v. Brown and Plata v. Brown*.

*Coleman v. Brown*

On April 23, 1990, mentally ill inmates in the California state prisons filed a class action lawsuit against the California corrections and mental health officials claiming that mental health care provided at most of the California penal institutions violated their constitutional rights. After an extensive trial, the judge ruled in favor of the plaintiffs and granted a permanent injunction claiming that the defendants had violated inmates' mental healthcare including "inadequate screenings, delays in access to care, deficiencies in medication management, improper housing of mentally ill inmates in administrative segregation, and the indifferent use of tasers and guns on inmates with serious mental disorders" (Coleman v Brown Case Study, 2009). 12 years after this trial, the State reported that there were no improvements for mental health services, in fact, they were deteriorating due to increased overcrowding. (Brown v Plata, XXX).

*Plata v. Brown*

Eleven years later in 2001, ten California male inmates filed a class action lawsuit in the U.S. District Court against officials of the California Department of Corrections and Rehabilitation, alleging that the medical services were inadequate, and violated the Eight Amendment, and the Americans with Disabilities Act.

*Plata v. Brown / Coleman v. Brown Three-Judge Court*

On August 4, 2009, the three-judge district court issued a population cap on California's prisons. The court found that the cap was needed to eliminate the constitutional violations that have long existed. If a prison deprives prisoners of basic sustenance, including adequate medical care, the courts have a responsibility to resolve the resulting Eighth Amendment violation" (Brown, 2010, p. XXXX) Under the Prison Litigation Reform Act, the court found that overcrowding was the primary cause of these violations. In 2010, the U.S. Supreme Court ordered California to come up with a plan to fix its overcrowding prison problem by reducing the

number of inmates in the State's 33 prisons from 190 percent to 137.5 percent of design capacity by May 24, 2013. In order to meet the court order, Governor Brown signed Assembly Bill AB 109, which enables any person convicted of a non-violent, non-serious, non-sex offender crime, who would normally be sent to State prison, to be incarcerated in County jails. According to an article from the California Department of Corrections and Rehabilitation (2011) the inmate population in California must meet the following design capacity in order to adhere to the Supreme Court ruling:

- 167 percent of design capacity by November 28, 2011
- 155 percent of design capacity by May 24, 2012
- 147 percent of design capacity by November 26, 2012
- 137.5 percent of design capacity by May 24, 2013

### III. Problem Identification

Prison overcrowding is a major problem throughout the United States. There is currently not enough room in prisons for criminals to serve out their entire sentences, leading to early prisoner releases. Prisoners whom have not been fully rehabilitated are sent home early in order to make room for new offenders. Parolees may not adapt to life on the outside, may get in trouble with the law again, and ultimately end up back in prison. California's "Three Strikes" policy ultimately has reduced crime on the street, however, has filled up the prisons beyond capacity (A.L.E.C., 2012).

In 2011, California Governor Brown signed Assembly Bill 109 in order to reduce the 33 California prisons population down to 137.5 percent design capacity by May 24, 2013, in compliance with the Supreme Court's orders (CDCR-Fact Sheet). Although AB 109 is a

solution to many problems throughout the prison system, such as costs and recidivism, we will focus primarily on the problem of overcrowding.

Although there are many Actors involved with AB 109, we are only going to focus on the following: The Institutional Actors are the Supreme Court, the Governor, and the Counties. The Non-Institutional Actors are law enforcement, the local court system, and individual citizens.

The Supreme Court is the driving force behind AB 109 by federally mandating California's prisons to reduce their numbers. Governor Brown signed AB 109, authorizing the realignment of non-violent and non-sexual criminals to their local counties. Governor Brown also signed other Assembly Bills in regards to funding to the counties for more personnel, building jails, training, etc. Finally, the counties are now responsible for budgeting the time, money, jails, personnel, and programs that goes with criminals who fall under the realignment.

Law enforcement agencies are on the front line handling the issue of monitoring criminals and their workload will be drastically impacted. Police officers and deputies work will increase because there will be more criminals out on the streets. Their job motivation and work ethic may even decrease due to knowing that certain criminals will no longer see prison time. Correctional deputies workload will increase due to the number of inmates whose sentences would have originally went to prison. Workload increase for probation officers will include more probationers to monitor. Local courts are also heavily impacted because of California's high recidivism rate. Judges and Attorneys will be burdened with repeat offenders not seeing prison time. The increased caseload will also tax the public who serves on juries as an increase of trials requires and increase of jurors. Individual citizens are impacted because of safety concerns. A prime example is a drug offender gets released into the community. Although his charges are not deemed "violent," the drug world is extremely violent. "The US Department of Justice

found that 61% of domestic violence offenders also have substance abuse problems” (Collins & Spencer, 2002).

#### IV. Alternative Solutions/Opinions

A graphic created by the President’s Commission on Law Enforcement and Administration of Justice (1967) shows that the criminal justice system follows a complicated sequence of events with a variety of outcomes. Subsequent to an arrest there are many ways in which the accused can be released or detained. Many alternative options to prison can be discovered by examining the moments in the system where people are arrested, convicted, and sent to prison, and creating solutions to avoid those situations. These alternatives include improving a community’s quality of life, increasing the use of mental health services, reducing the causes of wrongful imprisonment, decreasing sentence length based on the possibility of recidivism, increased use of the death penalty, improving the bail system, and legalization of some drug crimes.

One major policy change that would drastically reduce the number of prisoners is the full legalization or government regulation of illicit drugs. A policy change in the war on drugs could include many of the previously listed alternatives like increased use of public and mental health services, decreased sentence length based on recidivism, and legalization of some crimes. According to a report from the California Department of Corrections (2009), 17% of state prison inmates are serving for drug related crimes (p. 16). Removing them from the penitentiary would reduce the prison population by almost 30,000, which is the amount of inmates the Supreme Court required California to reduce from state prisons.

The first alternative to the war on drugs would be to approach the problem of drug addiction through public health instead of law enforcement. While drug abuse is considered more

of a public health issue than a crime issue, the public use and trade of drugs attracts other criminal behavior. In 2003, a legally supervised injection site called Insite opened in Vancouver, BC. While its operation and funding is controversial, an editorial in the Canadian Medical Association Journal (2006) claims scientists, criminologists, and the Vancouver Police Department have come to “a remarkable consensus that the facility reduces harm to users and the public...” (p. 1).

Crime rates are reduced when criminals with mental illnesses are treated instead of simply being thrown into prison. According to McNeil and Binder (2007), participation in a mental health court program “was associated with longer time without any new criminal charges or new charges for violent crimes. Successful completion of the mental health court program was associated with maintenance of reductions in recidivism and violence after graduates were no longer under supervision of the mental health court.” (p. 1395). Their final conclusion was that a mental health court reduces “recidivism and violence by people with mental disorders who are involved in the criminal justice system.” (p. 1395).

The second alternative to the current war on drugs is to reduce or remove mandatory sentencing and three-strikes laws. According to a congressional report from the United States Sentencing Commission (2011), over three-quarters of all convictions carrying a minimum penalty were for drug trafficking offenses (p. xxii). The same report claims that nearly 40% of all federal prison inmates were subject to a mandatory minimum penalty (p. xxix). Removing these mandatory sentences would give judges discretion to either reduce their sentences or place persons guilty of drug crimes in programs outside of prison. This policy makes sense considering one crime with a relatively low recidivism rate according to a report from the California Department of Corrections (2005) is CS (controlled substance) manufacturing at 29% (p. 1).

Changing how the public and public servants approach the war on drugs is difficult however for many reasons. The largest constraint to changing how Americans view drugs is the current public perception of the danger of drugs to the user and the public. While it can be argued that drug use can be dangerous, the abuse of legal substances and devices can also lead to death. A report from the Department of Health and Human Services (2009) shows that in 2008 the three leading causes of death were heart disease, cancer, and lung disease (p. 4). Drug induced deaths, both illicit and prescription, were fifth on the list at 37,485. Alcohol and firearms, both government regulated entities, accounted for 24,263 and 31,228 deaths respectively (p. 20).

A cynical explanation for why the United States would never end the war on drugs is because it is a large source of funding for law enforcement and prisons. The “Sourcebook of Criminal Justice Statistics” (2009) notes that from 1989 to 2010, U.S. Attorneys seized \$12.6 billion in assets, which is roughly \$575 million per year (table 4.25.2010). While a policy of drug decriminalization and regulation could lead to a new tax base for the government, that money would not specifically fund law enforcement and corrections departments.

The primary difference between a drug crime and other types of crime is the drug trade is an economy. If someone is arrested and convicted of rape and imprisoned, the problem of that person raping again has been solved. If someone is arrested and convicted of drug trafficking and imprisoned, the drug cartel simply hires a new person to traffic the drugs. The only way to reduce drug manufacturing and use is to neutralize the market. A paradox must be created to destroy the market through increased dollars towards prevention programs and decreased funding for military and police action. First, resources for drug prevention and addiction treatment programs must increased. The second and most controversial policy would be to

legalize drugs and neutralize the trade oligopoly by opening the market to anyone. A United Nations report (2005) shows that 76% of drug profits are generated when the drug hits the market in industrialized countries (p. 130). Decreasing the potential for profit could dramatically reduce the size of the United States' estimated \$200 billion drug industry, forcing dealers and manufacturers into other means of business (p. 123). While current dealers and manufacturers could find themselves working in other illicit industries, decreased sentencing for drug violators would go a long way to meeting required inmate housing levels.

Reforming the system through which suspects are granted bail could also enhance the county's ability to house state prisoners. According to a report by the ACLU (2012), 50,000 of the more than 71,000 county jail inmates (71%) are awaiting trial and have therefore not been convicted of any new crime (p. 18). The problem is a "one-size-fits all" system where judges set bail based on an adopted schedule instead of taking factors like flight risk, offense, and ties to the community into account. This practice of presumptive bail makes it difficult for suspects to post bail so they wait in county jail until trial. Instead of waiting in county jail, counties could implement day reporting centers or other ways of monitoring suspects. This would not only reduce the burden on the county jails, it is more cost effective. The ACLU (2012) reports that while it costs \$100 per day to house an inmate in county jail, it only costs \$2.50 to monitor people with pre-trial programs (p. 26).

#### V. Recommendation

The very idea of incarceration weighs the liberty of the criminal with the safety of the public. While realignment in California addresses the humanitarian concerns of the U.S. Supreme Court, it does so at the expense of a public that now faces increased numbers of non-violent felons walking their streets. As a means for addressing the U.S. Supreme Court decision, our group

recommends staying with the status quo of realignment. The rationale for this recommendation is that realignment is already in motion. Stopping realignment now would be a waste of resources already allocated to AB 109 and AB 900. We recommend that counties continue with building new jails with AB 900 funds for the sake of updating old structures with outdated technology. In the long term we hope the old jails can be repurposed to serve the communities or local government.

In the long term however we recommend a deeper examination of the criminal justice system and solutions that address crime prevention and public health concerns. Our recommendation for preventing crime is for more communities to adopt “broken windows” policies. The idea behind the broken windows theory is that acts like vandalism act as gateway crimes to felonious behavior. While the theory is controversial, we believe fixing and beautifying neglected neighborhoods is a good tactic for government and volunteers to offer assistance while decreasing the likelihood of children from low income communities from maturing into criminal life.

Our third and most controversial recommendation is to legalize drugs. This issue deserves more than a paragraph, but we believe that drug crimes are unique because of their connection with a global market. If a rapist is convicted, the problem of that rapist striking again has been solved with his incarceration. If a drug dealer is arrested however, the drug cartels merely hire another drug dealer. Much in the way that the music business has suffered over the past two decades with digital pirating over peer-to-peer networks, we believe that legalizing drugs reduces their profit margin and therefore the viability of the drug business. While legalizing all drugs would immediately decrease the prison population by around 20%, this could ultimately be a bad idea (US DOJ, 2007). With drug related death rates already at 37,485 (US Department of Health

of Human Services, 2011), our prediction is that society would see an increase in drug related deaths due to the availability and no consequences for use. This potential increase in drug abuse would require additional funding for public health services to treat addiction and other results of increased drug use.

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