

THE FALSE PROMISE AND LETHAL CONSEQUENCES OF RELEASING INMATES

by Michael Rushford

A three-judge panel—appointed by the Chief Judge of the Ninth Circuit in 2007 to decide if California prison conditions violated the constitutional rights of inmates—has announced that the state prison population must be reduced by roughly 27% over the next two years. The panel’s August 4 opinion, in the companion cases of **Coleman v. Schwarzenegger** and **Plata v. Schwarzenegger**, orders the state to submit a plan within 45 days describing the process for releasing the required 43,000 inmates.

The release order was announced two weeks before the California Legislature planned to vote on a proposal to release 27,000 inmates, which was initially part of the July budget compromise. The legislative proposal seeks to save \$1.2 billion in corrections expenditures from the state budget. It was pulled in July from the spending package, which requires a 2/3 vote, after Republicans refused to support it. By separating the proposal from the budget, it can be adopted by a vote of 51%. This allows Democrat majorities in both houses to approve the proposal without any Republican votes. At this writing, it remains uncertain whether enough Democrats needed to pass the proposal will be willing to vote for the release of thousands of prison inmates on the verge of an election year. If the proposal does pass, the Governor has promised to sign the bill.

While the court order and the legislative proposal have been advanced to solve different problems, they share some common themes. They both attempt to meet their initial objectives with 1) expansion of the “good time” credits inmates earn to shorten their sentences by participation in education and rehabilitation programs, and 2) authorization for state officials to utilize evaluation tools to determine which inmates should be considered “low risk” of committing violent crimes and eligible for early release and assignment to community based counseling and treatment programs.

Both suggest shortening or eliminating supervised parole for released inmates classified as “low risk” and limiting the re-imprisonment of parole violators to those who commit new felonies. The court order also suggests that the state offer incentives to counties who divert “low risk” felons to local programs rather than incarceration, “similar to that adopted by California in the 1960s . . .” The legislative proposal would transfer some illegal alien inmates to federal custody for deportation, cut prison medical costs by sending elderly and infirm inmates to community based facilities, and diffuse accountability for public safety by creating an appointed commission to set sentencing policy.

The panel’s decision and the supporters of the legislature’s plan suggest that inmate releases can be accomplished without increasing the crime rate. The panel actually goes further, concluding that if some of the corrections funds saved by releasing inmates are used to fund local rehabilitation programs, public safety will be improved.

Assumptions about California sentencing and prison conditions

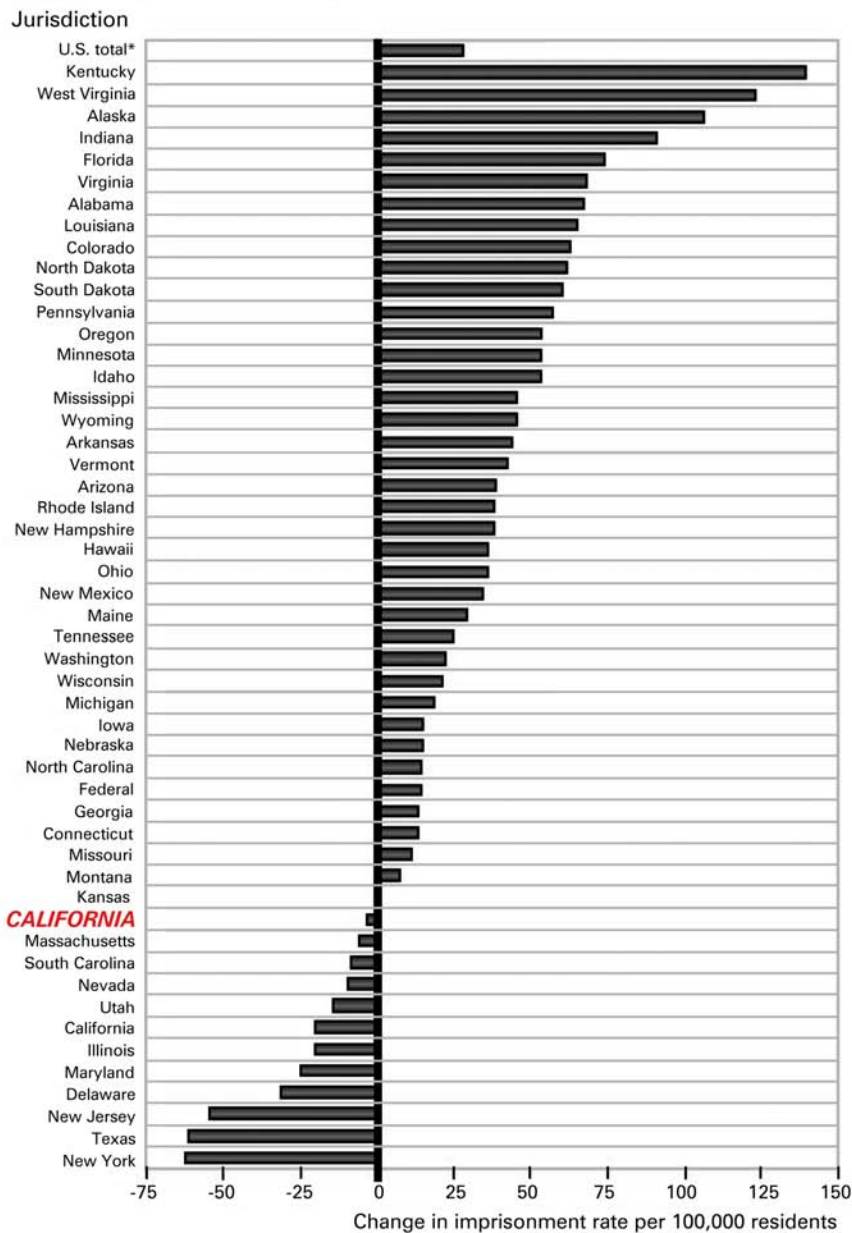
Three widely reported assumptions about California sentencing and prison conditions have been cited by proponents as support for the release of prison inmates.

1) **California sentences a disproportionate number of people to prison compared to other states.** Sentencing data from the U. S. Department of Justice (DOJ) tracking the imprisonment rates in each state per 100,000 population does not support this claim. A DOJ report, *Prisoners in 2007*, released in December 2008, indicates that California's imprisonment rate ranks 40th among the 50 states and is significantly below the national average. (See Chart 1.) If anything, California is behind the national curve on the imprisonment of convicted felons.

Chart 1.

Where's the Giant Growth Rate in California?

Change in imprisonment rates, 2000-2007



*Illinois, Nevada, and Maine did not provide data for 2007. The U.S., Illinois, Nevada, and Main imprisonment rates are estimated.

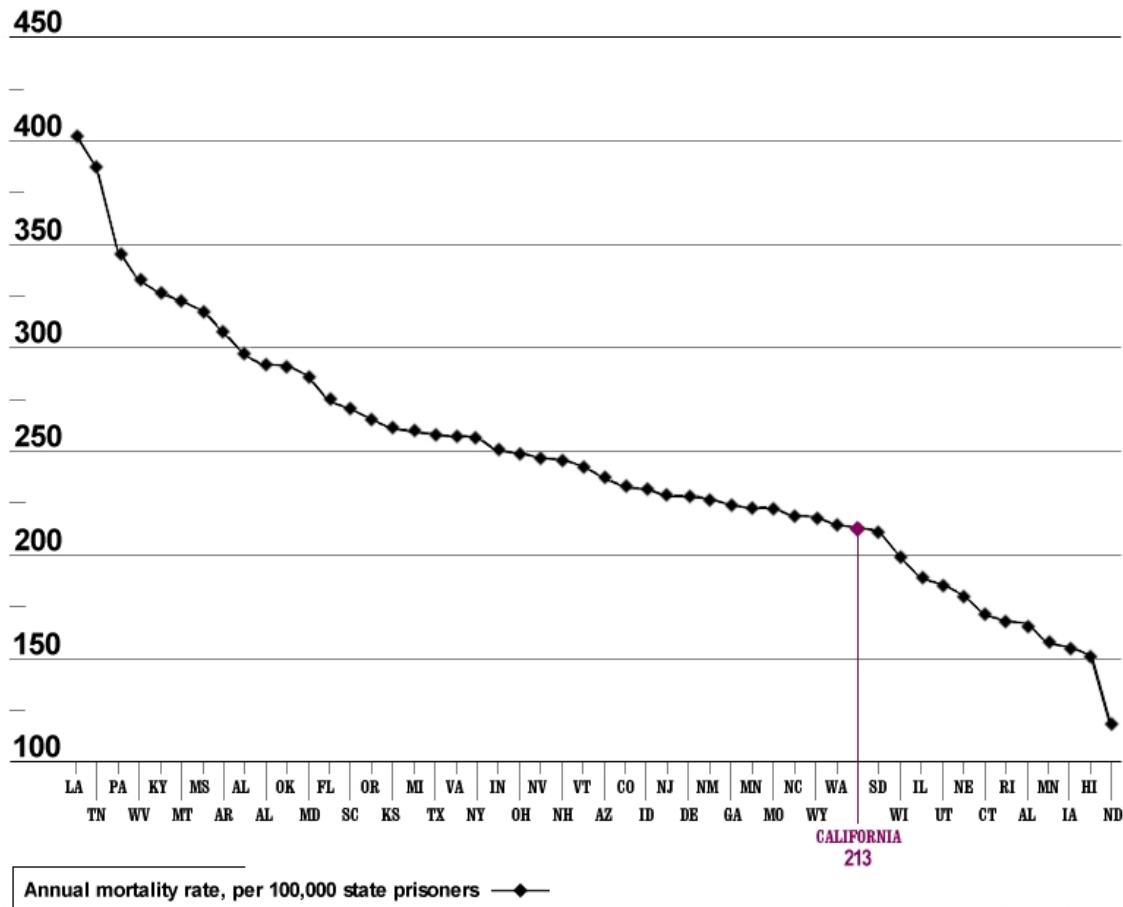
Source: Bureau of Justice Statistics, *Prisoners in 2007*. December 11, 2008.

2) **California prisons are overcrowded and conditions are getting worse.** The claim that state prisons are filled beyond design capacity is correct. California prisons have been overcrowded for more than 15 years. While state spending increased from \$68.5 billion in 1998 to \$144.8 billion in 2008, the Democrat majority in the state legislature has refused to include spending to modernize and expand the capacity of state prisons. In spite of this, overcrowding has not gotten worse. As of June 30, 2009, California had roughly the same number of inmates in state prisons as it did in 1998. And, since 2000, the number of juveniles in state institutions has actually dropped by 79%.

3) **Healthcare in California prisons is so substandard that massive inmate releases are necessary.** The judicial inmate release order cites experts, anecdotal evidence, and earlier court rulings to support its conclusion. Other data raises questions about how severe the problem is and the need for drastic action to solve it. The mortality rate of prison inmates can be affected by several variables such as age, prison assaults, and suicide, but a total breakdown in the prison healthcare system as the panel asserts, should have caused a significant impact. A Bureau of Justice Statistics report, *Mortality rate per 100,000 state prisoners by state, 2001-2006*, provides this data. (See Chart 2.) It shows that the mortality rate among California prison inmates is the 38th lowest among the 50 states. In its release order, the judicial panel

Chart 2.

Prison Inmate Mortality Rate by State (2001 - 2006)



Source: Bureau of Justice Statistics

relied heavily on the testimony of prison administrators *from Pennsylvania*. In the above-cited report, Pennsylvania's prisons had the third highest inmate mortality rate in the country.

Another measure of California's commitment to inmate healthcare is the per-inmate expenditure for medical costs. The Bureau of Justice Statistics report *State Prison Expenditures, 2001*, lists these per-inmate costs by state. California had the third highest expenditures for medical care at \$4,394 per inmate. For California's 2008-2009 fiscal year, the state Legislative Analyst's Office estimated the per-inmate cost at \$12,558. This does not count the estimated \$1,000 per-inmate expense for secure transport to state medical facilities. California is currently spending nearly three times more per inmate for healthcare than the states of New York and Florida, and the federal prison system.

The level of medical staffing for California prisons also provides an indication of efforts to improve healthcare quality. In 1999, California corrections had 3,940 healthcare employees. In 2009, there were 12,579 healthcare employees.

An assessment of the odds that either of the two release plans will achieve their goals while preserving or improving public safety requires a review of available research and historical data.

Saving Money

The suggestion that releasing prison inmates will reduce state costs is based on the assumption that the state will save a significant portion of the Governor's estimated \$49,000 (the annual incarceration cost to house an inmate) for each inmate released. Corrections employees represent the largest expenditure category related to prison inmates. In 1999, California actually had 8,229 more inmates in state institutions than in 2009. However, the number of corrections employees over this period went from 49,446 to 67,862. Fewer inmates in prison . . . more prison employees. The largest drop in state inmates has been for those housed in state juvenile institutions. In 1999, the state had 7,761 incarcerated juveniles and the annual cost per juvenile inmate was \$48,841. In 2009, the number of juvenile wards in state institutions dropped to 1,659. The cost per inmate projected in the Governor's budget is \$328,015.

Recognizing the size and influence of California's public employee unions, a release of 27,000 inmates, as proposed by the majority leaders of the legislature, is unlikely to trigger a corresponding reduction of prison staff. It is also unlikely that such a release would result in prison closures or a significant reduction in most fixed costs such as utilities, maintenance, and programs. One exception may be the medical care expense for older inmates. The legislative proposal intends to remove older and infirm inmates to community facilities. This would transfer the obligation for the care of this cost-intensive class of inmates to local governments. Even with this transfer, there is no proposal to reduce the number of prison healthcare employees. This reduces the likelihood that the state will save most of the cost for older inmate care.

Because both plans require released inmates to participate in community-based programs providing temporary housing, rehabilitation, and drug treatment, both plans will significantly increase local government expenditures.

Relieving Unconstitutional Prison Conditions

The federal court panel's inmate release order is premised on its conclusion that, "California's prisoners have long been denied constitutionally adequate medical and mental healthcare, often with tragic consequences, and the overcrowding in California's prisons, which have become criminogenic, must be reduced if the prison system is to achieve constitutional compliance."

The panel's order would reduce the state prison population to 137% of its design capacity by releasing 43,000 inmates, in order to achieve what it has determined is constitutional compliance. This is the largest such inmate release order ever announced in the United States.

The judicial panel's order is preceded by a 184-page opinion. It represents the views of three federal judges, each of whom has distinguished himself over a long career as sympathetic to criminal defendants and prison inmates. The opinion and its conclusions could be wrong. Recognizing that that is often the case, in 1996 Congress enacted the Prison Litigation Reform Act, which was signed into law by President Clinton.

A major feature of the Act was its reform of inmate release orders by federal judges. New rules were adopted to require that release orders be the result of review by a panel of three judges, that the release order be the last available option to address the problems identified by the panel, and that the effect of the order on public safety be a primary consideration. The Act also requires that the appeal of a release order go directly to the United States Supreme Court.

Whether or not the medical care provided to inmates is unconstitutional, because California prisons are holding more inmates than they were designed for, will remain an open question until the Supreme Court issues its ruling on the state's appeal.

Evidence that California spends more on inmate healthcare than most, if not all, other states, and far more than in federal prison, and that the inmate mortality rate is lower than in the majority of other states, raises questions about the legitimacy of the panel's findings.

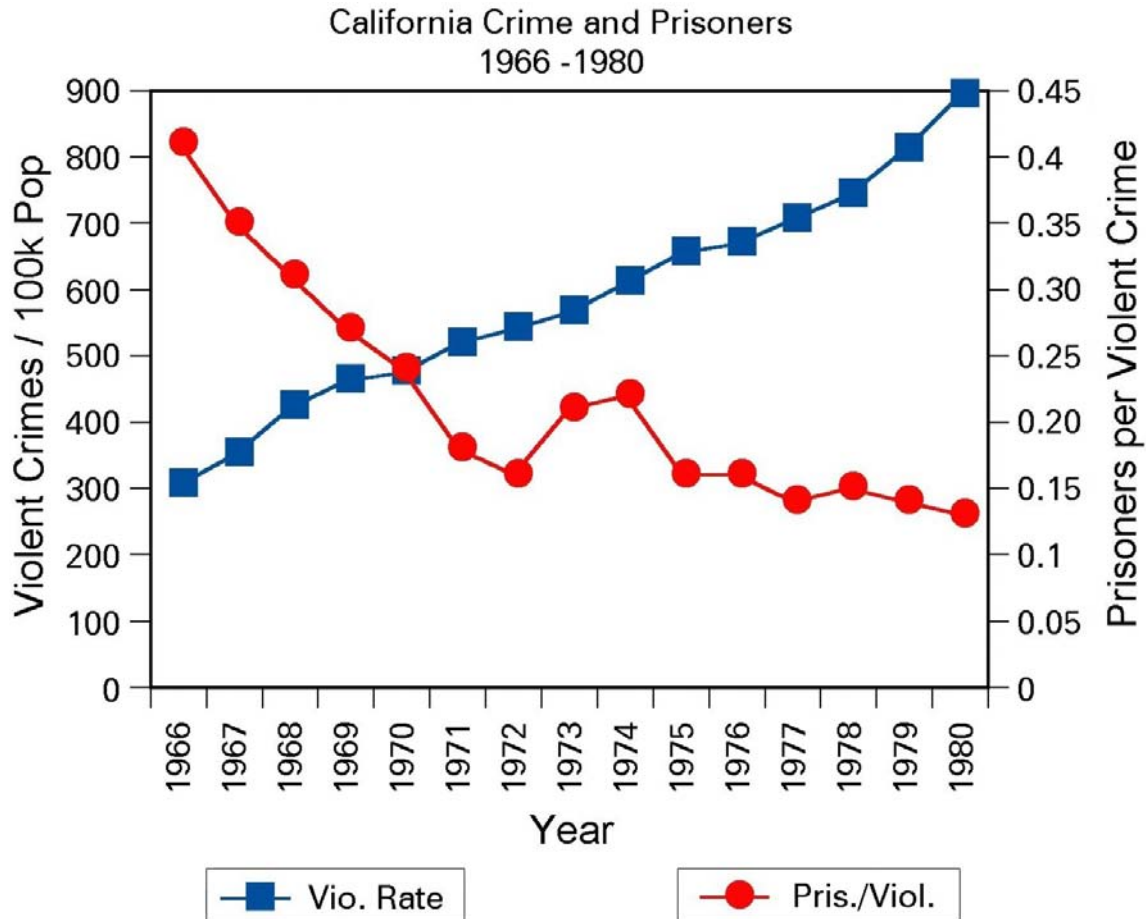
The Effect on Public Safety

The authors of both inmate release plans assert that, by selecting prison inmates who exhibit a "low risk" of committing violent crimes and enrolling them in community-based rehabilitation programs, public safety will not be significantly reduced and, as the judicial panel notes, may be improved.

California history provides an initial point for evaluating this claim. As the judicial panel noted, in the 1960s, the state initiated policies to reduce the number of felons sent to prison and provide incentives to local governments for rehabilitation programs. The purpose of these policies was to reserve incarceration for only violent offenders and divert lower risk felons to alternatives that would help transform them into law-abiding citizens. The effort, which was initiated in the early sixties, began to achieve the desired result a few years later, keeping the state prison population at, or below, its 1968 level for every year, but one, until 1980.

Between 1966 and 1980, when the policies began to unravel, the violent crime rate more than doubled, and the murder rate nearly quadrupled. Several hundred thousand Californians became victims of crimes—including rape, robbery, assault, and murder. (Chart 3.)

Chart 3.



It took another ten years of consistently increasing the rate of convicted felons going to prison to begin a dramatic decline in violent crime in California that has continued through 2008.

The plan to divert convicted felons from prison worked. The plan to rehabilitate them failed miserably at the expense of public safety.

The proponents of the new inmate release plans note that only “low risk” inmates will be selected for release. These are inmates who have committed one or more nonviolent felonies such as commercial burglary, larceny, and motor vehicle theft. While there are hundreds of examples of violent crimes committed by what authorities previously believed to be nonviolent offenders, research by the Bureau of Justice Statistics (BJS) is sufficient to question the premise regarding the ability to identify “low risk” offenders.

A BJS report, released in 2002, tracked the three-year recidivism of nonviolent property offenders released nationally in 1994. Among the 91,061 property offenders released, 21.9% were rearrested for violent crimes, including 726 murders, 637 rapes, 5,735 robberies, and

12,475 assaults. Interestingly, car thieves, which represented just over 10% of all the offenders released, were rearrested for committing more than 1/3 of the murders and a disproportionate number of other violent crimes. This suggests that property offenders, who would undoubtedly qualify for release under both plans, are likely to cause a significant increase in violent crime. Both inmate release plans indicate that they would decrease or eliminate parole supervision of these “low risk” criminals, increasing the likelihood that a larger percentage of felons than those tracked in the BJS study will commit violent crimes.

The judicial release order sets a cap on the state inmate population. This will prevent an unknown percentage of criminals convicted of new crimes from receiving prison sentences, requiring instead that they be diverted to local programs. The release order also prevents released inmates who violate the conditions of their parole from being returned to prison. This reduction of consequences for new offenses committed by known criminals is likely to encourage an increase in crime.

Conclusions

The Legislative proposal to release an estimated 27,000 inmates from state prison is unlikely to save the hoped for \$1.2 billion in budgeted funds. It is virtually certain that the release of these inmates will have a real impact on local spending, initially for the costs of increased rehabilitation programs. While the proposal will fail on the cost issue, if the provision to create a sentencing commission with the power to adopt policy is passed, the Democrats who run the state legislature will have insulated themselves from the responsibility for protecting public safety.

It is quite possible that the judicial inmate release order is not required by law and will be overturned by the United States Supreme Court on appeal. Its reliance on local rehabilitation programs would, like the Legislative proposal, force increased local spending.

Both plans would re-institute policies adopted in the 1960s which resulted in dramatic increases in all types of crime. Local governments would be responsible for the law enforcement cost of investigating new crimes committed by released inmates, along with the costs for their rearrest and prosecution. An increase in state costs for the appeal of convictions, and the re-incarceration of released inmates who commit violent crimes, is inevitable.

The highest price will be paid by the people of California, who will suffer injury, property loss and death at the hands of known criminals turned loose by legislators to save money, or by a panel of life-appointed federal judges who cannot be held accountable. Relearning the clear lessons of the past will come at a very high price.