AB 2819 Work Release Legislation

Kern County's Attempt to Help Mitigate Jail Overcrowding in California

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This Command College Independent Study Project is a FUTURES study of a particular emerging issue in law enforcement. Its purpose is NOT to predict the future, but rather to project a number of possible scenarios for strategic planning consideration.

Defining the future differs from analyzing the past because the future has not yet happened. In this project, useful alternatives have been formulated systematically so that the planner can respond to a range of possible future environments.

Managing the future means influencing the future--creating it, constraining it, adapting to it. A futures study points the way.

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Standards and Training

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Introduction

In many areas of Kern County, California, violence seems to be on the rise, especially gang violence. One area of focus to fight gang violence is incarceration of the criminal gang members. In Kern, however, the jails are critically overcrowded (as is the case with most other jails in the State). Complicating potential solutions to the problem of housing dangerous prisoners is the obligation to abide by jail population caps as prescribed by federal mandate. Like many others, Kern resorts to the release of inmates whose convictions are generally nonviolent misdemeanors as a means of reducing chronic overcrowding.

Statewide data shows the need to release inmates early is a problem existing in almost every setting. In an article appearing in the October 2006 issue of the California Sheriff magazine, San Bernardino County Sheriff Gary Penrod wrote, "Every month more than 9,300 inmates are released early from their jail sentences due solely to lack of jail space. An additional 9,150 offenders a month are given pretrial releases because Sheriffs have no place to house them. This equates to 221, 400 jail inmates who are released back to our communities before serving their time because California's 125 county jails are critically overcrowded." In 2005, Assembly Bill 2819 (AB2819) was proposed to provide an alternative to this type of revolving door release policy. AB 2819 would modify existing law to allow for "good time" and "work time" for inmates who participate in a county work release program.

If enacted, AB2819 would provide a viable option to mitigate jail overcrowding. Inmates who elected to participate in work release would not only provide a valuable public service, their efforts would translate to a system where those who left custody early did so due to their work and perseverance, and not due to a lack of bed space alone. Unfortunately, after passage by the State Legislature, the bill died on the Governor's desk without a signature. In truth, there are perspectives on both sides of this piece of legislation. The purpose of this article is to demonstrate the need for AB 2819, show differing perspectives, and encourage the efforts by State Sheriffs, legislators and the Governor to provide counties with the tools necessary to manage their inmate populations. As you will see, the only alternative not viable in this setting is the one where we continue to "do nothing" and hope for the best.

Background

Presently in the State of California, county jails are at or above capacity. California Sheriffs continue to look for methods to alleviate overcrowding without increasing their early releases for sentenced county inmates. According to a June 2006 California State Sheriff's Association, (CSSA) report titled, *DO THE CRIME, DO THE TIME? MAYBE NOT, IN CALIFORNIA*, In 2005, statewide bookings per month reached a ten-year high -

- 106,941 per month (up from 97,589 in 1995).[1] According to the report, "There are 74,686 rated capacity (RC) jail beds in the state and, in 2005, the average daily population (ADP) of jails was 79,639 inmates -- the highest yearly ADP in history! It would take an additional 4,953 beds to house all the inmates in today's ADP."[2] Other pertinent findings of the report were:

- The highest one-day jail population count statewide, in 2005, was 87,500 inmates. This means that, with current capacity, during times of peak demand for jail space, the state is short at least 12,800 jail beds.[3]
- 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.[4]
- 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 incarcerated, another 28,522 beds would be needed to house these felons.[5]
- This is the current state of our jails. These deficits exist today. 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.[6]
- These beds would not eliminate early releases or unserved warrants or allow for a vacancy factor. To deal with those existing deficits and achieve a fully functioning jail system by the year 2050, the state would need to add 217,300 jail beds.[7]

Due to these overcrowded jails throughout the State, inmates are assured they will be released early with no incentive to participate in a work release program. While in custody, an inmate will receive good and work time credit which shortens their incarceration time. By combining this with the early jail releases to maintain population capacity, inmates have little incentive to participate in any programs to enhance their skills or contribute to society, such as work release programs. When inmates do not participate in work release programs, problems with maximum jail populations are exacerbated. Ultimately, more inmates must be released earlier, and in some cases, counties may be forced to reduce the amount of minimum time an inmate serves before being released.

The severe reduction in work release participants not only negatively impacts the jail population, it also impacts those agencies relying on work release to perform their daily responsibilities. Those services that were previously performed by work release

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[1] Do the Crime, Do the Time? Maybe Not In California, California State Sheriffs' Association, June 2006, p. v
[2] Ibid
[3] Ibid
[4] Ibid p. vi
[5] Ibid
[6] Ibid
[7] Ibid

participants are now either being paid for separately or no longer get completed. In Kern County, this equates to parks and government buildings not being maintained efficiently as well as trash along roadways remaining longer until a work crew can be scheduled to clean the area.

Kern County's Experience

In Kern County, a rural county 110 miles north of the Los Angeles metro area, the rated jail capacity in 2005 was 2324 inmates, with and average daily population of 2412 inmates. In 2005, 2,404 felony inmates and 2,457 non-felony inmates were released earlier than their sentenced time. This does not include pretrial releases.

In the County, inmates meeting certain criteria based on type of convictions and prior criminal history can be released after serving only 1/3 of their sentence when the jail population reaches 90% of capacity. Kern County has one of the higher minimum time criteria for release in the state. Other counties are releasing the same types of inmates at or below 10% of their sentenced time. These early releases allow convicted criminals to be released back to their communities in a much shorter time than what was imposed by the court. The early releases also severely reduce the impact of sentencing by the judges when criminals realize they will not serve the full sentence.

Based on research documented by Kern County Detentions' Staff, Kern County inmates participating in work release programs decreased by 40 percent since the present legislation was interpreted by the court in 1994 to prohibit the good and work time credits to those that participate in the work release program (*People v. Wills (1994) 22 Cal. App. 4th 1810*). Prior to this court interpretation that changed the practice of good and work time credits for inmates in work release, Kern County had a monthly average between 800-900 participants. After the change, Kern County has an average of 400-500 with a present average of 428 monthly.

Present Efforts and the Future

In April 2006, *The Los Angeles Times* stated "California will have to make room for 23,000 additional felons over the next five years in the state prison system. The State will have more than 193,000 inmates in the state prisons by 2011".[8] All new state prisoners start at a county jail until convicted and sentenced by the court to state prison. Based on this recent report, it can be easily deduced each county will have an increase in their county inmate population within the next few years. Since county jails are already at capacity levels, any increase in county inmates will be devastating to the counties.

In January 2006, Governor Schwarzenegger proposed state funding for infrastructure projects, including funding for maintenance and improvements to existing jails and funds

[8] The Bakersfield Californian, page 1, 'Population crisis' choking state's prisons, Jennifer Warren of the Los Angeles Times, April 23, 2006

for the creation of new jail beds. Sheriffs became hopeful there was a potential avenue to address overcrowding at county jails. Unfortunately, in the latter part of 2006, the State Legislature defeated the Governor's proposal on infrastructure funding. This means California Sheriffs must continue to use existing resources and local budgets to create imaginative solutions to overcrowding in their jails.

Some existing policies allow inmates to be cited out of custody on their promise to appear in court, participate in community based programs for sentenced inmates for drug diversion or county operated work release programs. Some counties are presently examining or are in the early stages of a day reporting program. The day reporting can be developed to suspend the incarceration of the inmates for daily reporting of the inmate to a designated venue. The inmate would be introduced to vocational training with intense supervision and monitoring. All of these programs hold promise as a mitigation strategy for the overcrowding problem.

Work Release Program Specifics

Work release allows sentenced individuals to work in the community under a structured program in lieu of incarceration. An individual can participate in work release in one of two ways. First, a judge may refer a person to a work release program. Secondly, an inmate, after serving a required amount of time, and if they successfully qualify, can participate and be released from custody. In most work release programs, participants work during the day and stay at home at night and on weekends. They do not have to report back to the jail after their daily work assignment. The participants are monitored by work site staff and law enforcement for attendance and compliance to the established work release rules. They can finish their sentence participating in the work release program and not return to custody.

Generally, as in Kern County, each participant must pay fees to participate in the program. This allows the program to pay for itself. Work sites are operated either by a governmental or non-profit entity. Most of the tasks completed by work-release inmates include picking up trash on roadways, gardening, washing cars for a government agency and other routine maintenance at particular sites. An effective work release program can reduce inmate population and increase available jail beds to allow more serious offenders to be held in custody longer and would reflect the community's interest of keeping the serious criminals in custody. This also allows jail managers the ability to operate their jail more efficiently.

Presently there is a statute that allows for a strict use of good and work time credits to those who participate in a county work release program. However, the mandates set forth in the statute, PC 4024.3 (a), are problematic and would create critical issues if utilized that renders this statute useless.

Present Legislation PC 4024.3

California Penal Code Section 4024.3 (a), enacted in 1995, allows a Board of Supervisors to authorize the Sheriff of any county where the average daily inmate population is 90% of the county's correctional system's mandated capacity to operate a work release program. Pursuant to Penal Code provisions, priority for participation in the work release program shall be given to inmates who volunteer to participate in the program.[9] They will be given the same credit due as if they remained in custody. This section becomes problematic due to voluntary or mandatory participation and funding.

Kern County Sheriff's staff reviewed this law and determined the potential of a negative impact if implemented. One issue is the ability of an inmate to pay for the opportunity to participate in work release. Presently, inmates pay a $60 enrollment fee and $3 a day for participation. This fee pays for the program to operate. In Kern County, this generates approximately $25,000 a month. In the last twelve months, approximately $339, 379 was collected to pay for the management and supervision of the program. Under PC 4024.3, the County is entitled to charge participants; however, PC 1208.2 allows those inmates unable to pay the opportunity to participate. This could result in additional costs to the Sheriff's Departments by requiring them to subsidize the work release program. Another issue is if the program becomes a requirement, it is anticipated that the failure rate would increase due to it becoming mandated and not entirely voluntary.

Kern County Sheriff's staff believes inmates who are forced to participate in a work release program are less likely to comply with work release regulations and fail the program. Depending on the reason for failure, additional staff would be required to process and adjudicate those that fail. For example, basic rule violations my utilize existing staff to book the inmate back into custody, however, if an inmate failed to appear at the work site, a report would be created and subsequently a warrant would be issued for the arrest. Additional staff would be needed to process the report, locate, arrest, and book those individuals that fail. Presently, Kern County Sheriff's program has less than a 24% failure rate, which, according to work release staff is manageable.

A work release program is only as strong as the need for the labor it provides. If participants failed to complete the prescribed commitment or not show up for the program, the labor becomes unreliable, and the community partners would cease their participation. Even though the benefit is great to the end user, it must be reliable to be useful.

ASSEMBLY BILL 2819

Sponsored by Assemblyman Bill Maze, Kern County proposed Assembly Bill 2819 to allow inmates participating in a work release program to be eligible for good and work time credits and allow them to be subtracted from their sentenced time. This would modify California Penal Code Sections 4019 and 4024.2.

[9] California Penal Code Section 4024.3

Under existing law, the Board of Supervisors of a County may authorize the Sheriff to offer a voluntary program that allows jail inmates to participate in a work release program in which one day of participation is in lieu of one day of confinement. This bill 1) Provides that for each six-day period in which a prisoner participates in a work release program, two days shall be deducted from the period of confinement if the prisoner has satisfactorily performed labor as assigned and complied with the rules and regulations. 2) Makes a conforming cross-reference to provisions authorizing the Sheriff to establish voluntary work release programs under which any person committed to a local correctional facility may participate, as specified.[10]

If enacted, each county would set the parameters for participation in their work release program. Kern County has strict requirements for participation in work release. They are intended to allow the less severe, non-violent to inmates participate with little or no threat to the general public.

In February 2002, Assemblyman Roy Ashburn introduced the same legislation in Assembly Bill 2200 that is now AB2819. AB 2200 was supported by California Attorneys for Criminal Justice; California Police Chiefs' Association; California State Sheriffs' Association; Kern County Board of Supervisors; Kern County Sheriff's Department; and American Civil Liberties Union. The only opposition was the California District Attorneys Association. AB 2200 passed on the Assembly Floor with 77 Ayes and 7 Noes.[11]

The District Attorneys Association opposed and stated that AB 2200 was bad public policy because conduct credits have traditionally been reserved for jail inmates to encourage good behavior while in custody. Upon presentation to Governor Davis, AB 2200 was vetoed. The Governor was troubled about the notion of inmates having the ability to choose non jail punishment that would also reduce their sentences.[12]

Expected Impact AB 2819

It was expected if AB 2819 was signed into law, California Sheriffs would have had the ability to mitigate their jail overcrowding by allowing more inmates to voluntarily participate in the work release programs. The more inmates who participate in the work release programs results in an increase of available beds in the jail facilities. In Kern County, if AB 2819 became legislation, approximately 100 additional inmates per month would participate in the program. In the present program, each inmate would continue to pay the fee and allow the program to fund itself without county general funds.
This legislation would also allow for increased participation to community groups that utilize work release for a labor source.

[10] www.leginfo.ca.gov/pub/bill/as,/ab_2801-2850/ab2819_bill_20060323_status.html
[11] Assembly Bill 2200, February 2002
[12] Ibid

AB 2819 Evolution and Results

AB 2819 had support from the California State Sheriff's Association and many other recognized statewide organizations similar to the prior legislative attempt. AB 2819 was again, opposed by the California District Attorneys' Association. During meetings with the California District Attorneys Association Legislation Committee, the same message of being too lenient or soft on crime was delivered as it was with AB 2200. In spite of this opposition, AB 2819 passed the Assembly on May 30, 2006. The Assembly vote was 54 ayes and 21 noes. On August 10, 2006, this Bill passed the Senate on a vote of 24 ayes and 11 noes. AB 2819 was sent to the Governor's desk. [9]

On August 29, 2006, Governor Arnold Schwarzenegger declined to sign the legislation. His message was: "To the members of the California State Assembly: I am returning Assembly Bill 2819 without my signature. By providing conduct credits to individuals on voluntary work release, this Bill would allow convicted individuals the option of reducing their sentence without actually serving time in confinement. I understand and sympathize with the growing concern about jail overcrowding in California. I have addressed proposed solutions in my Strategic Growth Plan earlier this year regarding jail overcrowding; however, reducing the time served for voluntary work release program is an inappropriate solution to solve overcrowding. The mere option of completing ones sentence outside of jail should be enough incentive for individuals to enter a voluntary program. For this reason, I am unable to sign this bill." [10]

What's Next?

On December 21, 2006, the Governor presented a prison reform package that has been included in the proposed state budget for 2007-2008. This reform includes some potential funding for new county jail beds as shown in a Press Release from the Governor's Office:

"Additional Housing. To meet current demands, prepare for growth and provide prisoners and officers with a safer environment, the Governor is proposing $10.6 billion in bond financing and $0.3 billion from the General Fund to expand California's prison and jail capacity by a total of 78,000 beds. Details include:

- Local jails and juvenile facilities: $5.5 billion ($4.4 billion lease revenue bonds, $1.1 billion in local matching funds).
    - Proposal will fund 45,000 local beds and 5,000 juvenile beds.
    - Twenty jails are currently under court-ordered population caps and twelve more have self-imposed caps.
    - In 2005 alone, 233,388 individuals avoided incarceration or were released early from jail sentences due solely to a lack of jail space.

[9] http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab_2801-2850/ab_2819_bill_20060929_history.html
[10] http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab_2801-2850/ab_2819_vt_20060929.html

- California needs to build 40,000 new jail beds by 2050 just to address population growth."[11]

While the Governor's proposal is still in its infancy with no real concrete future, California Sheriffs must still contend with jail overcrowding today.

Conclusion

When you look at the overwhelming problem with jail overcrowding in the State of California, and what the future may hold, work release programs are a small part of the resolution. It appears, however, that no one program will resolve the overcrowding. It is also not viable to merely build more jail beds to hold all of the criminals. Many alternatives, therefore, must be considered and implemented to alleviate overcrowding in addition to the possible new construction of custody facilities.

As for AB 2819, Nick Warner, the lobbyist for CSSA and Paul Yoder, the lobbyist for Kern County, both agree that this legislation has a value for California Sheriffs. Both feel this legislation would not stand a reasonable chance for passage if reintroduced this legislative year. Their advice at this time, though, is to keep the intent and wording of the legislation pending and let the Governor's prison reform proposal progress. An opportunity may develop to allow this legislation to be included in the prison reform as it progresses. Warner and Yoder feel this would be the best chance to enact the work release modification legislation.

The one thing that is clearly apparent is that doing nothing is not an option. The Sheriffs may be responsible for the jails, but this is a community and statewide issue. Jails are operated with taxpayer dollars. The public should expect serious criminals to be locked up and not released until their sentence is complete. Therefore the public should be very interested in finding alternatives to incarceration for the less serious criminals and allow the more serious to remain in jail.

[11] http://gov.ca.gov/index.php?/print-version/press-release/4972