

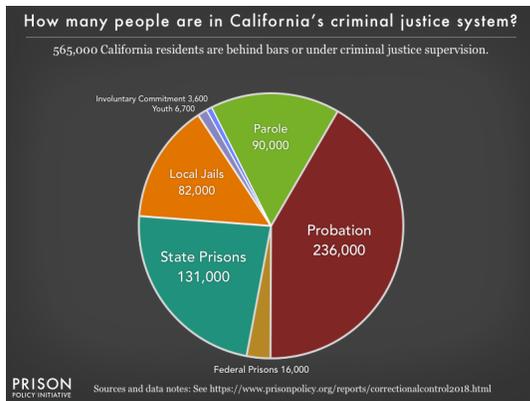
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California Corrections is Broken — Here's How to Fix It

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Our state has an opportunity to lead the nation in criminal justice reform by dramatically reducing the corrections population and state expenditures while improving public safety. Rather than trapping people in our corrections system in a permanent cycle of crime and punishment, we must develop strategies that allow these individuals to return to peaceful lives in their communities. Instead of paying correctional officers to “warehouse” and “process” human beings, we must reward them for helping detainees reintegrate and become productive members of society.



California has made historic strides in reducing its prison population since a Supreme Court decision in 2011, though many formerly incarcerated persons have been shunted into jails, probation, and parole systems.¹²³⁴ Still, 565,000 Californians are incarcerated or under supervision, and at \$12 billion a year California spends more on criminal justice than the next three states combined.⁵⁶⁷⁸⁹ Despite recent efforts at rehabilitating people

under community supervision, 69% of people are re-arrested in the two years after they are released from jail or prison, and the reconviction rate has actually increased 5% in recent years.¹⁰

SB 678

One of the most impressive achievements in California criminal justice policy in the last decade is a little-known law called Senate Bill 678 (“The California Community Corrections Performance Incentives Act”). SB 678 was sponsored by Mark Leno, a San Francisco Democrat, and John Benoit, a Riverside Republican. Remarkably, the bill passed both houses without a single No vote.

A classic problem in criminal justice is that county-funded probation departments shift costs to state-funded prisons. 75% of people charged with felonies in California are routed directly into probation, and probation officers are only too happy to lighten their caseloads by sending these individuals to prison — even though prisons are more expensive by an order of magnitude. SB 678 solved this problem by allocating performance-based funding to counties which have reduced the percentage of felon probationers they return to prison for technical violations of probation or for new crimes.¹¹

¹ California has a prison population of about 130,000, down from a peak of 173,000 inmates in 2006, or a 33% reduction. <https://www.ppic.org/wp-content/uploads/r-118mlr.pdf>

² County jail populations are now serving much longer sentences and doing rehab in jail. Rates of inmate violence in jails are up substantially since 2011. <https://www.ppic.org/publication/public-safety-realignment-impacts-so-far/>

³ Petersilia, Joan and Francis T. Cullen. “Liberal but Not Stupid: Meeting the Promise of Downsizing Prisons.” *Stanford Journal of Criminal Law and Policy*, 2015.

⁴ <https://www.ppic.org/wp-content/uploads/r-118mlr.pdf>

⁵ California has a combined inmate population of 212,560 people in state prisons and county jails. <https://www.sentencingproject.org/the-facts/#detail?state1Option=California&state2Option=0>

⁶ (CA, 11.8B; Texas, \$3.3B; New York, \$3.2B; Florida, \$2.4B). <http://www.ebudget.ca.gov/budget/2018-19/#/Home>

⁷ https://www.tdcj.texas.gov/documents/bfd/-Agency_Operating_Budget_FY2018.pdf

⁸ <https://www.budget.ny.gov/pubs/archive/fy19/exec/-agencies/appropData/CorrectionsandCommunitySupervisionDepartmentof.html>

⁹ <https://www.politico.com/states/f/?id=00000163-846c-d92c-a17f-edfcd4b0001>

¹⁰ <https://www.ppic.org/wp-content/uploads/r-118mlr.pdf>

¹¹ The bill also required county probation departments to implement “evidence-based” rehabilitation practices and allocate shared savings towards “evidence-based” rehabilitation, but the term “evidence-based” has become so vague as to be meaningless, so the financial rewards structure is the much more interesting component of the law. See: http://www.leginfo.ca.gov/pub/0910/bill/sen/sb_-06510700/sb_678_bill_20090625_amended_asm_v96.pdf

Here's how it worked:

The state would calculate the historical annual “probation failure rate” for a given county, determine the current probation population, and then estimate the number of people who would have been returned to prison at the historical rate. If the county was able to return a lower number of people than predicted, the county was entitled to 40–45% of the projected savings on each individual not returned (the estimated cost of the time they would have spent in prison and on parole).¹² 5% of the total savings on averted people was distributed to counties that were already below 50% of the baseline, statewide return-to-custody rate as a reward for their excellent performance.

Although the rewards structure for county probation departments recently changed, the essential framework of SB 678 is still in place: counties are incentivized to rehabilitate as many inmates as possible, to obtain the maximum amount of shared savings. And the results are staggering. Between 2009 and 2017, probation officers successfully averted thousands of supervised felons from incarceration resulting in a total allocation of \$703 million to California counties and over a billion dollars in savings to California taxpayers!¹³

Some of the California's success over the past decade is due to the statewide “realignment” that

occurred in 2011 and limited the number of new convictions made across the state. But even in the first two years of the SB 678 program the results were obvious. Compared to an annualized return-to-prison rate of 7.9% in 2006–2008, the return-to-prison rate declined to 6.1% in 2010, and 5.4% in 2011, even while violent and property crimes decreased substantially.¹⁴¹⁵¹⁶

We know that certain extremely successful rehabilitation programs — such as the Prison Entrepreneurship Program in Texas and The Last Mile program here in California — have been able to get recidivism rates down to a mere 7%.¹⁷¹⁸¹⁹²⁰ We also know that educational, cognitive behavioral, and domestic violence programs can also reduce recidivism by significant margins.²¹²² What we need to do is make sure California's entire criminal justice system is employing these and other rehabilitation techniques that *actually work*.

Performance-based funding for successful rehabilitation is one of the rare bipartisan issues in California criminal justice policy. Governor Gavin Newsom and the California state legislature should build on the success of the SB 678 model by deploying similar models in our parole departments and prisons.²³

¹² Counties with a return-to-prison rate of over 125% of the statewide failure rate were entitled to 40% of savings if they reduced their population relative to their county return-to-prison rate; counties with a return-to-prison rate of under 125% of the statewide failure rate were entitled to 45% of savings relative to their historical county rates. This funding structure has changed in 2015, see appendix for details.

¹³ In 2011 a bill called AB 109 (“The Realignment”) drastically changed the size and composition of California's prison populations. It's difficult to separate causality after 2011 to determine how effective SB 678 really was. But between 2009 and 2011 — before the Realignment took place — the state return-to-prison rate dropped from 7.9% to 5.5%. This is strong evidence that SB 678 has played a significant role in reducing return-to-prison rates. <https://www.courts.ca.gov/documents/lr-2017-JC-SB-678-CCC-performance-incentives-act.pdf>

¹⁴ <https://openjustice.doj.ca.gov/crime-statistics/crimes-clearances>

¹⁵ <https://www.courts.ca.gov/documents/SB678-Year-2-report.pdf>

¹⁶ The statewide return-to-prison rate has since stabilized around 3.3%. <https://www.courts.ca.gov/documents/lr-2017-JC-SB-678-CCC-performance-incentives-act.pdf>

¹⁷ <https://www.pep.org/pep-results/>

¹⁸ Guynn, Jessica. “Silicon Valley turns prisoners into programmers at San Quentin.” *USA Today*, Nov 14., 2014.

¹⁹ Alfaro, Lyanne. “Texas Program is Turning Thousands of Ex-Cons into Entrepreneurs.” *CNBC*, March 22, 2017.

²⁰ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1494019

²¹ Nicholaichuk et al. “Outcome of an Institutional Sexual Offender Treatment Program: A Comparison Between Treated and Matched Untreated Offenders.” *SEX ABUSE*, 2000.

²² Coulter, Martha and Carla VandeWeerd. “Reducing Domestic Violence and Other Criminal Recidivism: Effectiveness of a Multilevel Batterers Intervention Program.” *Violence and Victims*, Vol. 24-2, 2009.

²³ The average stay in a California jail has increased somewhat but is still under 98 days for the most severe felonies, and under a year for all inmates. This abbreviated detention period makes it difficult to conduct rehabilitation in jail, so we suggest focusing on parole and prisons. See: “Grattet et al. “California's County Jails in the Era of Reform.” *Public Policy Institute of California*, September 2016.

PAROLE

In 2010 California piloted a parole reform called the “Parole Supervision and Reintegration Model” (CPSRM). This reform mandated that parole officers implement rehabilitation strategies but did not give parole officers a stake in the savings that would accrue from their labor. As a result, CPSRM hasn’t experienced anything remotely close to the success of probation reform in our state. Instead, we should transplant the SB 678 model from probation to parole.

California parole departments are funded and managed by the state government but behave in a very similar manner to probation departments and are usually mentioned in the same breath. As in probation, we should calculate the historical return-to-custody rate for each parole district, estimate the number of parolees averted from having their parole revoked and from committing new crimes, and reward successful parole departments with some percentage of their savings. The California Department of Finance would disburse the reward to the parole district administrator, who would be empowered to spend the funding on evidence-based rehabilitation programs and possibly bonuses for individual parole officers.

To reward parole agents with salary bumps or annual bonuses, legislation must directly amend civil service law, which sets fixed salary schedules for all state employees in a given category. Fortunately, even labor organizations such as the SEIU now agree that we can’t continue rewarding public sector employees on the basis of veterans’ points, seniority points,

and points simply for being a current state employee.^{24,25}

PRISONS

The average person charged with a violent crime spends a substantial amount of time in prison as well as on parole, and a comprehensive rehabilitation program must address each individual’s needs while they are locked up as well as when they are released to community supervision. Our state deploys on the order of \$300 million annually to in-prison rehabilitation programs, but a report by the California State Auditor found these programs to be *literally worthless*.²⁶ A performance-based funding model for California prisons would ensure that taxpayer dollars spent on in-prison rehabilitation are not going to waste.

Because prison wardens are political appointees, the Governor’s office may request to adjust their salaries without violating civil service law.^{27 28} An immediate reform to our prison system would be to make warden salaries contingent on the prison’s success at reducing recidivism relative to its historic return-to-custody rate. In addition, prison reform should also amend civil service law to allow the warden to grant all prison employees — or at least those employees working on rehabilitation programs — bonuses based on their performance.

As in probation and parole, prisons would earn a fraction of shared-savings based on their performance. This reward would be allocated to the warden, who would have authority to spend it on evidence-based programming as she sees fit.

²⁴ “State Civil Service Reform: California’s Human Resource Modernization Project in a Comparative Perspective.” *SEIU*, March 24, 2008.

²⁵ “Guidelines for Administering Departmental Upward Mobility Programs 2017.” *California Department of Human Resources*, 2017.

²⁶ “Several poor administrative practices have hindered reductions in recidivism and denied inmates access to in-prison

rehabilitation programs.” California State Auditor, January, 2019.

²⁷ https://www.cdcr.ca.gov/career_opportunities/HR/OPS/Exams/Exams_Continuous/PDFs/Warden_DAIcFEC.pdf

²⁸ <http://www.calhr.ca.gov/Documents/exempt-salary-schedule.pdf>

It's true that rewarding both prisons and parole departments "double-counts" success at rehabilitating inmates. But as long as rehabilitation is successful at reducing recidivism and the corrections population is declining, even a system which double-counts success will significantly drive down the cost of corrections. As prison populations decline over time, our state could shutter the worst-performing facilities and randomly reassign their populations to some of the best performing prisons in the state.²⁹

Another important consideration is that an individual will frequently move through several different prisons over the course of her sentence. We suggest counting a successful rehabilitation as a success for *every* prison that played a role in rehabilitating someone. The lump sum reward would be distributed among the various prisons a person passed through based on the amount of time the person spent at each prison. Prisons that housed an individual for longer periods of time would receive larger fractions of the reward.

People charged with felonies make up most of California's probation population (there are around 145,000 probationers in the state today).³⁰ There are an additional 221,000 people in state prisons or on parole. Our rough calculations suggest that if the state of California implements SB 678-style reforms in state prisons and parole departments, we could easily save state taxpayers \$2–4 billion over the next decade, while helping to reduce our incarcerated and supervised populations by substantial margins.³¹

California's historic probation reform set the bar for the nation. We must mobilize a bipartisan

consensus to deliver reforms in our prisons and parole districts as well. California policymakers must have the political courage to embrace a marketplace of ideas in corrections — a system that rewards rehabilitation strategies that succeed and phases out those that don't. Only in a system with real accountability will the best ideas and methods win and help fight crime and restore our most fragile communities by reducing recidivism rates statewide. Performance-based funding in the image of our probation model would transform our criminal justice system into the humane, modern institution it should be.

²⁹ One criticism of our proposal is that some prisons house much "riskier" inmates than others (as measured by CSRA and COMPAS scores). It's true that some prisons will have a harder job of rehabilitating their inmate population than others. But if prisoners are randomly distributed to prisons, this competitive disadvantage will iron itself out over time.

³⁰ New felon probation cases average 61.4% of all new probation cases, which is not a perfect indicator but is representative. https://www.ppic.org/wp-content/uploads/r_0817vnr.pdf

³¹ SB 678 saved over a billion dollars in the first 8 years it was deployed; we expect larger savings from this larger population. In addition, we recommend giving parole departments and prisons a smaller stake in shared savings since these entities already receive stable funding from the state (whereas counties desperately needed to cover their expenses on probation). This modification will save taxpayers more money. True savings will vary with the success of rehabilitation programs, whether the state closes underperforming prisons, and a variety of other factors.

TECHNICAL APPENDIX

In 2015, the California state legislature updated SB 678 with a slightly modified funding structure. Today, a county probation department’s reward is calculated in the following way:

- 1) If the felon probation population’s rate of return to prison is \leq the original statewide baseline of 7.9%, county gets 40–100% of the highest payment accorded to it between 2009 and 2015 (when the rewards structure changed).^{32,33}

Return-to-Prison Rate	% of Highest Prior Payment
<1.5%	100%
1.5-3.2%	70%
3.2-5.5%	60%
5.5-6.1%	50%
6.1-7.9%	40%

- 2) Is the county sending fewer people to prison than would be expected from the return-to-prison rate from last year? If yes, county receives 35% of state’s costs to incarcerate an individual * # of individuals kept out of prison.

- 3) If (1) and (2) don’t add up to \$200,000 CA will guarantee the county the difference so the county is making at least \$200,000 for implementing evidence-based practices.

We prefer the reimbursement schedule in the original SB 678. The original rewards model is simple: for each person that you keep out of prison relative to your historic county return-to-custody rate, keep 40–45% of the projected cost

of that individual. The 2015 amendment ties rewards to performance relative to the prior year and makes rewards partially a function of the highest prior payment, which is an arbitrary metric.

As probation departments become better at rehabilitating people, legislators will have to adjust the original state and county return-to-prison baselines downwards, to stimulate. But the 2015 amendment is a very unusual and needlessly complicated approach. Instead, the statewide baseline should have adjusted from 7.9% to the average rate during some new period, say 2013–2015 (when the average rate was about 3.2%). Legislators could have retained the initial rewards structure of 40–45% for county probation departments.

We endorse rewarding parole departments and prisons on a similar shared savings model to the original SB 678 proposal with a minor modification. Today, probation departments are rewarded with shared savings if they don’t revoke a felon probationer to prison and the felon probationer does not commit a crime, and are ineligible to share in savings if they revoke a probationer or that probationer commits a crime:

- A) Not revoked; does not commit a crime → shared savings
- B) Revoked → no shared savings
- C) Not revoked; commits a crime → no shared savings

Suppose a probation department is managing a person with a 90% chance of recidivating. On the current model, the expected return for revoking the person’s parole and sending him to prison is 0, but the expected return for glossing over his technical violations (if there are any) in hopes that

³² http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0651-0700/sb_678_bill_20090625_amended_asm_v96.pdf

³³ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=2015201605885

he will reintegrate into society and not recidivate is 10% of the expected shared savings.

Probation departments may have a perverse incentive *not* to revoke probation for some of the riskiest members of their population because if these people commit crimes it doesn't cost the probation department, but if they don't commit crimes the probation department will earn a reward. As noted, recidivism rates have declined across the state even as the SB 678 program kicked in, so we're not especially worried about this prospect. But careful language on this issue would ensure that probation officers are perfectly aligned towards the end goals of reducing incarceration and crime.

We propose amending the structure of SB 678 to withhold rewards for county probation departments if the general recidivism rate for their population is greater than the average recidivism rate for people on probation in that county in the baseline years of 2017–2019. This model would encourage probation officers to use their best judgment about whether a person is truly likely to reoffend and determine whether to revoke the person over smaller technical violations accordingly. The penalty could be estimated as a percentage of the cost of crime (with different penalties for crimes of different severities).