

State's radical prison reform plan ready to start

Marisa Lagos, Chronicle Staff Writer

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Sacramento --

Starting Monday, California will radically change the way it sentences criminals, sending the first of thousands to serve time behind bars in their local county jails instead of in state prisons.

Drug dealers, shoplifters and other felons deemed to be nonviolent or non-sex offenders will become wards of the counties in which they are convicted, under a plan signed in April by Gov. [Jerry Brown](#) to reduce the flow of inmates entering the overcrowded state prison system.

The plan also changes parole rules so that thousands of inmates who are released from state prisons will no longer be considered "parolees" nor be supervised by state parole officers. Instead those inmates who served time for nonviolent, non-sex offenses will be "probationers" who are monitored by county probation officers - and the supervision period will be shortened.

Ventura County District Attorney Greg Totten recently called Brown's plan the most "significant reform of California sentencing law in a generation."

Critics, meanwhile, have warned that the plan, known as realignment, will overwhelm counties with offenders who should be locked up in state prisons.

The benefits

Brown says realignment will ease prison overcrowding and reduce recidivism by giving counties greater control and flexibility over the punishment, imprisonment and rehabilitation of their convicts.

The state is counting on local agencies to do a better job on rehabilitating offenders than it has done, so fewer will end up back behind bars. State officials believe that, ultimately, the change could lower incarceration costs and improve public safety.

Currently, California has one of the nation's highest recidivism rates: around 70 percent of offenders who are paroled re-offend.

"Realignment should not come as a surprise to any of us," Totten, president of the California District Attorneys Association, told about 500 prosecutors, sheriffs, probation officers and other law enforcement

officials at a recent conference on realignment's implementation in Sacramento. "It's the product, frankly, of repeated [state budget](#) deficits, increasing prison populations, federal litigation ... and what we all recognize as unacceptably high rates of recidivism by offenders."

In May, the U.S. Supreme Court ordered California to reduce its prison population from 143,000 to 110,000 by 2013 - starting with 11,000 by the end of 2011.

Instead of releasing tens of thousands of felons before they have completed their sentences, Brown and Democrats in the Legislature worked out the realignment plan to prevent thousands of offenders from entering the state prison system in the first place.

The list of crimes

To define who is impacted by the change, state officials made a list of which crimes are excluded from realignment. Those who will continue to be sent to state prison include people convicted of obviously violent crimes such as murder, rape, robbery, arson, attempted murder and kidnapping - as well as what lawmakers define as nonviolent but serious crimes such as bribing a legislator, selling horsemeat or misappropriating public funds.

Not only does the plan change sentencing and post-prison supervision, it also changes parole violation rules so that thousands of offenders won't automatically be sent back to prison when they get in trouble.

About 47,000 prisoners a year were serving 90 days or fewer in state lockups - mostly on parole violations. Every time one of those parolees went back to prison, taxpayers shelled out \$159 a day for medical, mental health and other evaluations conducted at intake, far more than it would cost to lock up criminals in local jails.

"I think this is really a chance for (the state prison system) to stop focusing on the churning of offenders - really, most of our energies are spent playing catch-up with those 47,000 guys," said Matt Cate, secretary of the California Department of Corrections and Rehabilitation. "This is a chance for us to focus on the long-term guys, the serious and violent, and to identify their needs and move them to a facility that can serve them."

The changes mean that counties are now responsible for punishing those low-level parolees who violate terms of their release.

While sheriffs, prosecutors and police chiefs across California have expressed reservations about the move, county probation officers appear overwhelmingly supportive.

That's because probation officers already have the tools to help these lower-level offenders, said Fresno County Probation Chief Linda Penner, president of Chief Probation Officers of California.

"I'm convinced that when we reduce an enormous system to a smaller system, it will be more effective

and nimble," she said. "This clientele is familiar to us - we are skilled and trained to deal with it."

How it works

Realignment is not just a numbers game. Under the new law, counties have been given new legal tools meant to help them get at the root issues that lead to criminal behavior.

Most of those tools consist of increased flexibility for judges, prosecutors and probation officers in deciding how to punish a person.

For example, in the past, if a drug offender failed to meet the terms of his probation, the only real option a probation officer had was to send him back to court, where a judge would consider whether to ship him back to prison or jail - a long, ambiguous process that resulted in delayed punishment.

But research shows that open-ended, uncertain punishments do not encourage criminals to change their behavior. What does, according to experts, are swift and certain sanctions - such as a tactic known as "flash incarceration," in which an offender is jailed for a day or two almost immediately after violating the terms of their probation.

Under realignment, a probation officer could make this decision without sending the person back to court. And, the probation officer can tailor the punishment to an offender's work schedule, so they don't lose their job.

Judges will also now be allowed to mandate a split sentence - combining jail time with at-home detention, drug abuse treatment or parenting classes, for example.

Changing behavior

Ultimately, realignment philosophically changes the way California has approached criminal justice for the past 40 years, retired Sacramento County Judge Roger Warren said at the recent realignment conference. Instead of trying to control offender behavior by locking people up, he said, California needs to embrace proven ways to change behavior.

"Over the long term, people tend to behave in ways for which they are rewarded and not behave in ways for which they were punished," he said. "It's important that sanctions be swift and certain, not that they be severe. As a matter of fact, overly severe sanctions are counterproductive and tend to worsen behavior."

Warren noted that in the past, it could take 10 probation violations for a judge to finally send someone back to jail or prison.

"So who really failed here? We did," he said. "Every time someone fails, we have to impose a consequence, and it has to be immediate. ... But sanctions alone, without any treatment component, will not work."

That's why probation officers - already adept at connecting criminals to job training and treatment programs - will play a critical role in realignment's success or failure, state leaders say.

Diane Cummins, an adviser to Brown, says probation officers "are considered the social workers of the law enforcement system. If we fund putting people in substance and mental health treatment, if we get people stabilized, then they are not cycling through the criminal justice system as much."

Costs to counties

Another theory behind realignment is that local governments will have more of a stake in the decision to throw someone behind bars if they have to pay for some of the costs of incarceration at the local level.

"Right now, if you can take someone who's in Sacramento and stick him in state prison, then the local authorities have saved money," the governor said recently while talking about realignment. "Anytime you have no skin in the game, you tend to overuse something. So that's why it's good to have (counties) participate in the costs."

The plan has plenty of critics. County officials worry that the influx of criminals will boost costs to a level they are unable to afford, and that the strain could lead to the release of criminals, more pressure on already overtaxed police departments and, ultimately, a public safety fiasco. The state has budgeted about \$400 million to help counties pay for their increased services for the first nine months, but local officials say it's not enough. Meanwhile, Brown has promised to push for a voter-approved change to the California Constitution to guarantee funding for realignment.

Complicating matters, a number of counties already have budget problems and overcrowded jails; some are building new lockups to prepare for the influx of prisoners.

And there's also the issue of equity: Some counties have relied more on state prisons as punishment than others, while others already have robust services for probationers in place.

San Franciscans, for example, make up 2 percent of the state population, but city residents only make up 1 percent of the state prison population, according to the city's chief probation officer, Wendy Still.

That's "because we do everything we can do before sending somebody off," Still said. "Other counties that are comparable in size have five times the prison commitments. They are going to have a more challenging time ... (because) they have really relied on incarceration as a primary criminal justice strategy."

Critics insist that some counties will have to release criminals, and say the plan has been rushed.

Republican lawmakers have been the most vocal: Sen. Sharon Runner, R-Lancaster (Los Angeles County), recently warned that realignment will "result in the early release of thousands of convicted criminals."

Critics' fears

"More than 35,000 convicted criminals will head to our streets instead of prisons where they belong. It is not only irresponsible and bad public policy but quite frankly, it is extremely dangerous," she said in a written statement. "Now is the time for Californians to get a dog, buy a gun and install an alarm system. The state of California is no longer going to protect you."

Some law enforcement officials, however, bristled at the suggestion, noting that these offenders will end up in local communities one way or another when they are released from prison. In the past, most have returned without [education](#), rehabilitation or support.

Cate, the prison department chief, said the system that's being replaced, under which about 70 percent of criminals re-offend, has not made anyone safer - and that the Supreme Court order to reduce the California prison population must be met with or without realignment.

"I wish people would keep in mind the alternative - we were heading down a path to release 33,000 prisoners, empty seven prisons onto the streets, within two years. That was the option," he said. "I don't expect people who are in the opposite political camp from the governor to praise anything he or the Legislature does ... but the option of some kind of mass release onto the streets of hard-core inmates is ridiculous, so we have to do something.

"By all accounts this is the best plan you could come up with in light of these circumstances," he said.

Realignment: what officials are saying

"Often, the way we sentence people is based on what the penal code says or on their prior convictions with very little thought to what does and doesn't work.

I think some people are dangerous, and we have to make sure we understand they are and act accordingly, but some people are not, and incarcerating them creates a greater likelihood they will re-offend. ... This is going to require a completely different thought process" for prosecutors.

George Gascón,

San Francisco district attorney

"What you have today is a realigned system that will have local authorities - probation, sheriffs, mental health, alcohol and drug abuse people - all working to reduce crime and recidivism as best they can."

Gov. Jerry Brown

"What I really want to do

as a judge is change behavior. How good of a person you are, how smart you are - that's really not my

role in life. What I am trying to do is change your behavior so you stop injuring people and stop injuring society."

Retired Judge Roger Warren

"The Legislature has decided that our enthusiasm for incarceration has outstripped our ability to pay for it. ... Now we have to be more responsible locally and I have to make wiser, better decisions for my community."

San Diego County Judge David Danielsen

"This is not a realignment, this is a dump. A dump of state problems on the cities, on the counties and more importantly on the citizens who will unequivocally and absolutely be victims of these un-rehabilitated criminals."

Assemblyman Jim Nielsen, R-Gerber (Tehama County)

"The goal is to reduce recidivism, which we believe can be done better at the local level."

Marj Pazin, Merced County sheriff and president of the California State Sheriffs' Association

"I'm really heartened that the governor promised to continue to fight for a constitutional amendment (to fund realignment). That will make or break the success of realignment."

Mack Jenkins, San Diego County probation chief

"What's key is cooperation between stakeholders in the process - if you have an errant judge, a resistant sheriff, or a police chief who thinks this is bunk, you are going to run into roadblocks. You have to recognize that this is the next 20 years in law enforcement."

Brian Richart, Alameda County Probation Department chief of staff

"CDCR had 47,000 inmates that spent less than 90 days in state prison last year. What that means is they took an expensive bus ride from the county to the state, paid for by taxpayers. When they got there, they had a medical exam, a dental exam, a mental health exam - and they literally could have been released 30 days before, then had a parole violation and gone through that whole expensive process all over again. What realignment is doing is stopping the movement, saying let's figure out interventions that work."

Wendy Still, San Francisco probation chief

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