

Statement of Ernest Galvan
Assembly Budget Committee, Subcommittee 4
Hon. Juan Arambula, Chair
Informational Hearing
February 24, 2009

Thank you for the opportunity to speak with you today. I am an attorney in private practice, and serve as counsel for the class of prisoners with mental illness in the *Coleman* litigation. I was invited to talk about the fiscal costs and benefits associated with controlling prison overcrowding. But I also want to address the other urgent issue at stake here that I know the committee is concerned with—which is public safety. When a person is victimized by crime, sometimes the cost is measurable, and sometimes it is infinite and immeasurable. I think it is important to stress that the state does not need to choose between public safety and saving money – by pursuing the programs I will discuss today, the state can both reduce crime and save money.

The estimates I am going to address come not from a budget study, but from a study that you, the Legislature, commissioned on how to reduce recidivism and victimization. The study included a budget analysis to show where you can get the money to implement the recommendations. Please remember that the budget analysis was incidental to the main purpose of the study you commissioned, which is to improve public safety.

The Three-Judge Court’s tentative order addresses budget impacts in terms of things that California could do to realize some of the public safety improvements that other states realized when they tackled their own prison overcrowding problems in the last decade. The evidence before the Court was clear that with California’s incarceration rate as high as it is, we can reduce the prison population with no additional spending and no harm to public safety. But the evidence also showed that California can take advantage of the prison fix to do more than keep public safety where it is—California can also improve public safety.

The figures that the Court used in discussing budgetary impacts came from a study that you, the California State Legislature, initiated in the Budget Act of 2006-2007. That budget act directed the Department of Corrections and Rehabilitation to complete an assessment of the state’s adult prison and parole programs designed to reduce recidivism.¹ The Department complied by choosing an “Expert Panel” and giving it full access to the Department and its data. This panel included a former Director of the California Department of Corrections, Jim Gomez, and the then Chief Deputy Secretary for Adult Programs within the Department, Marisela Montes.² It also included the

¹ 2006 Cal. Stat, Ch. 47/48, page 403, Item No. 18,
http://www.documents.dgs.ca.gov/osp/GovernorsBudget/pdf/fbudsum_06.pdf#page=413.

²California Department of Corrections and Rehabilitation, Expert Panel on Adult Offender Recidivism Reduction Programming, Report to the California Legislature, A Roadmap for Effective Offender Programming in California,

current Pennsylvania Secretary of Corrections, the retired heads of Corrections for Washington, Ohio, Maine and Pennsylvania, and a Deputy Director of the Arizona Department of Corrections. It included the President of the American Probation and Parole Association, and other nationally-known correctional experts.

In June 2007, the Expert Panel presented to the Legislature a very detailed 198-page report, called “A Roadmap for Effective Offender Programming in California.” You can find this report on the Department’s website.³

The Panel gave one “pre-condition” for reducing recidivism in California. That pre-condition is to first “reduce overcrowding in its prison facilities and parole offices.”⁴ In making this key finding, the Expert Panel is not alone – the same finding has been made in nearly every recent study of California corrections.⁵ Crowding is stopping California from taking the steps needed to make sure that the 134,000 people who get out of prison each year do not come back, and do not create new victims.⁶

The Expert Panel provided a detailed budgetary analysis balancing two elements—the cost of the recidivism reducing programs that it recommended and the savings that the state will realize from getting the population down.⁷

1. State Can Realize Up to \$900 million Savings By Controlling Prison Population

The Expert Panel provided a roadmap for CDCR to safely reduce occupied prison beds by approximately 39,000 to 44,000 people over a two-year period.⁸ They used a very conservative way of approximating the dollar savings that would result. They assumed that the state would not close any prisons or take other drastic steps. That

June 2007 (hereinafter “Expert Panel Report”), at page ii,
http://www.cdcr.ca.gov/news/docs/Expert_Rpt/ExpertPanelRpt_.pdf#page=6.

³ Expert Panel Report, <http://www.cdcr.ca.gov/news/ExpertPanel.html>.

⁴ Expert Panel Report at page 10, http://www.cdcr.ca.gov/news/docs/Expert_Rpt/ExpertPanelRpt_Part1.pdf#page=2.

⁵ Expert Panel Report, Appendix A, “Previously Published Reports on California’s Correctional Crisis,”
http://www.cdcr.ca.gov/news/docs/Expert_Rpt/ExpertPanelRpt_AppendA.pdf.

⁶ In 2004, Governor Deukmejian chaired the Independent Review Panel on California Corrections, and issued a report and recommendations on the impacts of crowding on the ability of the Department to prepare prisoners to return to society. http://cpr.ca.gov/Review_Panel/pdf/from7to11.pdf.

⁷ Expert Panel Report, Appendix E, http://www.cdcr.ca.gov/news/docs/Expert_Rpt/ExpertPanelRpt_AppendE.pdf.

⁸ Expert Panel Report at page 95,
http://www.cdcr.ca.gov/news/docs/Expert_Rpt/ExpertPanelRpt_AppendE.pdf#page=9.

means they did not assume that when you reduce the population by one person you save the entire \$40,000 to \$50,000 average cost of incarceration. Instead, they used a number called the “marginal overcrowding rate” of approximately \$20,500 per person. Using that rate, they determined that a population reduction of 39,000 to 44,000 will save the state between \$800 million and \$900 million per year.⁹

This population reduction over two years comes from the following Expert Panel recommendations.

a. Earned Credits

The Expert Panel recommended that the Department use a system of earned credits for completing rehabilitation programs such as substance abuse treatment. They estimated the impact of earned credits at 17,000 to 19,000 beds.¹⁰ The federal system does this through its in-prison Residential Drug Abuse Treatment Program, known as RDAP. It has been widely proven that these reductions in prison stay for people who are coming out anyway do not increase recidivism, and that they in fact reduce recidivism. For example, last year, the Washington State Institute for Public Policy released a study of that state’s “earned release” program under which prisoners who complete certain programs spend about 60 fewer days in prison than they otherwise would. The study found a decrease in recidivism, and that the programs more than paid for themselves due to the reduction in crime plus the reduction in incarceration days.¹¹

b. Replace Current Work Incentive Program Credits

The Expert Panel recommended that the Department replace its system of work incentive program credits, with a simpler system of statutory credits that prisoners would lose if they failed to comply with institutional rules. They estimated this would reduce the need for 14,000 prison beds.¹²

⁹ Expert Panel Report at page 97,
http://www.cdcr.ca.gov/news/docs/Expert_Rpt/ExpertPanelRpt_AppendE.pdf#page=11.

¹⁰ Expert Panel Report at page 95,
http://www.cdcr.ca.gov/news/docs/Expert_Rpt/ExpertPanelRpt_AppendE.pdf#page=9.

¹¹ Washington State Institute for Public Policy, Increased Earned Release From Prison: Impacts of 2003 Law on Recidivism and Criminal Justice Costs, Nov. 2008, <http://www.wsipp.wa.gov/rptfiles/08-11-1201.pdf>.

¹² Expert Panel Report at page 95,
http://www.cdcr.ca.gov/news/docs/Expert_Rpt/ExpertPanelRpt_AppendE.pdf#page=9.

c. Change Parole Violation Policies

The Expert Panel recommended that California join the many other states that restrict the use of prison beds for parole violators to only those with new felony convictions or with technical parole violations that are directly related to the offender's criminal behavior patterns and that threaten public safety.¹³ All other parole violators would be subjected to community-based sanctions. The panel found that this change would reduce the population by 6,500 to 9,500 prison beds.¹⁴

d. Reserve Parole for Uses that Improve Public Safety

The Expert Panel recommended that California reserve parole supervision for the mid to high risk offenders for whom supervision does some good. Until recently only California and Illinois¹⁵ still put a parole tail on every single prisoner released, no matter how low risk the offender, and Illinois recently stopped. The evidence shows that giving a parole term to low-risk prisoners reduces their chances to succeed.¹⁶ The Expert Panel recommended that California use its validated test for risk to re-offend, and remove the parole term from the lowest risk groups. They estimated that this would save about 1,000 prison beds.¹⁷

The Expert Panel estimated that the bed savings from these four policy changes would yield up to \$900 million in savings, again conservatively estimated based on the marginal overcrowding cost, not the full cost of incarceration.

2. Implementing Basic Recidivism Reducing Programs Still Leaves up to \$680 million in Savings

The Expert Panel recommended that the Department be allowed to use about one-third of the population savings to implement recidivism reducing programs. The Expert Panel provided a detailed estimate of the resources the Department would need to operate

¹³ Expert Panel Report at page 49,
http://www.cdcr.ca.gov/news/docs/Expert_Rpt/ExpertPanelRpt_Part1.pdf#page=40.

¹⁴ Expert Panel Report at page 95,
http://www.cdcr.ca.gov/news/docs/Expert_Rpt/ExpertPanelRpt_AppendE.pdf#page=9.

¹⁵ Joan Petersilia, California Policy Research Center, Understanding California Corrections, May 2006, at page 65,
<http://ucicorrections.seweb.uci.edu/pdf/UnderstandingCorrectionsPetersilia20061.pdf#page=79>.

¹⁶ Expert Panel Report at page 42,
http://www.cdcr.ca.gov/news/docs/Expert_Rpt/ExpertPanelRpt_Part1.pdf#page=34.

¹⁷ Expert Panel Report at page 95,
http://www.cdcr.ca.gov/news/docs/Expert_Rpt/ExpertPanelRpt_AppendE.pdf#page=9.

recidivism reducing programs both in prison and in the community for persons on parole. They took into account the then-current 2006 CDCR spending levels on prison and parole programming. Their recommendation is that CDCR be allowed to use about one-third of the population savings to increase its spending on programming from the 2006 level of about \$340 million to between \$630 million and \$650 million.¹⁸

When all of the savings elements are factored in, the state would still save between \$561 million and \$684 million per year while reducing overcrowding, and significantly increasing the delivery of proven recidivism reducing programs.¹⁹

The Expert Panel noted several examples of the types of programs that have been proven to reduce recidivism, victimization, and the need for new prison construction. The general categories are drug treatment—with community-based treatment having a greater effect than prison treatment, vocational education in prison, general education in prison, and cognitive/behavioral skills training. Each of these types of programs has been demonstrated to save more money in reduced crime and incarceration than they cost to implement.²⁰

3. Existing California Framework for Recidivism Reducing Programs

During the Three-Judge Panel trial, the parties presented evidence about a number of programs and frameworks that the Legislature and the Department have created for reducing recidivism. I will mention just a few examples.

a. Senate Bill 1453 (2006)²¹

Senate Bill 1453 provides for a transition from in-prison drug treatment to residential aftercare in the community, with discharge from parole for participants who complete 150 days of residential aftercare.

¹⁸Expert Panel Report at page 98,
http://www.cdcr.ca.gov/news/docs/Expert_Rpt/ExpertPanelRpt_AppendE.pdf#page=12.

¹⁹ Expert Panel Report at page 98,
http://www.cdcr.ca.gov/news/docs/Expert_Rpt/ExpertPanelRpt_AppendE.pdf#page=12.

²⁰ Expert Panel Report at page 31,
http://www.cdcr.ca.gov/news/docs/Expert_Rpt/ExpertPanelRpt_Part1.pdf#page=23.

²¹ 2006 Cal. Stat., Ch. 875, Senate Bill 1453, http://info.sen.ca.gov/pub/05-06/bill/sen/sb_1451-1500/sb_1453_bill_20060930_chaptered.pdf.

b. Mentally Ill Offender Crime Reduction Grants (MIOCRG)²²

From 1999 until 2008, the Correctional Standards Authority (previously known as the Board of Corrections) funded county programs with Mentally Ill Offender Crime Reduction Grants. During the Three-Judge Panel trial, some county intervener witnesses testified that the programs were so effective that the counties used their own funds to continue them after the state stopped funding them.

c. Assembly Bill 2034²³

AB 2034 programs targeted homeless persons with mental illness. These are county-based programs that were funded from 2000 through 2007 and proved effective in reducing incarceration among persons with mental illness who had been in jails and prisons.²⁴

d. AB 900 Funding and Targets for County Mental Health Funding²⁵

AB 900 included funding and specific benchmarks for the Department to contract with County Mental Health Departments to provide intensive mental health services for those parolees whose treatment needs are beyond the capabilities of the state's Parole Outpatient Clinic system.

e. Senate Bill 618, County Directed Re-entry Planning²⁶

Senate Bill 618, enacted in 2005, authorized three counties to take over re-entry planning for the people they sent to state prison. Only San Diego has started a program. San Diego's first annual report on the program says that it is effective, but it has been hampered by prison overcrowding.²⁷

²² Council of State Governments, Mentally Ill Offender Crime Reduction Grant (MIOCRG) Program Page, http://consensusproject.org/programs/one?program_id=91.

²³ Drafting California's Ten-Year Chronic Homelessness Action Plan, June 2006, State of California Highlight, AB 2034, <http://www.homebaseccc.org/PDFs/CATenYearPlan/CAHighlightOutreach.pdf>

²⁴ Stephen W. Mayberg, Effectiveness of Integrated Services for Homeless Adults with Serious Mental Illness, A Report to the Legislature as Required by Assembly Bill (AB) 2034 Steinberg, Chapter 518, Statutes of 2000, http://www.dmh.ca.gov/About_DMH/docs/press/Homeless-Mentally-Ill-Leg_rpt.pdf

²⁵ Penal Code Sections 3073 & 7021(a)(8), http://info.sen.ca.gov/pub/07-08/bill/asm/ab_0851-0900/ab_900_bill_20070427_enrolled.html.

²⁶ 2005 Cal. Stat. Ch. 603, Senate Bill 618, http://www.leginfo.ca.gov/pub/05-06/bill/sen/sb_0601-0650/sb_618_bill_20051006_chaptered.html.

²⁷ Improving Reentry for Ex-Offenders in San Diego County: SB 618 First Annual Evaluation Report, March 2008, http://www.sandag.org/uploads/publicationid/publicationid_1358_7933.pdf

f. Parole Outpatient Clinics

Since the 1950s, state parole has operated Parole Outpatient Clinics in many of the state's more than 180 parole offices.²⁸ Parole Outpatient Clinics have proven effective in reducing recidivism among parolees with mental illness.²⁹ The Department has recently added clinicians to the program, and has considered asking for funding to set up freestanding Parole Outpatient Clinics, but to my knowledge they have not followed through.

g. Pre-Release Planning and Benefits Applications

The Department, following the model of other states,³⁰ has begun a program of making pre-release benefits applications for prisoners about to parole who qualify for federal benefits such as Supplemental Security Income and Veterans' benefits. This can help prevent people from paroling into homelessness and indigence. The Department has already begun pre-release applications in a few prisons. This is an area where California is literally leaving federal money on the table, by releasing prisoners who previously qualified for federal benefits such as Supplemental Security Income, and failing to coordinate resumption of benefits, and instead allowing the released prisoners to be a burden on local communities.

There are many other examples of programs and laws on the books that could be used as a framework for improving public safety and reducing the prison population. I will just mention two more broad legislative frameworks that are on the books but have never been funded. These are the Community Punishment Act of 1994³¹ and the Parole Violator Intermediate Sanctions Act of 2007.³² Both of these laws would allow the

²⁸ Bureau of State Audits, Department of Corrections: Though Improving, the Department Still Does Not Identify and Serve All Parolees Needing Outpatient Clinic Program Services, but Increased Caseloads Might Strain Clinic Resources, Aug. 2001, at page 7, <http://www.bsa.ca.gov/pdfs/reports/2001-104.pdf#page=11>.

²⁹ David Farabee, An Evaluation of California's Mental Health Services Continuum Program for Parolees, <http://www.thefreelibrary.com/An+evaluation+of+California's+Mental+Health+Services+Continuum...-a0157642977>

³⁰ Model Act to Reduce Recidivism by Improving Access to Benefits for Individuals with Psychiatric Disabilities upon Release from Incarceration, http://www.bazelon.org/issues/criminalization/publications/buildingbridges/article5_comment.htm

³¹ Penal Code Section 8000, 8050. http://info.sen.ca.gov/pub/93-94/bill/asm/ab_0051-0100/abx1_99_bill_940927_chaptered.

³² Penal Code Section 3069, 3069.5 and 3069.9. http://www.leginfo.ca.gov/pub/07-08/bill/sen/sb_0351-0400/sb_391_bill_20071013_chaptered.html.

Board of Parole Hearings to implement a drug-court type model to respond to parole violations by using community-based sanctions, and retaining jurisdiction to monitor the person's progress. From the testimony of all parties in the trial, I think there is broad agreement that such options are more protective of public safety than simply parking parole violators on a prison bunk for four months and releasing them, as we are doing now.

Thank you again for the opportunity to comment.