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“It’s all Political, but Public Policy is Irrational”

Jacquelyn King

California’s prison system has long been known as one that is very overcrowded and costly to taxpayers. As of 2009, the prison population has been about 169,000, with 24.2% of male new admissions being drug offenders, and 30% of female new admissions being classified as drug offenders (Year at a Glance 2010). Each prisoner costs taxpayers around \$46,000 annually (Proposition 5 2008). The California Department of Corrections and Rehabilitation (CDCR) admits that substance abuse programs are needed in order to reduce recidivism for drug offenders, but the 2009-2010 Corrections budget alone reduced rehabilitation programs by a total of \$250 million (Year at a Glance 2010). According to the CDCR 2010 report, “The return to custody rate after two years for offenders completing both in-prison and community-based treatment in fiscal year 2005-2006 was 35.3% compared to 54.2% for all offenders” (Year at a Glance 2010). If the CDCR knows that substance abuse programs can help keep drug offenders out of prison, why are drug offenders in prison instead of these programs? Simply put, the answer is that “it’s all political, but public policy is irrational” (Zimmerman 2011). This paper will discuss the politics behind drug policy and incarceration by first providing an overview of the policy issue, a look at possible reforms, problems in attaining reform, and conclude with policy implications.

POLICY ISSUE: INCARCERATION AND DRUG POLICY

Historically, one of the main changes in drug policy, leading to high incarceration rates for drug offenders, has been the War on Drugs movement of the 1970s and 1980s. In 1986, Congress passed legislation that gave “harsh mandatory sentences for possession of even small amounts of crack cocaine” (Rudolf 2011). Under this law, possession of five grams of crack cocaine, led to an immediate five-year prison term (Rudolf 2011). This drug policy spurred a racially charged debate for decades over the fairness of sentencing drug offenders in possession of drugs that are common to poor, inter-city neighborhoods (Rudolf 2011). Since the

implementation of these federal sentencing guidelines, the Sentencing Project reports that “African American drug offenders have a 20% greater chance of being sentenced to prison than white drug offenders, and Hispanics a 40% greater chance” (The Federal Prison Population: A Statistical Analysis n.d.). Additionally, sentences for drug offenders increased from an average of thirty-three months in 1992 to forty-three months in 2002. (The Federal Prison Population: A Statistical Analysis n.d.) This approach of heavily criminalizing drug behaviors would have major implications for future policies.

Moving forward to the present in California, the most recent prison reform with implications for non-violent drug offenders, is the prison realignment legislation. Assembly Bill 109 is the legislation that shifts the responsibility for low-level offenders from the state to counties (Smith 2011). This bill “realigns” the prison population by taking these offenders and simply moving them from state prisons to county jails. As previously mentioned, California has a total prison population upwards of 160,000. Out of these prisoners, about 28,000 are drug offenders, with 9,000 of them in prison for simple drug offenses (Smith 2011). These offenders alone are estimated at costing the state about \$450 million per year, which does not include offenders who are returned to prison for various violations (Smith 2011). The realignment legislation has huge implications for this population, as non-violent drug offenders would be targeted to move out of prisons to jails. The concern surrounding this reform is one often voiced by the Drug Policy Alliance organization. Margaret Dooley-Sammuli, deputy state director in Southern California for the Drug Policy Alliance, claims that “the plan doesn’t include a dime for drug treatment or mental health care. In fact, the governor has proposed reducing funds for those services” (Smith 2011).

Studies consistently show that “states that increased the incarceration of drug offenders did not necessarily experience a corresponding decline in drug use” (Przybylski 2009). For example, New Jersey’s prison population showed that drug offenders accounted for the largest proportion (Przybylski 2009). However, when drug offender admissions increased by 29% in the 1990s, drug use also increased (Przybylski 2009). As a reform in New Jersey, lawmakers got rid of an old drug policy that required three-year minimum prison sentences for offenders selling drugs within 1,000 feet of a school (Rudolf 2011). Even though this move was somewhat controversial, New Jersey has still been able to reduce prison populations by 20% over the last decade, due in large part to cutting sentences for drug offenders (Rudolf 2011). While cutting

sentences for drug offenders is one way to reduce prison populations, it does little to rehabilitate these individuals.

CHANCE FOR REFORM: PROP 36

A major reform in California that dealt with incarceration for drug offenders was the Substance Abuse and Crime Prevention Act, Proposition 36, that was passed in 2000 (California Proposition 36 n.d.). This proposition changed California law, allowing first and second time, nonviolent, simple drug possession offenders to receive treatment over incarceration (California Proposition 36 n.d.). When Prop. 36 was passed, it was fueled by \$120 million in funding for treatment over the course of five years (California Proposition 36 n.d.). This funding dropped to \$100 million by 2006 (Zimmerman 2011). During this time, about 36,000 people per year entered treatment programs through provisions of Prop. 36 (California Proposition 36 n.d.). In a cost-benefit analysis performed by the University of California, Los Angeles, it was concluded that a total of \$1.5 billion was saved due to this legislation (California Proposition 36 n.d.). Legislation that involves treatment over incarceration is also favored by the public, as one survey shows that 63% of Americans support counseling and treatment as means of addressing drug abuse, rather than incarceration (California Proposition 36 n.d.). Funding for this proposition ended in 2007 with a vote by California Senate Republicans who blocked additional funding even though the bill saved \$2.50 for every dollar invested (California Proposition 36 n.d.). Because of this, Proposition 36 has no funding today, even though it was seen as a major success in rehabilitating drug offenders.

AN EXPERT PERSPECTIVE

In an interview with drug policy expert, Bill Zimmerman, I was able to gain some insight into the complexities surrounding sentencing laws for drug offenders. The interview started off with looking at cost estimates and overall success from the proposition. According to Zimmerman, drug treatment costs averaged at about \$3,000-\$4,000 per person per year, depending on the level of treatment that was needed (Zimmerman 2011). This represents only a fraction of the cost involved for one year in a state prison. After the passage of Prop. 36, about one-third of eligible offenders entered and completed treatment programs; one-third entered and never completed the programs; and, one-third did not enter the programs.

Much of the debate surrounding overcrowded prisons (due to sentencing) and the amount of drug offenders that add to the overcrowding, is centered around the three-strikes law in

California. This law stipulates life sentences for third strikers of felony crimes, which may or may not include drug offenders. For Bill Zimmerman, the three-strikes is only a partial part of the problem for overcrowding by drug offenses that are counted as felonies (Zimmerman 2011). The real problem of prison overcrowding is due to the drug laws enacted in the 1970s and 1980s which criminalized drug behavior. (Zimmerman 2011)

In 2008, Proposition 5, similar to Prop. 36, was put before the voters to approve expanding drug offenders' treatment program. This proposition would have provided much higher funding than Prop. 36, as it was set to allocated \$460 million per year "to improve and expand treatment programs for persons convicted of drug and other offenses" (Proposition 5 2008). In addition, this legislation would "limit court authority to incarcerate offenders who commit certain drug crimes, break drug treatment rules or violate parole," and would have "increased state costs potentially exceeding \$1 billion annually primarily for expansion of offender treatment programs" (Proposition 5 2008). However, though the legislation would have been costly, savings to the state would have exceeded the costs, according to the Legislative Analyst (Proposition 5 2008).

Bill Zimmerman was also a major proponent of Prop. 5, and unfortunately, since this bill was defeated, has not been focusing efforts towards drug policies that deal with incarceration (Zimmerman 2011). He said that there are no immediate plans to put this initiative back on the ballot because initiatives cost around \$2 million just to get on the ballot (Zimmerman 2011). Originally, Prop. 5 was backed financially by several philanthropists, but after the bill failed, this source of funding was lost (Zimmerman 2011). Now, with the prison realignment legislation in place, Zimmerman also claims that this law would affect sentencing for new drug offenders, where these offenders would likely be sent to jails over prisons because jails are less costly (Zimmerman 2011). Then, offenders who committed non-violent drug felonies are likely to be released early, without receiving treatment (Zimmerman 2011). After asking Zimmerman, what kind of reform would be most beneficial to California to address drug offenders in the prison system, if funding were not a detriment, Zimmerman responded that California would need an expansion of the Prop. 36 program (Zimmerman 2011). Under Prop. 58,000 per year would have entered treatment programs, up from the 35,000 per year served under Prop. 36 (Zimmerman 2011). Such a plan would likely cost between \$500-\$700million annually (Zimmerman 2011).

Unfortunately, even though Prop. 36 had several successes, there is no more funding for this legislation today (Zimmerman 2011). However, the change in the criminal law is still on the books: first and second time offender cannot be incarcerated but there is no funding to send these individuals to treatment either (Zimmerman 2011). As a result, these offenders are encouraged to elect going to programs such as Alcoholics Anonymous (Zimmerman 2011). Treatment programs that were needed under Prop. 5, were defeated primarily due to the prison guard union backing all of the money that opposed Prop. 5 (Zimmerman 2011). In order to win this fight, the only way is to obtain financial backing that exceeds this union's efforts (Zimmerman 2011).

POLICY IMPLICATIONS/CONCLUSIONS

As the title claims, "public policy is irrational," especially when it comes to the relationship between drug policies and incarceration. The focus in California right now is not to establish more treatment programs for drug offenders, but is instead to reduce prison populations by simply moving these offenders into jails through prison realignment. As mentioned, there is also the problem with first and second-time simple offenders who are not to be sent to jail, but are also not sent to treatment programs, thus remaining in a "limbo," stuck in the system. Overall, reform that is moving forward is weak at best as "Governor Brown and the legislature have attempted to craft a fix, but the fix will leave the system just as broken as ever" (Smith 2011). The realignment is an example of a policy that readjusts, but does not deal with drug problems in this state (Zimmerman 2011).

Knowing that an effective reform is needed, what are the policy implications for the future? As Bill Zimmerman argues, it is difficult for any successful reform to take place when drug policies have been so irrational, criminalizing behavior instead of treating them. A passage of Proposition 5 would be the most successful reform for California, as it expands upon Proposition 36, that already had successes. Even the federal government is moving towards reform, as new guidelines were approved that would reduce sentencing disparities between powder and crack cocaine, and "eliminate mandatory sentences for possession of small amounts of crack" (Rudolf 2011). Such a move would save the federal government \$200 million over five years (Rudolf 2011). As previously stated, states such as New Jersey have been issuing drug reforms as well. Until attitudes in California change, to allow initiatives such as Proposition 5 to pass, there may not be plausible changes for incarcerating drug offenders. However, if the

federal government, as well as other states, can move towards reform, California should have no problem in acquiring reform once again in the way drug offenders are sentenced.

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