

# Beyond Confinement

Contributed by Roberta Barth  
Tuesday, 13 March 2007

It's not just the mentally ill and chemically dependent, but more violent, ruthless young criminals that are challenging the system.

For more than 100 years, California has been a beacon of progress, leading the pack on many positive social, environmental and economic trends that would come to sweep the country.

Not so when it comes to criminal justice. With 170,000 inmates spilling out of a prison system designed for about half that many, even states with prison problems of their own look to California as a cautionary tale. Federal judges recently decreed that the state cannot build its way out of the crisis, and many legislators are concerned about the prospect of freeing even non-violent and drug offenders, lest some of them do something worse the next time around.

So, are lawmakers considering fundamental changes to a system that has put one of every 200 Californians behind bars, 50% of them as non-violent offenders?

You might be surprised.

"Obviously, there are efforts to be smarter about the problem, but it's much easier to come in and cry wolf, arguing that we need to get 'tougher' on criminals to clean up our society," says California State Senator Gil Cedillo. "At the end of the day, if we don't look at

the roots of these problems, we're go-ing to have more people in jail than out."

Cedillo's characterization may be more truth than hyperbole if current trends continue. Legislators on the other side of the aisle such as Assembly Republican Leader Michael Villines argue that the key lies in reducing recidivism. "I believe that if people want to change themselves once they're inside prison, they can do it. If we can connect them to industries that want to hire them, there are lots of industries that want to hire people like this and give them a shot."

Nevertheless, reducing recidivism does nothing to stem the influx of new criminals entering the system, nor does it address the burgeoning population of non-violent drug offenders in our prisons.

## Civil-style justice

American Bar Association officials say the panacea fix for an over-burdened criminal justice system is an alternative program designed for justice without prosecution, a criminal justice version of the civil court's Alternative Dispute Resolution program.

"A typical criminal case would be neighbor disputes that turned violent or caused property damage, and many youth-related crimes," according to John Bickerman, ABA's chair for the criminal justice division.

The nascent program holds promise, but it remains to be seen whether it will be seen as a serious remedy to our expanding prison population.

Those with a stake in alternative programs such as the ADR have had little comment on the program.

The California Judges Association would not comment on the program, nor say what alternative solutions California judges are using or considering—if any—and a number of California legislators, including senate and assembly legislative judiciary committee members, and district attorney offices all said they were not aware of any alternative programs and nothing is in the pipeline.

One of the ABA committee members, Kings County (Brooklyn, NYC) District Attorney Charles J. Hynes, is at the forefront of progressive programs in his New York office. He says Brooklyn's 100,000 arrests per year led him to charge the ABA committee with developing a method to unburden the criminal system.

"It will give victims closure sooner and reduce costs," says First Assistant Prosecutor, Anne Swern, who has spearheaded some of the innovative programs in Hynes' office, such as alternative sentencing to prison terms for lesser offenses.

#### A system for the vulnerable

Even if there seems to be a vacuum of ideas today, there have long been efforts to tweak and change the system in California. In 1989, El Dorado County Superior Court Judge Eddie T. Keller created the Children and Family Network program to prevent young people falling through the cracks of the system.

Frustrated with youth offenders bogging down his criminal court, Keller was inspired to take action after sending so many of these offenders to youth prisons, knowing they would later become career criminals.

The program brings social services, schools, prosecutors, judges and others into frequent meetings to review a youth's case file and to ensure all needs are met. Other programs, such as behavioral health courts, utilize similar service linkages to give people with genuine mental illness and substance abuse problems the help they need.

"We need specific strategies for specific circumstances," says Cedillo. If a person is mentally ill, that's the core of their problem and therefore the basis of their conduct. We need to address that instead of just punishing the conduct and then sending them out with an untreated problem."

#### A new breed of crime

It's not just the glut of mentally ill, chemically dependent and youth offenders that demand changes to the current criminal justice system. FBI Special Agent Karen Ernst, from California's eastern district, says lawmakers and the courts should be looking down the road for alternatives to deal with the new breed of criminals coming down the pipeline as well.

"The young criminals coming along are bolder, ruthless, lawless and packing big weapons," Ernest said. "They have no sense of family, loyalty, or community. The gangsters of the past generations drew the line on killing cops. I don't know what kind of alternative program you can develop for these guys, but they will bog down the system like nothing anyone has ever seen if something isn't done now."