

Prisoners of panic

Media hype and political quick fixes have swelled our inmate population.

By Joe Domanick
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How much more folly, absurdity, fiscal irresponsibility and human tragedy will we endure before we stop tolerating the political pandering that has dictated our criminal justice law and policy over the last two decades?

The pattern has become all too clear. Our politicians, fearful of being labeled "soft on crime," react to sensationalistic coverage of a crime with knee-jerk, quick-fix answers. Only years later do the mistakes, false assumptions and unexpected consequences begin to emerge, and then the criminal justice system is forced to deal with the mess created by the bad lawmaking.

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For example, remember the great crack scare of the 1980s? When basketball superstar Len Bias, who'd been drafted by the Boston Celtics as a franchise player, died of a crack overdose, the media went wild in covering it. Alarmed by the sudden increase in crack use and fearful that the drug was highly addictive and disposed users to commit violence, Congress mandated tough minimum sentences for crack-related crimes. A defendant convicted of possessing a small amount of crack could receive the same sentence as one possessing 100 times that amount of powder cocaine. Because crack users were disproportionately African American (and powder cocaine users were disproportionately white), 85% of those receiving dealer-like sentences for possession or sale of small amounts of crack were black -- an outcome that helped to fuel widespread perceptions among blacks that there was a double standard of justice in the U.S.

In December, the overly harsh and misguided sentencing policy concocted during the "war on drugs" in the 1980s was finally modified. The U.S. **Supreme Court** ruled that judges were no longer bound by the strict sentencing guidelines, freeing the jurists to craft punishment that best fits the crime and the background of the defendant.

The 1990s produced its own racially tinged crime panics. Led by John J. Dilulio Jr., a political scientist at Princeton University, and William J. Bennett, a former secretary of Education in the Reagan Cabinet, law-and-order proponents declared that the U.S. was being overrun by a new generation of remorseless "super-predators" spawned by crack-

head mothers in violence-infested ghettos. Stories of kids committing heinous crimes were common in the media. One of the most sensational occurred in Chicago in October 1994. Two boys, one 10 years old, the other 11, dropped 5-year-old Eric Morse from the 14th floor of a housing project, killing him, because he refused to steal candy for them.

In response to such crimes, politicians across the country passed anti-super-predator laws. In many states, including California, the age kids could be tried as adults was lowered to 14, and in 48 states, the decision to try juveniles as adults was taken away from judges and **given to prosecutors**. As a result, the number of people under 18 tried as adults rose dramatically through the 1990s, and a small percentage of them were even sentenced to prison. Ironically, the predicted crime explosion caused by super-predators never materialized. Juvenile arrests declined by more than 45% from 1994 to 2004, according to FBI statistics.

But the ultimate example of media hype meeting irresponsible politicians to produce bad public policy is California's three-strikes law. It was chiefly written by Fresno photographer Mike Reynolds after the murder of his daughter, Kimber, in 1992. Introduced in the Legislature, the bill languished until the rape and murder of 12-year-old Polly Klaas in 1993. A network of right-wing talk-radio hosts reacted to the killing by fiercely promoting Reynolds' measure, which had provisions like no other three-strikes bill in that virtually any crime, no matter how petty, could be prosecuted as a third strike.

In 1994, the Legislature unanimously put the measure on the November ballot, and Proposition 184 passed easily. The law would eventually send thousands of Californians to prison for 25 years to life, some for such third-strike crimes as attempting to steal a bottle of vitamins from a drug store, buying a macadamia nut disguised as a \$5 rock of cocaine from an undercover cop and shoplifting \$2.69 worth of AA batteries.

Today, Californians are still paying the price for that folly and other like-minded laws, not just in the ruined and wasted lives of people sentenced under these laws, but in other ways. There are now tens of thousands of inmates in California convicted of nonviolent crimes and serving out long second- and third-strike sentences, as well as thousands more behind bars because minor crimes were turned into felonies with mandatory minimum sentences.

All these laws have contributed to severe overcrowding in the state's prisons -- as high as 200% of capacity -- that has produced conditions of such "extreme peril" for prisoners and guards that Gov. Arnold Schwarzenegger was forced to declare a systemwide state of emergency in 2006. Since 2003, the inmate population has grown 8%, to about 173,000. But the budget of the Department of Corrections and Rehabilitation has skyrocketed 79%, to \$8.5 billion, becoming the fastest-growing category in the state budget and a factor in opening up a \$14-billion .

The get-tough-on-crime laws also have helped create a crisis in California's prison healthcare system, where spending has risen to \$1.9 billion a year, up 263% since 2000. A large part of the problem is that the prison population is aging because inmates are serving the longer sentences approved by lawmakers, and with aging comes more medical problems. The system became so understaffed and dysfunctional that a federal judge ruled that it was causing at least one avoidable death a week through sheer neglect and ineptitude. He has seized the entire prison medical system and placed it under his direct supervision.

Faced with the huge budget deficit and judicial threats to cap the state's prison population, Schwarzenegger's office has been floating the idea of early release for about 22,000 inmates convicted of nonviolent crimes. That 13% cut in prisoners, however, would require legislative approval, something that is by no means certain. The story of crime and punishment in California -- and the country -- since the 1980s, after all, has been quick-fix answers fueled by media hype. Let's hope that such proposals as releasing nonviolent inmates receive serious attention rather than panicky headlines that lead to bad criminal justice laws.

Joe Domanick, a senior fellow at the USC Annenberg Institute for Justice and Journalism, is writing a book about California's prison system.