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Chapter 16: Expanding the Pilot Program that Assists Indigent Inmates After Release

Chol Daniel Kim

Code Section Affected

Penal Code § 4025.5 (amended).

AB 2574 (Emmerson); 2008 STAT. Ch. 16.

I. INTRODUCTION

For many inmates released from California's adult correctional facilities, reintegration into society can be a stressful and difficult experience.¹ Oftentimes, inmates cannot even afford the seven dollar fee for an identification card.² In more extreme situations, the period immediately following release can lead to death.³ In fact, during the first fourteen days after release, the risk of death among former inmates is nearly thirteen times that of a normal individual.⁴ With such a dearth of resources and services, it is no surprise that released inmates sometimes return to their life of crime.⁵ The rate of recidivism in this country, particularly in California, is extraordinary.⁶ Naturally, with the prevalence of repeat offenders, the prison population has risen to astronomic proportions, rising by 500% in the last three decades.⁷ The national imprisonment rate in 2005 was 491 per 100,000 residents; when considering jail occupants, the number rises to 738 per 100,000.⁸

1. See Christy A. Visher, *Returning Home: Emerging Findings and Policy Lessons About Prisoner Reentry*, 20 FED. SENT. REP. 93, 97 (2007) ("The sudden change in environment coupled with the challenges individuals face to be successful can be overwhelming.").

2. *Scott Prison Reform Bills Pass First Assembly Test*, CAL. CHRON., June 20, 2007, <http://www.californiachronicle.com/articles/30238> (on file with the *McGeorge Law Review*).

3. See Ingrid A. Binswanger et al., *Release from Prison—A High Risk of Death for Former Inmates*, 356 NEW ENG. J. MED. 157, 159 (2007) (stating that in one study, 253 of 30,237 released prisoners died within one year of their release).

4. See *id.* at 160 ("The adjusted relative risk of death within the first 2 weeks after release was 12.7 times that among other state residents."). The leading causes of death among former inmates were drug overdose, cardiovascular disease, homicide, suicide, cancer, and vehicle accidents. *Id.* at 161.

5. See Visher, *supra* note 1, at 96.

6. See Joan Petersilia, *California's Correctional Paradox of Excess and Deprivation*, 37 CRIME & JUST. 207, 211 (2008) ("Nearly 50 percent of all [California] prisoners released in 2006 sat idle—meaning they did not participate in any work assignment or rehabilitation programs—for the entire time they were in prison. They return to communities unprepared for reentry, and two-thirds are returned to prison within 3 years, nearly twice the average national average.").

7. Adam M. Gershowitz, *An Informational Approach to the Mass Imprisonment Problem*, 40 ARIZ. ST. L.J. 47, 47 (2008).

8. Petersilia, *supra* note 6, at 207.

In an effort to reduce recidivism and the overcrowded prison populations, many states have implemented reentry and rehabilitation programs that change behavioral habits and provide training for a more successful reintegration into society.⁹ A pilot program funded by each county's Inmate Welfare Fund (IWF) went into effect last year, extending reentry programs and financial resources to indigent inmates for fourteen days after release.¹⁰ Chapter 16 extends this pilot program to Kern, San Bernardino, and Santa Clara Counties.¹¹

II. BACKGROUND

A. *The Problem of Recidivism*

According to the U.S. Department of Justice, at least ninety-five percent of state inmates will be released back into society at some point,¹² many of whom will reoffend and return to the prison system.¹³ Indeed, with the largest prison population in the country, California also has the highest recidivism rate, at around sixty-six percent.¹⁴ Unfortunately, despite various efforts, the recidivism rate has been relatively stagnant for the past decade.¹⁵

An obvious consequence of recidivism is the tremendous fiscal impact on the state, whose legislators must budget more and more funds each year to maintain the prison system.¹⁶ California currently houses over 170,000 inmates,¹⁷ with an

9. See generally *id.*

10. CAL. PENAL CODE § 4025.5 (West Supp. 2009).

11. *Id.* (amended by Chapter 16).

12. Timothy Hughes & Doris James Wilson, *Reentry Trends in the United States*, U.S. DEP'T OF JUSTICE, <http://www.ojp.usdoj.gov/bjs/reentry/reentry.htm> (last visited Feb. 10, 2009) (on file with the *McGeorge Law Review*).

13. See Charles Lane, *Justices to Rule on 'Three Strikes' Law*, THREESTRIKES.ORG, Nov. 6, 2002, http://www.threestrikes.org/washpost_0.html (on file with the *McGeorge Law Review*) (describing opposition arguments to California's three-strikes law, which sometimes imposes harsh penalties on repeat felony offenders).

14. Petersilia, *supra* note 6, at 262. "[Sixty-six] percent are back behind bars within [thirty-six] months . . ." *Id.*

15. Visher, *supra* note 1, at 93; see also CAL. DEP'T OF CORRECTIONS AND REHAB., EXPERT PANEL ON ADULT OFFENDER AND RECIDIVISM REDUCTION PROGRAMMING, REPORT TO THE CAL. STATE LEGISLATURE, A ROADMAP FOR EFFECTIVE OFFENDER PROGRAMMING IN CAL., at vii (2007) [hereinafter CDCR] (on file with the *McGeorge Law Review*) (listing overcrowding and too few quality rehabilitation programs as the reasons for California's ineffective reentry programs).

16. See CAL. STATE SHERIFF'S ASS'N, DO THE CRIME, DO THE TIME? MAYBE NOT, IN CALIFORNIA 28 (2006) [hereinafter CSSA] (on file with the *McGeorge Law Review*) (stating that local governments must bear the costs of staffing and operating local detention facilities).

17. CAL. DEP'T OF CORRECTIONS AND REHAB., MONTHLY REPORT OF POPULATION AS OF MIDNIGHT JANUARY 31, 2009, at 1 (2009), available at http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Monthly/TPOP1A/TPOP1Ad0901.pdf (on file with the *McGeorge Law Review*).

annual budget of more than nine billion dollars.¹⁸ The county jail system houses over 80,000¹⁹ inmates at any given day and costs over \$1.7 billion annually.²⁰

B. Reentry and Rehabilitation Programs

Former inmates struggle with a number of social and economic disadvantages that make it difficult to reintegrate into society and live as law-abiding citizens.²¹ Many inmates never finished high school and can only obtain low wage jobs.²² With an average prison stay of 21.9 months,²³ the typical inmate will have a difficult time acclimating back into society because of a lack of job skills and experience.²⁴ “Two-thirds of [released inmates] reported frequent . . . drug use (58 percent) or alcohol intoxication (27 percent) prior to prison”²⁵ and more than half suffer from chronic physical or mental health conditions.²⁶ However, employment—an essential aspect of becoming a responsible member of society—is the single most important concern for returned inmates.²⁷ Over seventy-five percent of inmates in one study said that finding employment would help keep them out of prison.²⁸ In the same study, eighty-eight percent reported a need for more job training and education.²⁹

Reentry and rehabilitation programs are therefore one way states have attempted to reduce recidivism rates.³⁰ The programs are designed to not only assist released inmates with reintegration but also to strengthen urban

18. Petersilia, *supra* note 6, at 222.

19. See Office of the Attorney General, State of California, Statistics by City and County, http://stats.doj.ca.gov/cjsc_stats/prof06/00/27.pdf (last visited Feb. 10, 2009) (on file with the *McGeorge Law Review*) (stating that in 2006 there were 81,622 inmates in Type II, III, and IV facilities).

20. See CSSA, *supra* note 16, at 28 (stating that the operational costs for county jails in 2001-2002 were \$1.7 billion for about 73,000 inmates).

21. See Visher, *supra* note 1, at 95 (“Following release, prisoners may experience social stigma and discrimination, lessened employment prospects, reduced access to housing, loss of negative mental health effects, increased risk of suicide and early death, and difficulties in finding needed services and supports.”).

22. See WriteAPrisoner.com, Federal and State Prisons, <http://www.writeaprisoner.com/prisoner-statistics.aspx> (last visited Feb. 10, 2009) (on file with the *McGeorge Law Review*) (“One third of the prisoners read at less than a 9th grade level. . . . They cannot compete in the work-place.”).

23. California Department of Corrections and Rehabilitation, Summary Fact Sheet, http://www.cdcr.ca.gov/Reports_Research/summaries.html (last visited Feb. 10, 2009) [hereinafter Summary Fact Sheet] (on file with the *McGeorge Law Review*).

24. Visher, *supra* note 1, at 96.

25. *Id.* at 95.

26. *Id.* at 96 (“[T]he most commonly reported conditions includ[e] depression, asthma, hepatitis, and high blood pressure.”).

27. *Id.*

28. *Id.*

29. *Id.*

30. United States Department of Justice, Learn About Reentry, <http://www.reentry.gov/learn.html> (last visited Feb. 10, 2009) [hereinafter Learn About Reentry] (on file with the *McGeorge Law Review*). Indeed, the effectiveness and importance of the reentry process is further supported by the recent emergence of reentry courts that conduct extensive case management of offenders. *Id.*

communities that receive large numbers of these inmates.³¹ All across the country, myriad programs assist criminals with the reentry process by providing pre-release programs, drug rehabilitation, vocational training, and work programs.³² The President's Prisoner Reentry Initiative (PRI) and the Office of Justice Programs' Bureau of Justice Assistance, which partnered with the U.S. Department of Labor, offer funding for state governments to implement reentry programs.³³ Furthermore, recent legislation under the Second Chance Act will provide even greater federal resources for the reentry initiative.³⁴

Rehabilitation programs are effective; well-designed and well-implemented reentry programs in some instances have reduced recidivism at a rate of five to thirty percent.³⁵ Targeted educational and vocational programs, cognitive behavioral therapies, substance abuse treatment, reentry partnerships, counseling, and other transitional assistance programs (especially with systematic monitoring), can lead to a reduction in recidivism.³⁶ However, in California, nearly half of all prisoners released do not participate in any work assignments or rehabilitation reentry programs during their incarceration.³⁷

C. The Inmate Welfare Fund

The IWF serves as one funding resource for the reentry and rehabilitation programs in California.³⁸ Existing California law authorizes the sheriff of each county to maintain a store at the county jail, the profits of which are deposited into the IWF to support programs that benefit, educate, and promote the general welfare of inmates.³⁹ The money is drawn from various sources, including stores operated in connection with a county jail,⁴⁰ a percentage from the gross sales of inmate hobbycraft,⁴¹ and funds received from telephone companies for telephones primarily used by inmates.⁴² Initially, the IWF only provided for essential clothing and transportation costs within the county.⁴³

31. *Id.*

32. *Id.*

33. *Id.*

34. The White House, President George W. Bush, Fact Sheet: President Bush Signs Second Chance Act of 2007, Apr. 9, 2008, <http://georgewbush-whitehouse.archives.gov/news/releases/2008/04/20080409-15.html> (on file with the *McGeorge Law Review*).

35. Petersilia, *supra* note 6, at 212.

36. *See generally id.*

37. *Id.* at 211. Even those inmates wishing to participate in reentry programs are discouraged from doing so because of the strong influence of gang leaders. *Id.*

38. CAL. PENAL CODE § 4025 (West 2000 & Supp. 2009).

39. *Id.* § 4025(a), (b), (e).

40. *Id.* § 4025(a). Products sold include "confectionery, tobacco and tobacco users' supplies, postage and writing materials, and toilet articles and supplies." *Id.* The products are sold for cash to inmates in the jail. *Id.*

41. *Id.* § 4025(c).

42. *Id.* § 4025(d). This is an extremely controversial topic. *See* Kim Curtis, *County Jails Profit Off*

D. *The Original Pilot Program*

To increase the resources and programs available to indigent inmates upon release from jail, a pilot program was established in early 2008 in the Counties of Alameda, Los Angeles, Orange, Sacramento, San Francisco, San Diego, Santa Barbara, and Stanislaus.⁴⁴ The pilot program allows the sheriffs in each county to use funds from the IWF to assist inmates up to fourteen days after release.⁴⁵ The program allows IWF funds to be used for “work placement, counseling, obtaining proper identification, education, and housing.”⁴⁶ Given the social and economic disadvantages that plague the inmate population and their additional post-release needs,⁴⁷ the ability to use these funds is crucial to successful reentry into society.⁴⁸

III. CHAPTER 16

Chapter 16 adds Kern, San Bernardino, and Santa Clara Counties to the list of counties implementing the pilot program that assists indigent inmates with the reentry process.⁴⁹ The program makes those inmates released from county jails—or any other adult detention facility under the jurisdiction of the sheriff—eligible for assistance during the first fourteen days after release.⁵⁰ The statute authorizes the sheriffs in these counties to fund the pilot program with money from the IWF.⁵¹ “The assistance provided [for indigent inmates by the pilot program] may include, but is not limited to, work placement, counseling, obtaining proper identification, education, and housing.”⁵²

Inmates' Calls, OAKLAND TRIB., Aug. 23, 2004, http://findarticles.com/p/articles/mi_qn4176/is_20040823/ai_n14580782 (on file with the *McGeorge Law Review*) (“Telephone companies and California counties have made hundreds of millions of dollars from some of the state’s poorest people through high, unregulated phone rates for calls from local jails . . .”).

43. CAL. PENAL CODE § 4025(i).

44. *Id.* § 4025.5(a) (West Supp. 2009).

45. *Id.*

46. *Id.*

47. Visher, *supra* note 1, at 96 (listing these needs as “employment[,] in-person reporting[,] payment of restitution, fees, . . . fines[], and the need for state-approved identification”).

48. *Id.*

49. CAL. PENAL CODE § 4025.5(a) (amended by Chapter 16).

50. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 2574, at 1 (Mar. 25, 2008).

51. *Id.*

52. CAL. PENAL CODE § 4025.5(a) (amended by Chapter 16).

IV. ANALYSIS OF CHAPTER 16

A. *Recidivism in the County Jail System*

Although the rate of recidivism among misdemeanor offenders is lower than the general prison population,⁵³ the success of the IWF-funded reentry and rehabilitation programs for prison inmates may very-well translate into reduced recidivism among these misdemeanor offenders as well. However, the program may not provide as much incentive for those convicted of misdemeanors. In 2005, 233,388 of these offenders were not incarcerated due to a lack of jail space.⁵⁴ Unsurprisingly, these individuals continue to commit misdemeanors and cycle through the jail system, as there are fewer consequences for their repeat criminal activity.⁵⁵ In fact, the problem is so severe that criminals prefer to have monetary fines transferred into jail time with the expectation that they will not serve their sentence due to a lack of jail space.⁵⁶ Fortunately, recent California Legislation has attempted to remedy the overcrowding issue, but it will take some time for these changes to take effect.⁵⁷

Additionally, there is a subset of misdemeanor offenders who would have a particularized benefit from the counseling and mental health services that are provided by many of the IWF funded programs.⁵⁸ These offenders suffer from mental health issues and repeatedly commit misdemeanors and “quality of life” crimes.⁵⁹ The counseling and mental health services available through IWF-funded rehabilitation programs could potentially have a strong impact on reducing recidivism in the jail system.⁶⁰

53. Compare Iris Yen, Comment, *Of Vice and Men: A New Approach to Eradicating Sex Trafficking by Reducing Male Demand Through Educational Programs and Abolitionist Legislation*, 98 J. CRIM. L. & CRIMINOLOGY 653, 677 (2008) (giving the rate of recidivism among misdemeanor offenders as 33 percent), with Hughes & Wilson, *supra* note 12 (stating that the national percent of released prisoners rearrested within three years was over sixty percent in 1994).

54. State of California, Office of the Governor, Comprehensive Prison Reform, <http://gov.ca.gov/index.php?/fact-sheet/4966> (last visited Feb. 10, 2009) (on file with the *McGeorge Law Review*).

55. See *id.* (creating the inference that there are less penalties for committing crimes because offenders are not receiving jail time due to the lack of jail space). Since 2002, Los Angeles County was unable to incarcerate over 150,000 criminals most of whom had only served 10 percent of their sentences. CSSA, *supra* note 16, at 14.

56. CSSA, *supra* note 16, at 16.

57. David Muradyan, Recent Statute, *California's Response to Its Prison Overcrowding Crisis*, 39 MCGEORGE L. REV. 482, 488-89 (2008) (stating that Chapter 7 authorized \$7.4 billion for the construction of facilities, which was projected to add 13,000 new county jail beds).

58. See generally *Developments in the Law: The Law of Mental Illness*, 121 HARV. L. REV. 1114 (2008).

59. *Id.* at 1170.

60. *Id.* With the rise of the mental health court system, this particular subset of criminals suffering from mental illness have more resources available to them. See generally *id.*

A. IWF Funded Programming Combats Recidivism

The IWF supports countless programs and necessities for inmates in the California jail system. For example, Orange County, included in the original pilot program last year, offers numerous academic and vocational programs that assist inmates in finding employment after release.⁶¹ The educational programs focus on acquiring a GED degree, learning English as a second language, attaining adult basic education, and participating in government classes.⁶² Additionally, vocational education programs offer instruction in cabinetry and furniture-making, construction technology, commercial painting, commercial sewing, horticulture, welding, computer business skills, computer literacy, and food services.⁶³ These programs are now available to indigent inmates, even after their release from jail.

Other counties in the state offer various programs in education and self-improvement with the help of funding from the IWF.⁶⁴ The programs range from vocational programs that expand occupational skills and social responsibilities to substance abuse programs that increase awareness of the correlation between substance abuse and incarceration.⁶⁵ Additionally, Santa Cruz County focuses on literacy programs and assisting inmates in passing the GED exam.⁶⁶

Reentry and rehabilitation programs have been effective in reducing recidivism.⁶⁷ In one Washington state study, general education programs (basic or post-secondary education) led to a seven percent reduction in recidivism.⁶⁸ Similarly, the study showed that vocational training while in prison reduced recidivism by nine percent.⁶⁹ Interestingly, the study showed that some programs fair better in the community (such as drug treatment programs) and others do better in prison (such as vocational education).⁷⁰ Other studies have shown reductions in recidivism of up to thirty percent.⁷¹ The extension of IWF funded programming after the inmate's release undoubtedly will help with reintegration.

61. INMATE WELFARE FUND, GRAND JURY REPORT, ORANGE COUNTY 3-4, available at <http://www.ocgrandjury.org/pdfs/GJInmate.pdf> (last visited Feb. 10, 2009) (on file with the *McGeorge Law Review*).

62. *Id.*

63. *Id.*

64. Letter from Steve Robbins, Sheriff-Coroner, County of Santa Cruz, to Board of Supervisors, County of Santa Cruz (Sept. 12, 2006), available at http://sccounty01.co.santa-cruz.ca.us/bds/govstream/BDSvData/non_legacy/Minutes/2006/20060912/PDF/019.pdf (on file with the *McGeorge Law Review*).

65. *Id.*

66. *Id.*

67. CDCR, *supra* note 15, at 31.

68. *Id.*

69. *Id.*

70. *Id.*

71. Petersilia, *supra* note 6, at 212.

B. Extending IWF-Funded Programs and Resources Beyond Release

The crux of the pilot program is the extension of IWF-funded resources, programs, and financial funding to indigent inmates fourteen days after release.⁷² In Los Angeles County, members of the Community Transition Unit evaluate an inmate's needs prior to release; oftentimes the indigent inmates cannot even afford the seven-dollar fee for an identification card.⁷³ The socioeconomic disadvantages and special needs of indigent inmates continue after release from prison, thus making reintegration difficult. Even years after being released, a large percentage of former inmates report needing assistance with housing, job training, education, medical care, and general financial issues.⁷⁴

V. CONCLUSION

Chapter 16 furthers the resources available to indigent inmates for reentry by authorizing the sheriff of specified counties to use money from the IWF to assist inmates with the reentry process.⁷⁵ The IWF provides essential services for the welfare and educational needs of inmates, and Chapter 16 assures that these services are available even after release.⁷⁶ Although there have been studies evaluating the efficacy of reentry and rehabilitation programs, a more systematic case management and mentoring program needs to be implemented to specifically monitor the effect of these programs on recidivism.⁷⁷

72. CAL. PENAL CODE § 4025.5 (amended by Chapter 16).

73. *Scott Prison Reform Bills Pass First Assembly Test*, *supra* note 2.

74. *Visher*, *supra* note 1, at 97.

75. CAL. PENAL CODE § 4025.5 (amended by Chapter 16).

76. *Id.*

77. *Id.*