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The Progressive Programming Facility: A Rehabilitative, Cost-Effective Solution to California's Prison Problem

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The Progressive Programming Facility: A Rehabilitative, Cost-Effective Solution to California’s Prison Problem

Hannah Fuetsch*

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* J.D. Candidate, University of the Pacific, McGeorge School of Law, to be conferred May, 2017; B.S. Human Development and Family Studies, University of Nevada, Reno, 2013. I would like to thank the law review board and my editor Amit. Thank you to Professor Clark Kelso and Professor Michael Vitiello for your help and guidance. To my family and friends, I could never thank you enough for all that you do for me, especially my Mom and Dad for letting me talk (and talk and talk) about my article. Alexander for patiently waiting to play while I worked, and Rosie for telling me about the Honor Yard. Thank you to Lieutenant Duane Bennett for your time and knowledge. Kenneth Hartman: I am grateful not only for your insight into the Honor Yard but also for your inspiring civil rights and social justice work. Most of all, thank you to my boyfriend Dan for loving me, supporting me, and always being there for me when I need it most.

*"Idle hands are never a good thing. Combined with too often addled minds and tormented hearts, the results are disastrous."*¹

I. INTRODUCTION

Kenneth E. Hartman, 45, is serving a life sentence without the possibility of parole at the Los Angeles County Prison for drunkenly killing a homeless man when he was nineteen years old.² While incarcerated, Mr. Hartman, and a group of inmates, wrote a proposal and assisted in implementing a program called the Progressive Programming Facility at the Los Angeles County Prison.³ Hartman created the program to give inmates the opportunity to change, to take responsibility, and to heal.⁴ Mr. Hartman believed that a rehabilitative program would save taxpayers money, positively impact the community, and change the way people viewed inmates.⁵ The Progressive Programming Facility has met its intended goals: progress reports show decreased rates of violence and drug use, as well as great fiscal savings.⁶

California prisons cost taxpayers billions of dollars annually, but with little effect given the fact that as many as 63.7% of released inmates return to prison within three years of release.⁷ One reason for this high level of recidivism is prison inmates often endure inhumane prison conditions that have detrimental effects on their mental and physical health.⁸ Many incarcerated people live in prison without adequate therapy, education, drug treatment, vocational training, or other types of skill development programs.⁹ Mr. Hartman may never see a day outside of the Los Angeles County Prison, however 650,000 incarcerated people are released from prisons across the country each year, many without the skillset necessary to reintegrate into society.¹⁰

1. Kenneth E. Hartman, *What is and What Should Be*, in HONOR COMES HARD: WRITINGS FROM THE CALIFORNIA PRISON SYSTEM'S HONOR YARD 119, 122 (Luis J. Rodriguez & Lucinda Thomas eds., 2009).

2. Kenneth E. Hartman, *About Me*, <http://www.kennethehartman.com/about.htm> (on file with *The University of the Pacific Law Review*).

3. Luis J Rodriguez, *Introduction: "A Chance to Live Like Human Beings,"* in HONOR COMES HARD: WRITINGS FROM THE CALIFORNIA PRISON SYSTEM'S HONOR YARD 5 (Luis J. Rodriguez & Lucinda Thomas eds., 2009).

4. Kenneth E. Hartman, Chairman, The Steering Committee for the Honor Program, *The Honor Program: Road to a Rehabilitative Prison System* (2007) [hereinafter *The Honor Program*].

5. *Id.*

6. Rodriguez, *supra* note 3; Hartman, *The Honor Program*, *supra* note 4.

7. CDCR, 2012 OUTCOME EVALUATION REPORT v-vi (2014), available at http://www.cdcr.ca.gov/Adult_Research_Branch/Research_Documents/ARB_FY_0809_Recidivism_Report_02.10.14.pdf (on file with *The University of the Pacific Law Review*).

8. See *infra* Part II (describing the detrimental effects conditions of confinement have on prison inmates in the United States).

9. Jeremy Travis, Laurie O. Robinson, & Amy L. Solomon, *Prisoner Reentry: issues for Practice and Policy*, 17 CRIM. JUST. 12, 12-13 (2002).

10. US DEPT. OF JUSTICE, PRISONERS AND PRISONER RE-ENTRY, http://www.justice.gov/archive/fbci/progmenu_reentry.html (last visited January 7, 2016).

Part II of this Comment explores the background of the prison system in the United States and California,¹¹ including a discussion of mass incarceration,¹² conditions of confinement,¹³ and an analysis of the goals of punishment.¹⁴ Part III details the Progressive Programming Facility. Part IV suggests that the current political climate and dire state of California prisons make this the ideal time to enact legislation requiring prisons to adopt progressive programming facilities.¹⁵

This Comment argues that because of the unacceptable state of California's prisons, including high costs and high rates of recidivism, California should enact legislation that requires prisons to implement programs modeled on the Progressive Programming Facility at Los Angeles County Prison.¹⁶

II. BACKGROUND: HOW DID AMERICA'S PRISONS GET HERE?

Approximately 2.2 million Americans live behind bars.¹⁷ The United States accounts for 25% of the world's incarcerated population, while it only constitutes five percent of the world's general population.¹⁸ Between 1980 and 2009, the prison population in the United States grew by 475%.¹⁹ Along with it, the government increased spending by 400%.²⁰ A recent study surveying 40 states found that taxpayers spent 39 billion dollars in prisons, and California alone incarcerates 127,325 people in its prisons,²¹ the majority of whom will return to society after serving their prison term.²² California's 2015-2016 budget

11. See *infra* Part II (describing the history of the prison system in the United States).

12. See *infra* Part II.A (discussing how mass incarceration affects the criminal justice system).

13. See *infra* Part II.B.1 (explaining how the conditions of confinement in the United States have led to the current prison system in the United States).

14. See *infra* Part II.B.2 (analyzing the goals of punishment and the consequences each has on incarceration).

15. See *infra* Parts III–IV (analyzing the Progressive Programming Facility and how it should be implemented at prisons across California).

16. See *infra* Parts III–IV (discussing the need for prison reform and identifying the Progressive Programming Facility as a means to accomplish this goal).

17. LAUREN E. GLAZE & ERINN J. HERBERMAN, CORRECTIONAL POPULATIONS IN THE UNITED STATES, 2012, DEP'T OF JUSTICE (2013), available at <http://www.bjs.gov/content/pub/pdf/cpus12.pdf> (on file with *The University of the Pacific Law Review*).

18. NAT'L RESEARCH COUNCIL, GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES 2 (2014), available at <http://www.nap.edu/read/18613/chapter/1> (on file with *The University of the Pacific Law Review*).

19. *Id.* at 315.

20. *Id.*

21. DATA ANALYSIS UNIT, WEEKLY REPORT OF POPULATION, CDCR (Feb. 17, 2016), available at http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/WeeklyWed/TPOP1A/TPOP1Ad160217.pdf (on file with *The University of the Pacific Law Review*).

22. See CDCR, *supra* note 7 (demonstrating that over 100,000 inmates were released in 2008).

designates \$10.07 billion to corrections.²³ These extraordinary costs have minimal rehabilitative effect, as California's recidivism rate is 63.7%.²⁴ Furthermore, of those who commit new offenses, 74.1% will return to prison within the first year of release.²⁵

The following Sections describe the leading forces behind California's unacceptable rehabilitation statistics.²⁶ Section A discusses mass incarceration,²⁷ Section B describes the conditions of confinement in the United States,²⁸ and Section C analyzes what the goal of incarceration should be.²⁹

A. Mass Incarceration: Social and Political Context

In the mid 1960's, crime rates rose, and Americans became anxious about criminals and public safety.³⁰ The victim's rights movement called for stricter sentences,³¹ and the "War on Drugs" quadrupled the amount of prison sentences for drug offenses.³² In context, the United States incarcerated more people for drug offenses in 2009 than it incarcerated people for all types of offenses in 1980.³³

23. Magnus Lofstrom & Brandon Martin, *Public Safety Realignment: Impacts So Far*, PPIC (2016), available at http://www.ppic.org/main/publication_quick.asp?i=1164 (on file with *The University of the Pacific Law Review*).

24. CDCR, *supra* note 7; THE PEW CENTER ON THE STATES, STATE OF RECIDIVISM: THE REVOLVING DOOR OF AMERICA'S PRISONS 9 (2011). "Recidivism is the act of reengaging in criminal offending despite having been punished. The prison recidivism rate—the subject of this report—is the proportion of persons released from prison who are rearrested, reconvicted, or returned to custody within a specific time period . . . Offenders are returned to prison for one of two reasons: 1. For committing a new crime that results in a new conviction or 2. For a technical violation of supervision, such as not reporting to their parole or probation officer or failing a drug test."

25. See CDCR, *supra* note 7.

26. See *infra* Parts II.A–C.

27. See *infra* Part II.A (describing mass incarceration and how it has affected incarceration).

28. See *infra* Part II.A.2 (explaining prison conditions in the United States).

29. See *infra* Part II.B (identifying the three primary purposes of incarceration and analyzing their impact on society).

30. Judith Greene, *Getting Tough on Crime: The History and Political Context of Sentencing Reform Developments Leading to the Passage of the 1994 Crime Act*, in SENTENCING AND SOCIETY: INTERNATIONAL PERSPECTIVES 2 (Cyrus Tata & Neil Hutton eds., 2002), available at <https://nationalcdp.org/docs/GettingToughOnCrime.pdf> (on file with *The University of the Pacific Law Review*).

31. *Id.*

32. MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS 60 (2012).

33. Testimony of Marc Mauer, Executive Director of The Sentencing Project, Hearing on Unfairness in Federal Cocaine Sentencing: Is it Time to Crack the 100 to 1 Disparity? 2 (May 21, 2009), available at http://www.sentencingproject.org/doc/dp_cracktestimonyhouse.pdf (on file with *The University of the Pacific Law Review*).

These social policies led to mass incarceration³⁴ and then to overcrowded prisons.³⁵ Overcrowded prisons increase rates of violence, rape, and suicide in prisons.³⁶ Positive sentencing reform movements have reduced the negative effects of mass incarceration, but many prisons are still overcrowded.³⁷

During the 1980's, public policy favored being tough on criminals.³⁸ As a result, states and the federal government drastically cut funding for rehabilitative programs.³⁹ This lack of funding perpetuated rates of violence, increased the use of solitary confinement, stilted visitation for inmates, and ultimately resulted in releasing inmates without the skills needed to successfully return to society.⁴⁰

Section 1 of this Part will explain how the conditions of confinement produce negative psychological effects,⁴¹ and Section 2 will discuss why, as a society, we have accepted these conditions and their corresponding results as normal.⁴²

1. Impact of Conditions of Confinement

Generally, the Eighth Amendment allows conditions of confinement that result in physical and psychological damage.⁴³ As a result, the State has used

34. Mass incarceration is the term used when a society's collective solution to crime and public safety is incarceration. LAWRENCE D. BOBO & VICTOR THOMPSON, RACIALIZED MASS INCARCERATION: POVERTY, PREJUDICE, AND PUNISHMENT, IN *DOING RACE: 21 ESSAYS FOR THE 21ST CENTURY* 322 (Hazel R. Markus & Paula Moya eds., 2010).

35. TERRY A. KUPERS, PRISON AND THE DECIMATION OF PRO-SOCIAL LIFE SKILLS, IN *THE TRAUMA OF PSYCHOLOGICAL TORTURE* 127, 130 (Almerindo Ojeda ed., 2008).

36. *Id.*

37. See Testimony of Marc Mauer, Executive Director of The Sentencing Project, Before the Senate Judiciary Committee On the Sentencing Reform and Corrections Act of 2015 (Oct. 19, 2015), available at http://sentencingproject.org/doc/publications/SRCA_Testimony_October_2015.pdf (on file with *The University of the Pacific Law Review*) (discussing the importance of immediate sentencing reform in connection with the proposed Sentencing Reform and Corrections Act of 2015); see also Tricia Escobedo, *What's Going on With Prison Reform in America?*, CNN (Oct. 21, 2015, 8:31 AM), <http://www.cnn.com/2015/10/21/us/prison-reform-overview/> (explaining the important goals of the Sentencing Reform and Corrections Act of 2015).

38. KUPERS, *supra* note 35; The California Three Strikes Laws provide an example of a legislative response to community outrage regarding crime. See Lorelei Laird, *California Begins to Release Prisoners After Reforming its Three-Strikes Law*, ABA JOURNAL, available at http://www.abajournal.com/magazine/article/california_begins_to_release_prisoners_after_reforming_its_three-strikes_la (on file with *The University of the Pacific Law Review*) (discussing why the Three Strikes Law was implemented and how it worked). California's Three Strikes Law meant that people could be sentenced to life in prison for "petty theft and drug possession." *Id.* Prison populations grew, along with the state's budget, so the California legislature amended the Three Strikes law and began releasing inmates. *Id.*

39. *Id.*

40. *Id.*

41. See *infra* Part II.A.1 (detailing the symptoms and psychological damage inmates suffer due to conditions of confinement).

42. See *infra* Part II.A.1 (illustrating societal attitudes toward criminals and how that impacts the criminal justice system).

43. See *infra* Part II.A.2 (discussing the negative experiences inmates undergo while in prison in the United States). Though outside the scope of this comment, it is worth noting that the United States engages in several punitive practices that are rejected by many other developed nations. In December 2015, the United

techniques that contribute to a lack of skills necessary for prisoners to function in society upon their release.⁴⁴ One common tool used in prisons across the United States is solitary confinement.⁴⁵ Solitary confinement involves isolation in a cell for almost an entire day with minimal to no social or environmental stimulation.⁴⁶ The effects of solitary confinement include heightened sensitivity to external stimuli, hallucinations, delusions, panic attacks, inability to concentrate or think, memory loss, uncontrollably obsessive thoughts, paranoia, lack of impulse control, and suicide.⁴⁷

The Eighth Amendment also allows a great deal of overcrowding.⁴⁸ A prison is overcrowded when the number of prisoners it houses exceeds the number it can humanely account for.⁴⁹ Overcrowding leads to higher stress levels, more behavioral infractions, lack of privacy, exposure to physically or mentally ill inmates, and feelings of chaos and uncertainty.⁵⁰ Studies also indicate that as prisons become overpopulated, prison administrators provide fewer programs and activities, fewer opportunities for education, and fewer opportunities for prison employment.⁵¹ The lack of prison programming creates a great deal of idle time with little activities for inmates, resulting in negative behavioral and psychological symptoms.⁵² "Idleness-related frustration increases the probability of interpersonal conflict and assaults," and overpopulation severely restricts the

Nations General Assembly promulgated several rules regarding minimum standards of treatment for prisoners. Rule 1: "All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment." Rule 3: "Imprisonment and other measures that result in cutting off persons from the outside world are afflictive by the very fact of taking from these persons the right of self-determination by depriving them of their liberty. Therefore the prison system shall not, except as incidental to justifiable separation or the maintenance of discipline, aggravate the suffering inherent in such a situation." Rule 43: "In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. The following practices, in particular, shall be prohibited: (a) Indefinite solitary confinement; (b) Prolonged solitary confinement; (c) Placement of a prisoner in a dark or constantly lit cell. . . ." Rule 45: "Solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority. . . ." United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), G.A. RES. 217 A (III), U.N. DOC. A/RES/70/175 (Dec. 17, 2015).

44. See *infra* Part II.A.1 (describing the conditions of confinement that have negative impacts on inmates).

45. Stuart Grassian, *Psychiatrist Effects of Solitary Confinement*, 22 J.L. & POL'Y 327, 328 (2006).

46. *Id.* at 327.

47. *Id.* at 336–37.

48. The United States Supreme Court held that California's overpopulated prisons violated the Eighth Amendment; however, prisons across America remain overpopulated. *Brown v. Plata*, 131 S.Ct. 1910, 1928 (2011).

49. Craig Haney, *The Wages of Prison Overcrowding: Harmful Psychological Consequences and Dysfunctional Correctional Reactions*, 22 WASH. U. J. L. & POL'Y 265, 266 (2006), available at http://open.scholarship.wustl.edu/cgi/viewcontent.cgi?article=1360&context=law_journal_law_policy (on file with *The University of the Pacific Law Review*).

50. *Id.* at 269–73.

51. *Id.* at 273–75.

52. *Id.* at 274–75.

time prison staff spend monitoring inmates, therefore increasing rates of violence, sexual assault, and victimization.⁵³

In *Brown v. Plata*, Justice Kennedy stated, in dicta, that “[p]risoners retain the essence of human dignity inherent in all persons.”⁵⁴ But prisoners still experience detrimental physical and emotional symptoms from the conditions of their confinement.⁵⁵ In light of this information, one ought to consider why our society allows, and often encourages, inmates to live in these conditions.⁵⁶

2. Societal Views of Prison Inmates

Though many advocates support rehabilitative programs and improving conditions of confinement,⁵⁷ a deeper issue perpetuates negativity in prisons: “dehumanization of criminals and inmates.”⁵⁸ One cause of this dehumanization is the media.⁵⁹ The media often depicts criminals as animals or as beings unworthy of compassion, which influences citizens to view criminals in the same manner.⁶⁰ Furthermore, people react emotionally when they see people victimize innocent beings.⁶¹ People’s strong emotional reactions create moral outrage and lead to stricter sentences and more severe punishments.⁶² Researchers are studying the links between moral outrage and dehumanization, but early studies demonstrate that moral outrage directly leads people to dehumanize criminals.⁶³

When the public views criminals as humans or animals devoid of moral sensibility or emotion, it becomes easier for the public to incarcerate criminals for long periods of time without making their time in prison beneficial or worthwhile.⁶⁴ One study focused on people’s views of sex offenders.⁶⁵ The study

53. *Id.* at 275–76.

54. *Brown v. Plata*, 131 S.Ct. 1910, 1928 (2011).

55. See *supra* Part II.B.2 (describing the lasting effects the conditions of confinement have on inmates).

56. See *infra* Part II.B.3 (analyzing societal attitudes of criminals and how that impacts incarceration and conditions of confinement).

57. KUPERS, *supra* note 35.

58. J. Clark Kelso, *Corrections and Sentencing Reform: The Obstacle Posed by Dehumanization*, 46 MCGEORGE L. REV. 897, 899 (2014); see also Milica Vasiljevic & G. Tendayi Viki, *Dehumanization, Moral Disengagement, and Public Attitudes to Crime and Punishment*, in HUMANNESS AND DEHUMANIZATION, 129, 129 (Paul G. Bain, Jeroen Vaes, & Jacques-Philippe Leyens, eds. 2014) (describing animalistic dehumanization, which equates criminals to animals lacking “civility and moral sensibility,” and mechanistic dehumanization, which analogizes criminals to machines that lack feelings).

59. Milica Vasiljevic & G. Tendayi Viki, *Dehumanization, Moral Disengagement, and Public Attitudes to Crime and Punishment*, in HUMANNESS AND DEHUMANIZATION, 129, 129 (Paul G. Bain, Jeroen Vaes, & Jacques-Philippe Leyens eds., 2014).

60. *Id.*

61. Brock Bastian, Thomas F. Denson, & Nick Haslam, *The Roles of Dehumanization and Moral Outrage in Retributive Justice*, 4 PLOS 1, 1 (2013).

62. *Id.*

63. *Id.*

64. Kelso, *supra* note 58.

65. Bastian, *supra* note 61.

found that when people dehumanized sex offenders, they supported harsh punishments. Further, people supported excluding the offenders from society, reducing resources for rehabilitative programs, and imposing violent means of punishment.⁶⁶ This reflects people's views of serious criminal offenders in general.⁶⁷

Dehumanizing criminals and moral outrage leads to the belief that punishment should be proportional to the crime committed, and also results in a departure from a rehabilitative view of punishment because dehumanized criminals are seen as being incapable of returning to society.⁶⁸ These mental processes also reduce feelings of guilt or empathy for the criminal, so that harsh prison conditions continue without remorse.⁶⁹ Though some may argue this is a good thing—that society should treat criminals this way—the current state of the United States' criminal justice system suggests the contrary.⁷⁰ The following Section discusses the purpose of punishment and how it has contributed to the current issues in the criminal justice system.⁷¹

B. Purpose of Incarceration

Three popular theories of punishment are retribution, deterrence, and rehabilitation.⁷² Over time, the state has preferred one rationale over the others. As developed below, following one theory instead of another has led to the state's current problem of over-incarceration and high rates of recidivism.⁷³

1. Retribution

Retribution is based on restoring equilibrium; if an innocent person is harmed, then the wrongdoer should be punished.⁷⁴ The concept of retribution began with an individual's desire to seek vengeance on his offender but eventually evolved into society adopting the feelings of anger and resentment felt

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. See *supra* Part II (demonstrating the statistics for the rate of recidivism in the United States and the cost of incarceration in the United States).

71. See *infra* Parts II.B.1–3.

72. Joel Meyer, *Theories of Punishment*, 59 J. CRIM. L., CRIMINOLOGY, & POLICE SCIENCE 595 (1968), available at file:///Users/hannahfuetsch/Downloads/59JCrimLCriminologyPolice.pdf (on file with *The University of the Pacific Law Review*).

73. See *infra* Parts II.B.1–3 (explaining the theories of punishment and how they impact society).

74. Meyer, *supra* note 72, at 596.

by the victim and punishing the criminal for his behavior.⁷⁵ Critics describe retribution as a primitive, emotional, and instinctive reaction to wrongdoing.⁷⁶

Gerald V. Bradley, a former district attorney, argues that retribution should be the primary theory behind punishment.⁷⁷ Bradley argues retribution is not based on emotion.⁷⁸ He explains that retribution has nothing to do with community outrage or emotion; rather, he posits that many crimes compel no reaction in people and instead that crime is a part of “societal chaos,” and “it is simply tolerated and often unreported.”⁷⁹ Bradley also argues that criminals gain an advantage by choosing to break the law, so “depriving the criminal of this ill-gotten advantage is therefore the central focus of punishment.”⁸⁰ He suggests punishment should include sensory deprivation and pain, and the goal of punishment is to remove a criminal’s free will.⁸¹

The first fallacy in Bradley’s argument is that people simply tolerate crime; movements like the “War on Drugs” and “Tough on Crime” blatantly demonstrate societal intolerance for crime.⁸² The second flaw in his argument is that punishing a criminal act involves no emotion.⁸³ Humans naturally feel repulsed, disgusted, and sad when they experience or see criminal behavior.⁸⁴ This response is expected, but should not be the basis for punishing criminals because at most, “using punishment to satisfy emotions, either for vengeance or to satisfy aggressive instincts, gives only temporary satisfaction,” while society and criminals feel the effects of unproductive punishments long after the satisfaction dissipates.⁸⁵

Bradley’s argument that criminals’ free will needs to be destroyed in order to release them back into society is misplaced not only on moral grounds, but also because prison programs that promote self-control and self-motivation demonstrate lower criminal activity and lower rates of recidivism.⁸⁶ His argument also fails to consider environmental factors that prompt people to engage in

75. *Id.* at 595.

76. *Id.*

77. Gerald V. Bradley, *Retribution: The Central Aim of Punishment*, 27 HARV. J.L. & PUB. POL’Y 19, 20 (2003–2004), available at http://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1487&context=law_faculty_scholarship (on file with *The University of the Pacific Law Review*).

78. *Id.* at 21.

79. *Id.*

80. *Id.* at 23.

81. *Id.*

82. See *supra* Part II.A (demonstrating how movements like the “War on Drugs” and “Tough on Crime” led to mass incarceration and emotional legislative decisions).

83. See *supra* Part II.A.2 (describing people’s views of criminals and how it affects their treatment in prison and in the criminal justice system).

84. See *supra* Part II.A.2 (discussing human reaction to criminal conduct).

85. Meyer, *supra* note 72.

86. See *infra* Part III (discussing effective prison programs).

criminal conduct.⁸⁷ All of Bradley's arguments are flawed for one central reason: retribution has been the historical drive for punishment in the United States,⁸⁸ and our prisons are overcrowded,⁸⁹ costly, and many people return to prison shortly after being released.⁹⁰

A more modern view of retributivism removes the emotion from punishment and focuses on the proportionality of the wrongdoing and the punishment.⁹¹ Under this view, criminals are punished in proportion to their offense against society, but the punishment is never more severe than the committed offense.⁹² The modern view of retributivism also allows for rehabilitative services because there is no systematic pressure to further oppress convicted offenders once their liberty is deprived.⁹³

2. Deterrence

Deterrence uses punishment as a way to prevent people from committing crimes, either by punishing a criminal to keep him from reoffending or by setting an example to prevent other people from engaging in criminal behavior.⁹⁴ Deterrence has two aspects that keep people from committing crimes: the severity and the certainty of punishment.⁹⁵ People who support using severe punishment to deter criminals from committing crimes assert that offenders should be put in jail for long, harsh sentences.⁹⁶ The theory behind long sentences is that it not only incapacitates criminals, but also shows citizens the severe consequences of criminal behavior, which in turn will keep them from committing crimes.⁹⁷

Long prison sentences have detrimental effects on humans.⁹⁸ Inmates who are incarcerated for extended periods of time can become institutionalized, lose community ties, and will frequently commit new offenses upon release.⁹⁹ Long

87. Meyer, *supra* note 72, at 596 (demonstrating that many criminals lack education, self-control, positive role models, and healthy environments).

88. *See Id.* (explaining that retribution began as an instinctive, individual method of punishment, but it eventually became a societal strategy for dealing with criminal activity).

89. *See supra* Part II.

90. *See supra* Part II.

91. Alec Walen, *Retributive Justice*, STANFORD ENCYCLOPEDIA OF PHILOSOPHY 1 (2015).

92. *Id.*

93. *Id.* at 16 (explaining that retributive theorists prefer shorter sentences, which demonstrates that after a criminal is punished, he can complete rehabilitative programs).

94. Meyer, *supra* note 72.

95. Valerie Wright, *Deterrence in Criminal Justice: Evaluating Certainty vs. Severity of Punishment*, THE SENTENCING PROJECT 1 (2010), available at <http://www.sentencingproject.org/doc/Deterrence%20Briefing%20.pdf> (on file with *The University of the Pacific Law Review*).

96. *Id.* at 6.

97. *Id.*

98. *Id.* at 7.

99. *Id.*

prison sentences do not promote public safety and are not met with fiscal savings.¹⁰⁰ California's Three Strikes Legislation, which imposes long sentences on people who commit three felonies, is an example of legislation aimed at deterring criminals from committing felonies with severe punishment.¹⁰¹ Conversely, when inmates serve shorter prison sentences, they are able to maintain family, social, and employer relationships.¹⁰² Furthermore, inmates who served short sentences were less likely to reoffend than inmates who served longer sentences.¹⁰³ Short prison sentences and alternatives to prison sentences, including drug rehabilitation or other therapy, save money.¹⁰⁴

The crime rate would fall drastically if the state could guarantee each citizen would be punished for each committed crime.¹⁰⁵ However, the state cannot make that guarantee, and people who believe they can get away with crimes will not be deterred by severe punishments.¹⁰⁶ Research also demonstrates that many people are unaware of statutory punishments and typically underestimate their severity, indicating that people will not be deterred by severe punishment.¹⁰⁷

Research demonstrates that the certainty of punishment deters people from committing crimes more often than the severity of punishment.¹⁰⁸ The Hawaii Opportunity Probation with Enforcement ("HOPE") utilizes severity of punishment to deter parolees from committing new offenses or committing parole violations.¹⁰⁹ HOPE targets parolees who typically have long histories of drug abuse and are deemed likely to reoffend.¹¹⁰ HOPE's purpose is to provide short, certain consequences to parole violations.¹¹¹ For example, when a person on probation fails a drug test, he is immediately arrested and must complete a brief jail term.¹¹²

HOPE parolees were 55% less likely to commit a new offense compared to Hawaiian parolees not participating in the HOPE program.¹¹³ HOPE parolees were also 61% less likely to miss a probation hearing or meeting.¹¹⁴ HOPE is a

100. *See id.* (finding that longer prison terms cost the state millions annually and do not increase public safety).

101. *Id.* at 1.

102. *Id.* at 7.

103. *Id.* at 7.

104. *Id.* at 8.

105. *Id.* at 2.

106. *Id.*

107. *Id.* at 3.

108. *Id.* at 4.

109. NATIONAL INSTITUTE OF JUSTICE, HAWAII OPPORTUNITY PROBATION WITH ENFORCEMENT (HOPE), CRIME SOLUTIONS GOV., <http://www.crimesolutions.gov/ProgramDetails.aspx?id=49> (on file with *The University of the Pacific Law Review*).

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

great example of a program that reduces recidivism without harsh punitive measures.¹¹⁵

If deterrence were completely effective, the United States would not see any crime,¹¹⁶ however, deterrence simply does not work for many people.¹¹⁷ Instead, society should focus on a purpose of punishment that uses positive aspects of deterrence, such as certainty of punishment, with a purpose of punishment that achieves more positive results.¹¹⁸

3. Rehabilitation

Rehabilitation aims to prepare a person to reintegrate into society with “a new set of values and morals and a desire to contribute.”¹¹⁹ Effective programs are tailored to meet individual needs.¹²⁰ When offenders are placed in programs that do not address their specific needs, they are more likely to reoffend.¹²¹ Common areas of focus are “antisocial attitudes and associates, low self-control, substance abuse, dysfunctional family environments, employment or vocational/educational needs, and mental health issues.”¹²² Programs should focus on “cognitive-behavioral and social learning strategies.”¹²³ These strategies help resolve antisocial attitudes, and teach problem solving, critical thinking, and social skills.¹²⁴ Programs that include these strategies reduce recidivism by 18 to 50%.¹²⁵ Other important factors to consider when implementing prison programs are gender, offender responsivity,¹²⁶ care that continues after release, and program activities that include the inmate's friends and family.¹²⁷

115. *Id.*

116. Meyer, *supra* note 72, at 595.

117. *Id.*

118. *See infra* Part II.B.3.

119. Meyer, *supra* note 72, at 597.

120. OHIO DEP'T OF REHABILITATION AND CORRECTIONS, *What Works? General Principles, Characteristics, and Examples of Effective Programs* 5 (2010), available at <http://www.drc.ohio.gov/web/Reports/Effective%20programs.pdf> (on file with *The University of the Pacific Law Review*).

121. *Id.*

122. *See id.* (defining “criminogenic needs” as “problems or conditions that people need help with that are known to impact criminal recidivism.”)

123. *Id.* at 7 (“Cognitive-behavioral programming rests on the assumption that how we think controls our moods and feelings, and ultimately our behavior. These programs help to identify the thought process that lead to negative feelings and maladaptive behaviors and replace them with processes that lead to positive feelings and behaviors.”)

124. *Id.* at 7.

125. *Id.* at 5.

126. *Id.* at 8 (describing offender responsivity as “the skills needed for program success,” with examples including “intelligence, anxiety, verbal ability, motivation, and cultural appropriateness.”)

127. *Id.*

The time period after release from prison can be extremely stressful.¹²⁸ People recently released from prison are often confronted with little or no family support, unemployment, substance abuse, little education, and lack of housing.¹²⁹ A great deal of people released from prison have few work skills and often very little work history.¹³⁰ Many inmates quickly relapse into old patterns of drug and alcohol abuse, making it more difficult for them to avoid criminal activity.¹³¹ Effective rehabilitative programs are critical to successfully reentering the community because of all the challenges newly released individuals face.¹³² This is undoubtedly a comprehensive, high standard for prison programming, but there are current prison programs, such as the Progressive Programming Facility, that effectively incorporate many of these features.¹³³

Because “evolving standards of decency” in a “maturing society” guide the determination of appropriate conditions of incarceration,¹³⁴ the modern approach to incarceration should reflect the progressive, available research.¹³⁵ The most logical purpose of incarceration should be rehabilitation because most prisoners ultimately return to society, and research shows rehabilitation is the most effective method in reducing recidivism and reducing the burden on taxpayers.¹³⁶ The following Section discusses the Progressive Programming Facility at Los Angeles County, which is a prime example of a rehabilitative program that reduces recidivism and saves taxpayer’s money.¹³⁷

128. Richard P. Seiter & Karen R. Kadela, *Prisoner Reentry: What Works, What Does Not, and What is Promising*, 49 CRIME & DELINQUENCY 360, 367 (2003), available at http://canatx.org/rrt_new/professionals/articles/SEITER-WHAT%20WORKS.pdf, (on file with *The University of the Pacific Law Review*).

129. *See id.* (discussing a study that found that 50 out of 66 participants had no family or friends to help them when released from prison); *see also* Lois M. Davis, Robert Bozick, Jennifer L. Steele, Jessica Saunders, & Jeremy N.V. Miles, *Evaluating the Effectiveness of Correctional Education*, RAND CORP. xv (2013), available at https://www.bja.gov/Publications/RAND_Correctional-Education-Meta-Analysis.pdf (on file with *The University of the Pacific Law Review*) (finding that in 2004 only 36% of federal prison inmates had a high school education).

130. Seiter & Kadela, *supra* note 128.

131. *Id.*

132. *See id.* at 368 (arguing that prisoner reentry begins from the time a person enters prison, and that “reentry should be the focus of classification decisions, prison program participation, and assignment to prison-community transition programs.”)

133. *See infra* Part III (describing the Progressive Programming Facility’s rehabilitative features and how they impact inmates).

134. *Kennedy v. Louisiana*, 554 U.S. 407, 421 (2008) (quoting *Roper v. Simmons*, 543 U.S. 551, 563 (2005)).

135. *See infra* Part III.

136. *See infra* Part III (demonstrating the benefits of rehabilitative prison programs).

137. *See infra* Part III (illustrating the nature and purpose of the Progressive Programming Facility).

III. THE PROGRESSIVE PROGRAMMING FACILITY

The Progressive Programming Facility (“PPF”) at Los Angeles County Prison is in its fifteenth year of operation.¹³⁸ It is a voluntary program for incarcerated men who demonstrate dedication to personal growth, a drug free lifestyle, nonviolence, and rehabilitation.¹³⁹ The PPF is the only program of its kind in California.¹⁴⁰ Inmates apply for the program, complete a screening process, and commit themselves to a higher standard of living in prison.¹⁴¹ The PPF utilizes a personal accountability model, rather than a “negative group punishment model,”¹⁴² and applies many of the effective components of rehabilitative programs discussed above.¹⁴³ Although many participants are serving life sentences without the possibility of parole, inmates serving shorter sentences are also eligible for the program.¹⁴⁴

Each participant creates an individualized plan and engages in activities that promote social skills, vocational skills, and mental and emotional health.¹⁴⁵ The PPF offers art, education, music, sports, and writing workshops.¹⁴⁶ The PPF also gives inmates the opportunity to raise money for charities.¹⁴⁷ Additionally, the program has groups based on various interests, such as a Veterans group and a meditation workshop.¹⁴⁸ Los Angeles County Prison offers some of these programs exclusively to inmates in the PPF.¹⁴⁹ For example, inmates in the PPF play in softball tournaments on the weekends.¹⁵⁰ Inmates in the general population yards, however, are not allowed to use the bat required for the game

138. THE PRISON HONOR PROGRAM, <http://www.prisonhonorprogram.org/> (on file with *The University of the Pacific Law Review*).

139. *Id.*

140. Telephone Interview with Lieutenant Duane Bennett, Public Information Officer at California State Prison, Los Angeles County (Feb. 16, 2016).

141. THE PRISON HONOR PROGRAM, *supra* note 138; Telephone Interview with Lieutenant Duane Bennett, Public Information Officer at California State Prison, Los Angeles County (Feb. 16, 2016).

142. *Id.*

143. *See supra* Part III (detailing rehabilitative measures that have a positive impact on inmates after they are released from prison).

144. Telephone Interview with Lieutenant Duane Bennett, Public Information Officer at California State Prison, Los Angeles County (Feb. 16, 2016).

145. THE PRISON HONOR PROGRAM, *supra* note 138.

146. Luis J Rodriguez, Introduction: A Chance to Live Like Human Beings, in *HONOR COMES HARD: WRITINGS FROM THE CALIFORNIA PRISON SYSTEM'S HONOR YARD 5* (Luis J. Rodriguez & Lucinda Thomas, eds. 2009).

147. Telephone Interview with Lieutenant Duane Bennett, Public Information Officer at California State Prison, Los Angeles County (Feb. 16, 2016).

148. *TOE TAG PAROLE: TO LIVE AND DIE/ YARD A* (Home Box Office 2015).

149. Telephone Interview with Lieutenant Duane Bennett, Public Information Officer at California State Prison, Los Angeles County (Feb. 16, 2016).

150. *Id.*

because of the propensity for violence among the general inmate population.¹⁵¹ However, several of the activities available to PPF inmates, such as art, education programs, and therapy, are also available to inmates outside of the program.¹⁵²

A group of inmates who decided they did not want to participate in “prison politics” created PPF.¹⁵³ “Prison politics” refers to the extreme racial segregation found in most prisons.¹⁵⁴ This segregation often leads to threats, physical assaults, and higher rates of violence.¹⁵⁵ A unique feature of the PPF is that the inmates commit to living in a racially integrated environment.¹⁵⁶ Integrating the inmates dramatically reduced the “prison politics” violence typically seen in racially segregated prison yards.¹⁵⁷ The level of violence on the PPF yard is described as “non-existent” when compared with the level of violence in the general population yards.¹⁵⁸ Racially integrated prison programs also help prepare inmates to live in a culturally diverse society, which supports inmates successfully transitioning back into society.¹⁵⁹

Because a group of inmates initiated the PPF, and because Los Angeles County Prison already implemented many of the requested activities, the PPF did not cost Los Angeles County Prison anything outside of its available budget.¹⁶⁰ In fact, the PPF saves Los Angeles County Prison approximately \$200,000 annually.¹⁶¹ The decrease in violence explains those savings.¹⁶²

A great deal of money is spent on ways to reduce prison violence, procedures to handle inmate attacks with each other or against guards, and disciplinary measures when these outbursts occur.¹⁶³ In the interest of fairness, there is no official study detailing the PPF’s success and cost-effective methods.¹⁶⁴

151. *Id.*; see also TOE TAG PAROLE: TO LIVE AND DIE/ YARD A (Home Box Office 2015) (describing the weekend softball tournaments and why inmates outside of the PPF are not allowed to participate in a sport that involves a bat).

152. Telephone Interview with Lieutenant Duane Bennett, Public Information Officer at California State Prison, Los Angeles County (Feb. 16, 2016).

153. *Id.*

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. Sherman Davis, *Is California’s Experiment with Racial Integration in Prisons Working?*, PRISON WRITERS (2016), <http://www.prisonwriters.com/racial-integration-in-prisons/> (on file with *The University of the Pacific Law Review*).

160. Telephone Interview with Lieutenant Duane Bennett, Public Information Officer at California State Prison, Los Angeles County (Feb. 16, 2016).

161. THE PRISON HONOR PROGRAM, *supra* note 138; see also *id.* (confirming that the PPF saves \$200,000 annually).

162. Telephone Interview with Lieutenant Duane Bennett, Public Information Officer at California State Prison, Los Angeles County (Feb. 16, 2016).

163. *Id.*

164. *Id.*

However, Los Angeles County Prison reports saving money, and studies on the type of individual activities offered also report savings.¹⁶⁵

One lieutenant at Los Angeles County Prison explained that the PPF inmates' behavior, communication, and demeanor are different from inmates in the general population.¹⁶⁶ Inmates in the PPF openly speak with guards, which inmates outside of the PPF stringently avoid.¹⁶⁷ In fact, fellow inmates often ostracize, or verbally and physically assault inmates who openly communicate with guards.¹⁶⁸ In the PPF, however, inmates feel comfortable speaking with guards about anything from small talk to bigger issues.¹⁶⁹

Although the PPF has been successful, it has also drawn critics.¹⁷⁰ The following Section addresses the opposing views of the PPF.¹⁷¹

One concern regarding the PPF is that participating inmates feel "entitled," and have a "bad attitude" because they have more independence and accountability and are able to participate in more activities than inmates in the general population.¹⁷² A lieutenant at Los Angeles County Prison provided an example of this "bad attitude."¹⁷³ He explained that one way inmates can raise money for charity is to buy food from outside vendors and sell it in the prison.¹⁷⁴ For reasons irrelevant to the example, the prison administration cancelled the program.¹⁷⁵ The lieutenant emphasized PPF inmates were the only inmates to

165. For example, meditation is one of the workshops available to inmates in the PPF. Studies on meditation in prison show participants experience less depression, anxiety, criminal thinking, fatigue, and anger. Furthermore, incarcerated persons who meditate report higher feelings of spirituality, optimism, and sense of purpose. Recidivism rates for people who participate in meditation are reduced by 30%. See David Lynch Foundation, *Healing Traumatic Stress and Raising Performance in At-Risk Populations*, <https://www.davidlynchfoundation.org/prisons.html#video=hzV55gus4NA> (Jan. 7, 2016) (on file with *The University of the Pacific Law Review*) (explaining the effects of meditation on incarcerated persons). Another component of the PPF is education. A recent study found that prisoners who completed educational classes had a 13% lower chance of returning to prison (see Lois M. Davis, Robert Bozick, Jennifer L. Steele, Jessica Saunders, & Jeremy N.V. Miles, *Evaluating the Effectiveness of Correctional Education*, RAND CORP. xv (2013), available at https://www.bja.gov/Publications/RAND_Correctional-Education-Meta-Analysis.pdf (on file with *The University of the Pacific Law Review*) (showing lower rates of recidivism for inmates who completed educational classes in prison)). The Bard Prison Initiative (BPI) is one example of a prison education program. BPI reports that only 2% of its graduates have returned to prison, which not only benefits each individual, but also saves taxpayer money by keeping people out of prison. See BARD PRISON INITIATIVE, *What We Do* (2015), <http://bpi.bard.edu/what-we-do/> (on file with *The University of the Pacific Law Review*) (describing BPI and its implications for saving money and lowering recidivism rates).

166. Telephone Interview with Lieutenant Duane Bennett, Public Information Officer at California State Prison, Los Angeles County (Feb. 16, 2016).

167. *Id.*

168. *Id.*

169. *Id.*

170. See *infra* Part III (describing opposition to the Progressive Programming Facility).

171. See *infra* Part III (analyzing the opposition to the Progressive Programming Facility).

172. Telephone Interview with Lieutenant Duane Bennett, Public Information Officer at California State Prison, Los Angeles County (Feb. 16, 2016).

173. *Id.*

174. *Id.*

175. *Id.*

speaking up and opposing the cancellation.¹⁷⁶ Though the lieutenant clarified that the inmates did not respond violently to the cancellation, he reiterated that this “bad attitude” is a problem caused by the PPF.¹⁷⁷

Though prison guards may dislike any form of inmate resistance, it is highly unpersuasive that this verbal resistance creates significant problems in a prison yard reporting “non-existent” violence.¹⁷⁸ Furthermore, the lieutenant also described the guards’ overall perception of the PPF as positive, and he said that because of the low risk of violence, the PPF is a great work environment.¹⁷⁹

Another critical factor concerning this allegedly negative aspect of the PPF is that many inmates enter prison without the communication and emotional skills necessary to communicate their feelings without resorting to aggressive behavior.¹⁸⁰ The fact that the PPF inmates were able to verbally express rather than react violently to their disappointment in the prison’s choice to cancel a program they cared about demonstrates significant levels of self-control and communication skills.¹⁸¹ Self-control and communication skills are primary examples of the type of skills that help inmates successfully transition back into society after release.¹⁸²

A common argument against rehabilitative programming like the PPF is that people should be punished in prison; therefore, they do not deserve to participate in positive activities that help improve inmates’ interpersonal skills.¹⁸³ Some people even argue that criminals should be treated violently while incarcerated.¹⁸⁴ The most obvious flaw in this line of reasoning is that the United States prison system currently utilizes this model, and the state of our prison system clearly demonstrates a need for change.¹⁸⁵ Legislation modeled after the PPF program will foster this necessary change.¹⁸⁶

176. *Id.*

177. *Id.*

178. *Id.*

179. *Id.*

180. Patricia Clark, Preventing Future Crime with Cognitive Behavioral Therapy, NAT’L INSTITUTE OF JUSTICE (May 29, 2010), available at <https://www.nij.gov/journals/265/pages/therapy.aspx> (on file with *The University of the Pacific Law Review*) (describing the link between criminal behavior and low social skill, lack of self-control, and poor communication skills).

181. *Id.*

182. Richard P. Seiter & Karen R. Kadela, *Prisoner Reentry: What Works, What Does Not, and What is Promising*, 49 CRIME & DELINQUENCY 360, 367 (2003), available at http://canatx.org/rrt_new/professionals/articles/SEITER-WHAT%20WORKS.pdf, (on file with *The University of the Pacific Law Review*).

183. Brock Bastian, Thomas F. Denson, & Nick Haslam, *The Roles of Dehumanization and Moral Outrage in Retributive Justice*, 4 PLOS 1 (2013).

184. *Id.*

185. See *supra* Part II (describing the high cost and low rehabilitative effect the current prison system produces).

186. See *infra* Part IV (analyzing prior attempts to legislate the Progressive Programming Facility).

IV. REQUIRING PRISONS TO IMPLEMENT A PROGRESSIVE PROGRAMMING FACILITY

In 2007, the California Assembly and the California Senate passed a bill requiring California state prisons implement programs based on the PPF.¹⁸⁷ Unfortunately, former California Governor Arnold Schwarzenegger vetoed the bill.¹⁸⁸ Section A of this Part will describe the vetoed legislation.¹⁸⁹ Section B of this Part will discuss the opposition and veto of the bill,¹⁹⁰ and Section C will explain why now is the ideal time to implement similar legislation.¹⁹¹

A. *The Honor Yard Bill*

The PPF was originally called the “Honor Yard” to reflect the collective choice to live honorable lives while incarcerated.¹⁹² Senator Romero wrote this Honor Yard bill, SB 299, in 2007.¹⁹³ The purpose of SB 299 was to promote public safety and rehabilitation by requiring California prisons that housed level III and IV offenders to implement an Honor Yard.¹⁹⁴ The bill listed several legislative findings: 90 percent of inmates returned to the California community, rehabilitative programs were necessary for successful reintegration into society and to protect the public, inmates in higher security prisons needed environments that effectuated lasting behavioral change, the Honor Yard proved to inspire significant behavioral change, and because of that proven change, the Honor Yard promoted public safety.¹⁹⁵

People entering prison are placed in a numbered (I-IV) category based on a point system, which calculates their initial prison sentence and can be adjusted to consider infractions or good behavior while incarcerated.¹⁹⁶ Level III and IV inmates are placed in higher security prisons.¹⁹⁷ SB 299 would have required the Department of Corrections and Rehabilitation (CDCR) to develop an Honor Yard for inmates categorized as level III or IV.¹⁹⁸

187. S.B. 299, 2007 Leg., 2007-2008 Sess. (Cal. 2007) (as amended on Aug. 31, 2007, but not enacted).

188. *See infra* Part IV.B (assessing Governor Schwarzenegger's veto to SB 299 and its impact on California prisons).

189. *See infra* Part IV.A (examining SB 299 and its intended impact on California prisons).

190. *See infra* Part IV.B (illustrating the three primary opponents views of SB 299 and how they impacted the legislation).

191. *See infra* Part IV.B (discussing how prison reform is changing and why now is the more appropriate time to pass legislation requiring the Progressive Programming Facility).

192. Telephone Interview with Lieutenant Duane Bennett, Public Information Officer at California State Prison, Los Angeles County (Feb. 16, 2016).

193. S.B. 299, 2007 Leg., 2007-2008 Sess. (Cal. 2007) (as amended on Aug. 31, 2007, but not enacted).

194. *Id.*

195. *Id.*

196. Cal. Code Regs. tit. 15, § 3375.1 (current through 2016).

197. S.B. 299, 2007 Leg., 2007-2008 Sess. (Cal. 2007) (as amended on Aug. 31, 2007, but not enacted).

198. *Id.*

Because SB 299 was based on the PPF at Los Angeles County Prison, it also required inmates to meet certain criteria before being eligible to apply to the voluntary program.¹⁹⁹ Inmates would have been required to live free of drugs, violence, and gang affiliation, as well as to live in a racially integrated environment.²⁰⁰ Had SB 299 passed, level III inmates would have needed two years and level IV inmates would have needed three years without any serious rule violations to be eligible for the program.²⁰¹ After eligible inmates were accepted into the program, prison staff would have created a master list, and inmates on the list would have been transferred to the designated Honor Yard at that facility or to the Honor Yard at another prison if the on-site Honor Yard was at capacity.²⁰² Section B of this Part addresses the formal opposition to the bill.²⁰³

B. Opposition and Veto of SB 299

Three main forces opposed SB 299.²⁰⁴ Section 1 will describe why the Department of Finance initially opposed SB 299.²⁰⁵ Section 2 will explain the Crime Victims United of California's stance on SB 299,²⁰⁶ and Section 3 will discuss Governor Arnold Schwarzenegger's veto.²⁰⁷

1. Department of Finance

The Department of Finance (DOF) initially opposed SB 299 because the introduced draft increased spending, which the DOF stated was outside of the budget.²⁰⁸ One of the provisions increased visitation time from two days to four days, which the Department estimated would cost the state \$19.2 million dollars annually if required at all twenty-four prisons.²⁰⁹ Though the Department conceded the unlikelihood that every prison could increase the visitation time or even implement an Honor Yard, this remained a significant opposing point to SB 299, and the DOF only removed its opposition upon the provision's deletion.²¹⁰

199. *Id.*

200. S.B. 299, 2007 Leg., 2007-2008 Sess. (Cal. 2007) (as amended on Aug. 31, 2007, but not enacted).

201. *Id.*

202. *Id.*

203. *See infra* Part IV.B (discussing the opposition to SB 299).

204. *See infra* Part IV.B.1-3 (illustrating SB 299's three primary opposing groups).

205. *See infra* Part IV.B.1 (explaining why the Department of Finance initially opposed SB 299 and why it later removed its opposition).

206. *See infra* Part IV.B.2 (analyzing why the Crime Victims United California opposed SB 299).

207. *See infra* Part IV.B.3 (describing former Governor Arnold Schwarzenegger's veto to SB 299).

208. Senate Rules Committee, S.B. 299 Bill Analysis (Ca. 2007).

209. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 299 at 6 (June 19, 2007).

210. *See* S.B. 299, 2007 Leg., 2007-2008 Sess. (Ca. 2007) (as amended on Aug. 31, 2007, but not enacted) (demonstrating that the Department of Finance removed its opposition).

Although the legislature removed increased visitation time from SB 299, it should be included in any new Progressive Programming Facility bill.²¹¹ Frequent contact with loved ones inspires inmates to behave better;²¹² it also strengthens family bonds and produces significantly lower recidivism rates.²¹³ However, increased visitation requires more guards, which produces higher costs.²¹⁴

Although the DOF considered the estimated increase in cost too significant to justify, the savings from the PPF will offset the costs.²¹⁵ Also, it is notable that the DOF's cost was just an estimate; studies show that many inmates receive no visitors; therefore, the cost prediction for increased visitation will likely be lower than anticipated.²¹⁶ Furthermore, because the PPF reduces violence, prisons may find they can reduce the amount of guards typically required for visitation after the initial implementation period, which will decrease the costs associated with increased visitation.²¹⁷

Visitation time benefits inmates in a number of ways: it strengthens family bonds, decreases stress and feelings of anxiety, and reduces recidivism.²¹⁸ Increasing visitation for inmates committed to living a positive lifestyle will create a more positive prison environment with less violence and lower rates of recidivism, which both save tax dollars.²¹⁹ Maintaining the increased visitation requirement will also reduce recidivism rates, which will in turn reduce prison populations and lead to fiscal savings.²²⁰

211. See *infra* Part III.B.1 (describing the benefits of inmate visitation such as reduced recidivism and closer family bonds).

212. KUPERS, *supra* note 35.

213. See William D. Bales & Daniel P. Mears, *Inmate Social Ties and the Transition to Society: Does Visitation Reduce Recidivism?*, J. RES. IN CRIME & DELINQUENCY 287, 293, 304 (2008) (explaining various theories which posit that prison visitation promotes strengthening family bonds, and also providing a study on Florida inmates which showed a 30.7% reduction in recidivism for inmates who were visited while incarcerated).

214. KUPERS, *supra* note 35.

215. See *supra* Part III.

216. Bales & Mears, *supra* note 213 at 293, 304 (finding that 58% of inmates studied were not visited at all).

217. See *supra* Part III (describing the results from the PPF regarding lower rates of violence and savings due to low violence).

218. Bales & Mears, *supra* note 213.

219. *Id.*

220. See *supra* Part II (emphasizing the positive results inmates experience when visitation time is increased).

2. *Crime Victims United of California*

The Crime Victims United of California (CVUC) also opposed SB 299.²²¹ CVUC conceded its support for rehabilitation, but emphasized SB 299 should acknowledge that some offenders, especially level III and IV offenders, are incapable of rehabilitation.²²² According to CVUC, the rehabilitative focus should be placed on low-level offenders “who stand a greater chance of turning their lives around prior to committing more serious and violent crimes.”²²³ First and foremost, this argument is mistaken because inmates serving sentences for violent crimes recidivate at lower rates than inmates serving sentences for less serious offenses.²²⁴

The other flaw in CVUC’s criticism is the clear misunderstanding SB 299’s effect.²²⁵ Regardless of an inmate’s ability to successfully complete a rehabilitative program, the PPF is a completely voluntary program, which means only inmates dedicated to rehabilitation can participate in the PPF.²²⁶ Moreover, every inmate involved in the PPF at Los Angeles County Prison is a level III or IV offender.²²⁷ The success of that program clearly demonstrates the ability of level III and IV offenders to rehabilitate.²²⁸ To make this point even more clear, many of the inmates in the PPF at Los Angeles County Prison are serving life sentences without the possibility of parole and participated in the PPF for years without a single infraction.²²⁹

221. CRIME VICTIMS UNITED OF CALIFORNIA, *Legislation 2007 Archives*, <http://www.kristieslaw.org/legislation.htm> (2007) (on file with *The University of the Pacific Law Review*).

222. *Id.*

223. *Id.*

224. See CDCR, 2012 OUTCOME EVALUATION REPORT vi (2014), available at http://www.cdcr.ca.gov/Adult_Research_Branch/Research_Documents/ARB_FY_0809_Recidivism_Report_02.10.14.pdf (on file with *The University of the Pacific Law Review*) (finding that inmates incarcerated for more serious offenses returned to prison less frequently than inmates incarcerated for less serious offenses. “For example, inmates released for rape have a lower recidivism rate (52.8 percent) than those who were committed for vehicle theft (72.5 percent).”).

225. See *infra* Part III (explaining that the PPF is only available to certain level III and IV inmates who are committed to behavioral change).

226. See *supra* Part III (detailing the requirements for participating in the PPF, including that it is a voluntary program).

227. Telephone Interview with Lieutenant Duane Bennett, Public Information Officer at California State Prison, Los Angeles County (Feb. 16, 2016).

228. See *supra* Part III (reporting the PPF inmates’ low violence rates and improved self-control and communication skills).

229. Telephone Interview with Lieutenant Duane Bennett, Public Information Officer at California State Prison, Los Angeles County (Feb. 16, 2016); though outside the scope of this article, a life sentence without the possibility of parole is arguably an inhumane form of punishment. See ACLU, *The Truth About Life Without Parole: Condemned to Die in Prison* (2015) <https://www.aclunc.org/article/truth-about-life-without-parole-condemned-die-prison> (on file with *The University of the Pacific Law Review*) (“Prisoners condemned to die in prison are not given any special treatment and, in fact, have less access to programs than other prisoners. They are housed in high security facilities with few privileges, far away from any relatives, and in crowded group

The CVUC also opposed SB 299 because it lacked sufficient detail.²³⁰ The CVUC explained that the bill indicated that visitation alone was enough to reduce recidivism, and therefore required more detailed descriptions of the necessary, intensive rehabilitative program.²³¹ To solve this problem, the author of the bill should explain the PPF at Los Angeles County Prison in order to demonstrate exactly what worked in the past and how it will work in other prisons.²³² While clarity is essential, it is equally necessary to consider that this legislation regulates prisons, and specifically regulates the CDCR.²³³ Each prison is different and each warden needs to retain some control when implementing new programs, so the CDCR and various wardens may oppose a bill that requires explicit, exhaustive measures required for prison programming.²³⁴ When drafting new legislation, the author should be mindful to balance the level of detail in the bill to ensure it will be passed.²³⁵

3. Governor Schwarzenegger's SB 299 Veto

Governor Schwarzenegger's veto message stated: "While I appreciate the author's interest in reducing recidivism and promoting public safety, this bill is unnecessary because the California Department of Corrections and Rehabilitation already has the authority to establish and expand honor programs administratively."²³⁶ Governor Schwarzenegger's reason for vetoing SB 299 fails to recognize the purpose of the legislation in requiring the CDCR to implement the PPFs.²³⁷ The problem is that the PPF has shown continual success for 15 years and it is still the only program of its kind in California.²³⁸ New legislation requiring California prisons to implement PPFs should highlight that the CDCR has not used its independent authority to implement these programs.²³⁹

cells. Ironically, people on death row are provided much more comfortable single cells and sometime gain celebrity and attention just by being there.")

230. CRIME VICTIMS UNITED OF CALIFORNIA, *supra* note 221.

231. *Id.*

232. *See id.* (explaining that a problem with SB 299 is that it references successful prison programs that SB 299 is modeled on but does not include information about the successful program).

233. *See* GOVERNOR ARNOLD SCHWARZENEGGER, VETO MESSAGE SB 299 (2007) (stating that the legislation is unnecessary because the CDCR has the authority to require honor programs).

234. *See id.* (explaining that the CDCR has the power to implement prison programming which implies their right to control the type of prison programs at each prison).

235. *See supra* Part IV.B.

236. GOVERNOR ARNOLD SCHWARZENEGGER, VETO MESSAGE SB 299 (2007).

237. *See* SB 299, 2007 Leg., 2007-2008 Sess. (2007) (as amended on Aug. 31, 2007, but not enacted). (referencing the CDCR's authority to implement rehabilitative programs).

238. Telephone Interview with Lieutenant Duane Bennett, Public Information Officer at California State Prison, Los Angeles County (Feb. 16, 2016).

239. *See supra* Part IV.B.

C. 2017 is the Time to Try SB 299 Again

In 2011, the Supreme Court of the United States found the overcrowding in California prisons unconstitutional.²⁴⁰ In response, CDCR released a plan for “realignment,” which they described as, “[a] blueprint to save billions of dollars, end federal court oversight, and improve the prison system.”²⁴¹ California’s budget demonstrates that the projected monetary savings of realignment were not met.²⁴² Critics express concern because the budget continues to grow despite the reduction in California’s prison population.²⁴³ However, a large part of realignment includes investing in rehabilitative programs, which may be more expensive initially but will produce savings after implementation.²⁴⁴ California continues spending large amounts of money on prisons and still faces other challenges regarding prison reform, including overcrowding, high rates of violence, racial segregation, depressed inmates, and undesirable work environments.²⁴⁵ This is a critical time to implement effective, cost saving programs.²⁴⁶ PPF is an ideal program to promote the goals of realignment because it is inexpensive to implement, especially compared to other rehabilitative programs, and it produces vast savings.²⁴⁷

In 2015, President Barack Obama became the first sitting president to visit a federal prison.²⁴⁸ This trip was significant because it emphasized how dedicated the President is to prison reform.²⁴⁹ In 2015, Democrats and Republicans jointly announced a bipartisan bill on prison reform.²⁵⁰ The political climate in the United States, and specifically in California, demonstrates that this is the correct time to rewrite SB 299 in order to implement legislation requiring PPFs in

240. *Brown v. Plata*, 131 S.Ct. 1910, 1928 (2011).

241. CDCR, *The Future of California Prisons 52* (2011), available at <http://www.cdcr.ca.gov/2012plan/docs/plan/complete.pdf> (on file with *The University of the Pacific Law Review*).

242. Magnus Lofstrom & Brandon Martin, *Public Safety Realignment: Impacts So Far*, PPIC (2016), http://www.ppic.org/main/publication_quick.asp?i=1164 (on file with *The University of the Pacific Law Review*).

243. *Id.*

244. *Id.*; It is worth noting that most rehabilitative programs are expensive to implement initially; however, the Progressive Programming Facility is relatively inexpensive to implement because the majority of activities the program offers are already available at most prisons. Telephone Interview with Lieutenant Duane Bennett, Public Information Officer at California State Prison, Los Angeles County (Feb. 16, 2016).

245. *Id.*

246. *Id.*

247. *See supra* Part III (describing the low cost it takes to implement the PPF into prisons).

248. Tricia Escobedo, *What’s Going on with Prison Reform in America?*, CNN (Oct. 21, 2015, 8:31 AM), <http://www.cnn.com/2015/10/21/us/prison-reform-overview/>.

249. *Id.*

250. *Id.*

California prisons because legislators on both sides of the political spectrum are interested in implementing cost-effective measures in prisons.²⁵¹

V. CONCLUSION

One in every 100 Americans is either incarcerated or on probation.²⁵² United States' taxpayers spend billions of dollars each year on incarceration.²⁵³ The majority of people who end up in prison are less educated and financially unstable compared to the general population.²⁵⁴ While incarcerated, many inmates endure conditions that leave them depressed, anxious, violent, and suicidal.²⁵⁵ When released from confinement, former inmates have a difficult time securing employment, finding housing, reconnecting with family and friends, and staying away from drugs, alcohol, and criminal behavior.²⁵⁶

Comprehensive, individually tailored, rehabilitative prison programs reduce the negative impacts of confinement.²⁵⁷ Incarcerated individuals who complete effective prison programs are less likely to reoffend and return to prison.²⁵⁸ Prison programs that work to decrease stress, promote nonviolence, teach self-awareness, and encourage healthy behavior treat incarcerated people as humans rather than animals, and demonstrate a commitment to public safety, human values, and rehabilitation.²⁵⁹ The Progressive Programming Facility at the Los Angeles County Prison exemplifies many of these qualities, and for the fifteen

251. See *supra* Part IV (explaining why SB 299 failed and why a new attempt at legislating the PPF is necessary).

252. NAT'L RESEARCH COUNCIL, GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES 315 (2014), available at <http://www.nap.edu/read/18613/chapter/1> (on file with *The University of the Pacific Law Review*).

253. Christian Henrichson & Ruth Delaney, *The Price of Prisons: What Incarceration Costs Taxpayers*, VERA INST. OF JUST. (2005), available at <http://archive.vera.org/sites/default/files/resources/downloads/price-of-prisons-updated-version-021914.pdf> (on file with *The University of the Pacific Law Review*).

254. Lois M. Davis, Robert Bozick, Jennifer L. Steele, Jessica Saunders, & Jeremy N.V. Miles, *Evaluating the Effectiveness of Correctional Education*, RAND CORP. xv (2013), available at https://www.bja.gov/Publications/RAND_Correctional-Education-Meta-Analysis.pdf (on file with *The University of the Pacific Law Review*).

255. See *supra* Part II.A.2 (reporting the negative impact of conditions of confinement).

256. Richard P. Seiter & Karen R. Kadela, *Prisoner Reentry: What Works, What Does Not, and What is Promising*, 49 CRIME & DELINQUENCY 360, 367 (2003), available at http://canatx.org/rrt_new/professionals/articles/SEITER-WHAT%20WORKS.pdf, (on file with *The University of the Pacific Law Review*).

257. See *supra* Part III (detailing the most effective rehabilitative programs for reducing recidivism).

258. See *supra* Part III (describing the lower rates of recidivism when inmates complete effective rehabilitative programs).

259. David Lynch Foundation, *Healing Traumatic Stress and Raising Performance in At-Risk Populations*, <https://www.davidlynchfoundation.org/prisons.html#video=hZV55gus4NA> (Jan. 7, 2016) (on file with *The University of the Pacific Law Review*).

years since its implementation, it has saved substantial amounts of money and changed the lives of numerous inmates.²⁶⁰

In the past, prison reform requiring rehabilitative programs failed due to a lack of information, negative societal views of prison inmates, and emotional responses to criminal behavior.²⁶¹ In 2016, legislators are pushing for prison reform at the state and federal levels.²⁶² Developing research shows that rehabilitative prison programs, like the Progressive Programming Facility, save money and lower recidivism rates.²⁶³ California needs to enact legislation that requires prisons to implement programs based on the Progressive Programming Facility at Los Angeles County Prison because of the dire state of California prisons where taxpayers spend billions of dollars on an ineffective prison system.²⁶⁴ Enacting such legislation will promote public safety and humane treatment of incarcerated individuals, and will save significant amounts of money.²⁶⁵

In the 1800's, Fyodor Dostoevsky wrote, "The degree of civilization in a society can be judged by entering its prisons."²⁶⁶ California's prisons are plagued with conditions that do not meet modern standards of civilization and human decency.²⁶⁷ Requiring California prisons to implement Progressive Programming Facilities will promote humane treatment of individuals, and will be a step toward an effective prison system.²⁶⁸

260. *See supra* Part III (describing the PPF and how it has positively impacted the prison and inmates who participate in the program).

261. *See supra* Part II (assessing historical practices and societal views of inmates and how both led to the current treatment of inmates and high cost of prisons).

262. *See supra* Part IV (discussing the current political conversation regarding prison reform).

263. *See supra* Part III (analyzing rehabilitative programs and their positive fiscal, moral, and societal value).

264. *See supra* Part IV (emphasizing the need for legislative action that requires California prisons to implement a PPF).

265. *See supra* Parts III–IV (analyzing how rehabilitative programs like the PPF save money, treat inmates humanely, and promote public safety).

266. BIG THINK, <http://bigthink.com/words-of-wisdom/fyodor-dostoevsky-you-can-just-a-society-by-entering-its-prisons> (on file with *The University of the Pacific Law Review*) (quoting Fyodor Dostoevsky in *The House of the Dead*).

267. *See infra* Part II (explaining the conditions of confinement and rate at which inmates are released into society).

268. *See infra* Parts II–IV (analyzing conditions of confinement and how the PPF positively impacts inmates and society).