

Big Time for Petty Crime: The Story of Petty Theft Offenders in California

by
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"The criminal justice system in California is out of balance, and will remain so unless the entire state and local criminal justice system is addressed from prevention through discharge of jurisdiction... insufficient prevention efforts, intermediate sanctions and programs for those incarcerated exist; and as a result, there are offenders incarcerated and on probation who judges and parole authorities would, and should, manage differently if these additional sanctions were available."

California Blue Ribbon Commission on Inmate Population Management,
Final Report, 1990

Introduction

In 1994, the "three strikes and you're out" law hit California politics like a locomotive. Prospective office-holders rushed to endorse the law which would one day cost nearly twice what the state spends on all of higher education, and would add 276,000 prisoners to a prison system already at 180% of capacity.

A cursory glance at the results of the "three strikes" initiative - voters approved Proposition 184 by a vote of 72% in favor and 28% opposed - have led many to conclude that any and all proposals to add inmates to the state's burdened prison system are a political "no brainer."

But, as has been consistently found in public opinion polling on crime, there are few consistencies. Despite the resounding victory of Proposition 184, 85% of the respondents to a *San Diego Union-Tribune* poll indicated that they would have favored a "violent-only" version of the law on the

ballot. Seventy-two percent of respondents to a *Los Angeles Times* survey indicated that they would not support taking funds from higher education to pay for the additional prisoners imprisoned under "three strikes", an inevitable scenario in a zero sum fiscal game.

Seemingly contradictory findings such as these have been revealed in national polling as well. While 83% of respondents believe that the courts are generally "not harsh enough", 89% feel that "increasing employment opportunities for youths could prevent a lot of serious crime," and 79% believe that "in most cases society would be better served if non-violent criminals were not jailed but were put to work and made to repay their victims."¹

In-depth focus groups with Californians in 1990 revealed that when respondents were provided with information about the criminal justice system and available alternatives to incarceration, they dramatically changed the way they felt about

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sentencing. When a group of 1,000 respondents were asked to "sentence" hypothetical defendants to either prison or probation, they sent 60% of the defendants to prison. The subjects were then given some information about the costs of prison and some prison alternatives (electronic monitoring and intensive supervision probation). The percentage of "defendants" who were "sentenced" to prison dropped to 25%.²

There is also strong support in the corrections field for the use of alternatives to imprisonment. In 1990, the California Blue Ribbon Commission on Inmate Population Management was empaneled by Republican Governor George Deukmejian, who assigned the majority of appointments to the Commission, and the Democrat-dominated California Senate and Assembly. The bipartisan commission was made up of the state's correctional leadership, prosecutors, judges, probation personnel, researchers and service providers. The commission consistently advocated for the use of "intermediate sanctions" for non-violent, non-serious offenders, concluding that the use of such alternatives was both cost-effective and in the interests of public safety.³

This research then, has started with the belief - supported by polling data and professional conclusions - that while Californians may feel strongly that repeat, violent offenders need to be incarcerated, that feeling is not generalizable to the non-violent offender population.

Petty Theft Offenders

As felony prisoners go, those who are arguably least feared by Californians are shoplifters. In California, petty theft is defined as theft of property valued at less than \$400. Of course, petty thefts usually amount to much less than that.

In 1977, Penal Code 666 was amended, making petty theft with a prior property offense for which an offender had been incarcerated, punishable as a felony or misdemeanor. Prior to that time, petty theft

was punishable as a misdemeanor, with a maximum one year county jail sentence.

While there were no petty theft offenders in state prison in 1977, there are currently 5,000 such offenders imprisoned in the California Department of Corrections ("CDC"). At the cost of approximately \$21,000 per year, that means that the state is devoting \$105 million per year to imprison shoplifters. There are currently twice as many persons in CDC for petty theft as there are for rape.

Purpose and Methodology

In the face of substantial prison costs and strong support for non-prison dispositions for minor offenders, harsh sentences for petty thieves could only be justified if they managed to reduce petty thievery. The degree to which Penal Code Section 666 has or has not done so is the question which this analysis sought to answer.

To answer this research question, the petty theft rates in the five largest states were compared. The states of California, Texas, New York, Pennsylvania and Florida created a handy interstate comparison. In California, Texas and Florida, repeat petty thievery can be charged as a felony. In New York and Pennsylvania, petty theft is always charged as a misdemeanor and is never prison eligible. If either the deterrent or incapacitative effects of imprisoning petty thieves was successful, one would expect that states which "felonized" petty theft would experience lower rates of petty thievery than those which did not. Conversely, if charging petty theft as a felony was an ineffective policy choice, no difference in petty theft rates would be expected.

To add depth to the analysis and suggest possible policy implications, persons imprisoned in the California Medical Facility on petty theft with a prior charges were interviewed. Chosen arbitrarily by California Department of Corrections staff, these offenders are not a representative sampling of inmates, as much as they are a signpost for policy considerations.

Findings

Table 1 represents in graphic form the major finding of our analysis. It is not good news for supporters of imprisoning petty thieves.

Contrary to the expectation that felony sanctions for petty thieves would reduce petty thievery, the three states which "felonize" petty theft experience consistently higher petty theft rates than those which do not.

In fact, Florida, which has the highest petty theft rate, experiences petty thefts at 174% the rate of Pennsylvania, the state least frequently victimized by petty thieves. California's petty theft rate is 66% higher than Pennsylvania's and 7% higher than New York's. Petty theft is only punishable as a misdemeanor in New York and Pennsylvania.

A story behind the statistics

On April 12, 1995, the California Department of Corrections permitted researchers from the Center on Juvenile and Criminal Justice to interview several petty theft offenders from the AIDS ward in the California Medical Facility (CMF) in Vacaville. The prisoners were apprised of the nature of the research and volunteered to the interviews and to allow their Central Files to be reviewed. The following is a fairly typical case study of one of the prisoners, whose name was changed to maintain the confidentiality of his HIV status.

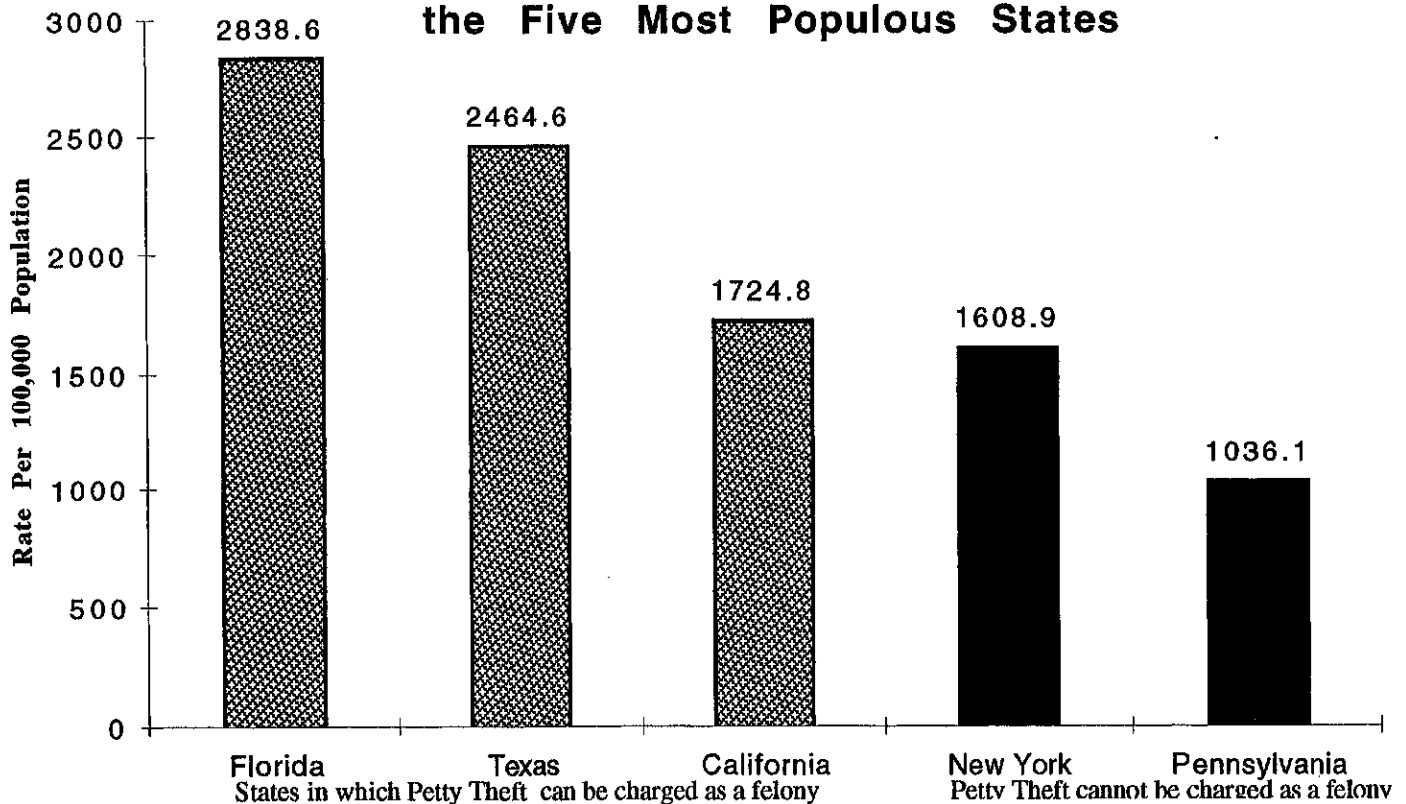
George

Charge: Petty Theft with a Prior Incarceration for Theft

Value of Stolen Goods: \$153

Items stolen: Thirteen pairs of women's panties and three picture frames

TABLE 1
Petty Theft Rates Per 100,000 in the Five Most Populous States



Source: Uniform Crime Reporting Offices in respective states.

Illinois excluded due to unavailability of data.

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At 43 years of age and the father of two children, George has spent more than half his life trying to cope with his drug addiction. He states that he is "tired of the whole scene." Though George was diagnosed as HIV positive in 1991, he has maintained a generally positive outlook on life. Until his petty theft conviction in 1994, George had been taking college courses and working toward becoming a drug counselor, a goal he still hopes to complete upon parole.

George began to experiment with drugs when he was a teenager and managed to stay out of trouble with the law until age 21 when he was first arrested for passing a bad check. Following this arrest, George was arrest-free for the next six years. In 1978, he was jailed for selling drugs.

Upon his release, George joined the military in an attempt to turn his life around. He was stationed in San Diego, far from his old friends. George reports that his drug addiction was not so easily escaped. He found drug use to be more prevalent in San Diego than it had been on the East Coast, even among the friends he made in the service.

Despite resuming the use of drugs, George completed two years of service in the military and was honorably discharged. He returned to Pennsylvania where he was unable to find work. In an attempt to support his drug habit, George turned to shoplifting. Though trained for combat in the military, George reports that he never thought of forcibly taking money from another person, or burglarizing a home, even when his cravings were at their worst. George was convicted of shoplifting two times over the next two years, and completed community service for these offenses. Ostracized by his family, and unable to beat his addiction, George returned to San Diego.

On September 24, 1994, George was arrested for what was to be his fourth conviction for petty theft. He placed some

women's underwear and picture frames in a paper bag at a Mervyn's Department Store in San Diego. He left without paying for the merchandise, valued at \$153. He was planning to give the stolen items to his girlfriend as a gift. Even though he had the money to pay for the items, George admits he was saving the money to purchase heroin.

George was sentenced as a felon under Penal Code Section 666 to 3 years in state prison for this offense. George's imprisonment will cost state taxpayers \$32,000, not including the costs of his treatment for HIV.

Discussion

There does not appear to be support in this study for the contention that harsher petty theft sentences have the desired effect on shoplifting in the five largest states. In fact, this data shows a positive correlation between "felonizing" petty theft and the incidents of shoplifting experienced.

In that respect, it gives support to the criminogenic impact of prisons found in other studies. For example, the RAND Corporation found that, when a group of offenders who were sentenced to state prison were compared to a matched group of offenders sentenced to probation, the probationers were 17% less likely to have a new charge filed against them than the prisoners.⁴

In many ways, George's case encapsulates the broader statistical comparison between the five largest states. Prior to his current incarceration, George actually moved from Pennsylvania, a state in which petty theft could bring only jail time, to California, a state in which he could receive up to a three year sentence for petty theft.

In George's life, and the lives of the largely homeless, drug addicted inmates interviewed at CMF, obtaining food, shelter and their daily "fix" was far higher on their hierarchy of needs than was the fear of incarceration. Several of those interviewed

indicated that they would have attended a drug program in lieu of incarceration, but that there were no beds available at the time of their sentencing.

Recommendations

The data revealed in this analysis support both other data and the public's view that scarce public resources ought not be wasted imprisoning shoplifters. California should abolish the "petty theft with a prior" law, and use the \$105 million more wisely.

In the Governor's fiscal year '95/'96 proposed budget, he has asked for student fee increases for the University of California, California State and Community College systems. These fees will generate \$68 million in revenues to the state. Reducing petty theft to a misdemeanor would allow the Governor to actually reduce student fees, opening up more opportunities for lower income students to attend college.

One of the most often cited reasons that crime did not increase during the Great Depression was the widespread use of public works projects employing

primarily young men in the crime-prone age years of 16 - 25. Currently, California has the highest teenage unemployment rate in the country, 38% higher than the national average. For \$105 million, the state could employ 72,000 young people.⁵

Or the money could be used to abate drug abuse in the very population which currently occupies California's prisons. In 1992, the Bay Area Services Network (BASN) was founded, providing drug treatment for thousands of parolees in six counties contiguous to the San Francisco Bay. That project was later extended to include Los Angeles and San Diego. BASN, which to date provides approximately \$4.3 million in drug treatment to recovering parolees, has been largely credited for the substantial reduction in technical, drug related parole revocations which the Department of Corrections has experienced over the past three years.

For \$105 million, this type of treatment could be offered to over 13,000 parolees throughout the state. This would have the dual benefit of bringing this network of services to counties like Orange, Fresno, and Kern which are currently bereft of such services, and augmenting the networks which currently exist.



Endnotes

1. Gaubatz, Kathlyn Taylor, *Crime in the public mind* Ann Arbor, Michigan: University of Michigan Press, 1995.
2. California Blue Ribbon Commission on Inmate Population Management, *Final Report*, California Department of Corrections, 1990.
3. Ibid.
4. Petersilia, Joan and Susan Turner, *Prisons vs. Probation*, RAND Corporation, Santa Monica, California, 1987.
5. Children Now, California: *The State of Our Children 1995*, Los Angeles, California, 1995.

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