

Viewpoints: Modernize Penal Code or face more lawsuits

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What's more daunting than resolving Plata v. Brown and other lawsuits that resulted in federal oversight of the state's overcrowded prisons? How about dozens more of them?

That's what California's 58 counties could face if we don't address underlying drivers of bloated prisons and jails, and improve our strategies to hold many of the people cycling in and out of our justice system accountable more effectively – and cheaply – outside of a cell.

While all eyes are on how federal judges will react to Gov. Jerry Brown's motion to end federal oversight before the court-imposed population cap is achieved, we should not lose sight of the possibility that similar cases could start emerging for county jails if we don't address key reasons facilities become overcrowded.

Two fixes would go a long way to increase safety and reduce waste in local and state justice systems: fixing the Penal Code and enhancing county innovation.

The main driver of over-incarceration is our Penal Code, a morass of complicated sentencing requirements developed over the decades more out of "tough on crime" political posturing than science about what prevents crime.

Since 1980, state lawmakers have passed hundreds of sentencing requirements that keep people locked up for longer, even for nonviolent and nonserious offenses. The result? The number of people incarcerated in California since 1977 grew 14 times faster than California's general population.

Not surprisingly, the cost to taxpayers exploded, too. Since 1981, California's prison costs have increased by 1,500 percent to reach more than \$10 billion annually. This decreased available funding for health, social services and education – and wastes justice resources on low-risk people instead of serious and violent crime.

Public Safety Realignment, the 2011 law that shifts responsibility of certain nonviolent offenders from state prison and parole to county jail and probation, has had a major impact on reducing overcrowding in state prisons.

Still, much of the Penal Code dysfunction remains, leaving counties facing many of the same challenges that previously were passed on to the state. So a shift from overcrowded prisons to expanding county jails could open the door for more of the same. In other words, county and state tax dollars could increasingly go to litigation and settlements rather than vital government and community needs.

Just ask Lake County, Indiana. In August 2012, the state's second most populous county agreed to pay \$7.2 million to settle a lawsuit regarding conditions in its jail. That same month,

county commissioners said they would be facing a \$12 million to \$15 million shortfall for the 2013 budget.

Jail overcrowding has cost other localities throughout the nation: Camden County, New Jersey, settled a lawsuit for \$4 million, and Philadelphia County had to allow plaintiff monitors to evaluate its jail for two years per a lawsuit that is being reinstated now that its jail population is rising again.

This problem is appearing in California counties, too. Los Angeles County's jails are under court-ordered monitoring per a lawsuit, and Fresno County is mired in two different lawsuits about its jail conditions.

Facing jail pressures, many counties plan to build or expand their facilities. Experts project that by 2016 California will have built more jail beds than the number of beds in our state prisons. This expansion comes with a hefty price tag. Riverside County, for example, is building a new jail for 2017 at a cost of \$237 million – and thinks this may not be enough.

Without a Penal Code revamp, some counties are innovating to avoid overcrowding and reserve jail space for those who need it. In Sacramento County, the sheriff is beefing up programming in and outside its jail to help with effective re-entry. Yolo County's probation department uses a tool to effectively monitor individual's risks so that some low-risk people can await trial under supervision instead of in jail. Contra Costa County is utilizing split-sentencing 84 percent of the time, which requires someone convicted of a crime to spend some time in jail and some under supervised probation.

These kinds of innovations should be supported and enhanced, but fixing the Penal Code is what will ultimately help counties avoid local court orders like Plata. And that requires the Legislature to act.

Fortunately, legislators can take heart in the political courage paying dividends in other states that have modernized their penal codes. Nevada saved \$38 million in 2009 and avoided \$1.2 billion in prison construction through sentencing reforms. Arkansas expects to save \$875 million over the next decade by modernizing sentencing for nonviolent drug and property offenses.

That is the road California must take, otherwise it and its counties may face lawsuits and growing costs from a justice system hamstrung by an unwieldy, dysfunctional Penal Code.

The Plata case is a symptom of our Penal Code problem, and we're about to witness a statewide outbreak if we don't address the cause.

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Lenore Anderson, formerly with the San Francisco District Attorney's Office, is director of Californians for Safety and Justice, a new nonprofit working to replace justice system waste with common-sense solutions.

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