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MAKING PRISONS WORK

I. INTRODUCTION

The California correctional system has mushroomed in size and cost in the last fifteen years, and the growth shows no sign of slowing down. From 1980 to 1995 the California prison population increased more than fivefold from 23,511 to 131,000.¹ In 1980 one out of every thousand Californians was in prison.² By 1995 this number had soared to nearly one out of 250.³ To accommodate this increase, the state has built seventeen new prisons in the last fifteen years—the largest prison construction program in American history.⁴ The number of employees working for the California Department of Corrections (CDC) has nearly tripled in the past ten years.⁵

The costs due to the increases in inmates, prisons, and guards account for a substantial piece of the taxpayer pie, and the piece is growing disturbingly fast. In 1980 the CDC accounted for 2% of the total California budget.⁶ In 1995 California devoted nearly 10% of its total budget to the state's correctional system.⁷ One study projects that the amount will increase to 18% of the budget by the year 2002.⁸ The growth of California's correctional system

1. See DANIEL C. CARSON, CALIFORNIA LEGISLATIVE ANALYST'S OFFICE, REFORMING THE PRISON INDUSTRY AUTHORITY 1 (1996) (for the 1995 figure); CALIFORNIA ALMANAC 50 (James S. Fay ed., 6th ed. 1993) (for the 1980 figure).

2. The general population of California in 1980 was 23,511,000. See STATE OF CALIFORNIA, CALIFORNIA STATISTICAL ABSTRACT 1994, at 11 (1994).

3. By 1995 the state's population had reached 32 million. See Lynne Carrier, *Immigrant Population May Have Helped State Economy, Study Says*, SAN DIEGO DAILY TRANSCRIPT, May 23, 1995, at 1.

4. See Fox Butterfield, *California Prison Costs Overshadow College Funding*, L.A. DAILY NEWS, Apr. 16, 1995, at N4.

5. See *id.*; Mary Lynne Vellinga, *Guards Hit Jackpot with Overtime Pay*, SACRAMENTO BEE, Apr. 23, 1995, at A15.

6. See Butterfield, *supra* note 4, at N4; Vellinga, *supra* note 5, at A15.

7. See Butterfield, *supra* note 4, at N4.

8. See G. Pascal Zachary, *Prison Boom in U.S. is Seen Taking Its Toll*, WALL ST. J. EUR., Oct. 2, 1995, at 4 (quoting a study from the Rand Institute). California spends more on prisons than on higher education. See Butterfield, *supra* note 4, at N4. In 1995 the state spent more on prisons than for its two university systems—University of California and California State University. See *id.*

has been described as "without precedent in the statistical record of imprisonment in the Western world."⁹

A recidivism rate of 59%¹⁰—the percentage of released convicts who end up in prison again—is the locomotive of this runaway train. Six out of every ten released inmates lack either the skills or incentives to steer clear of crime. California's "three strikes" law compounds the recidivism problem; under an increased sentencing scheme, each time a repeat offender returns to prison, that person faces a stiffer sentence.¹¹ To brake the speeding growth of the correctional system, the state must reduce the recidivism rate. A decrease in the number of returning prisoners would slow the demand for new prisons, more guards, and expanded programs. Most significantly, a reduced recidivism rate would result in a decrease in crime.

Among the various work and educational programs run by the CDC,¹² the Prison Industry Authority (PIA) offers a unique "real world" experience to an inmate who can get training for a job outside prison.¹³ Given this practical goal of releasing inmates with marketable skills, the PIA is one of California's best bets for reducing the recidivism rate. A recent study conducted by the Federal Bureau of Prisons concluded that inmates in work programs

9. John Jacobs, *Study Questions Investment Return on State's Prisons*, FRESNO BEE, Aug. 15, 1995, at B5 (citing a scholarly study published by the California Policy Seminar).

10. See *A Proposal to Improve State's Prison Industry*, S.F. CHRON., May 2, 1996, at 6 (zone 1) [hereinafter *Proposal*].

11. See CAL. PENAL CODE § 667(b) (West Supp. 1996). The law has many teeth, all designed to escalate the sentences of repeat offenders. A "second strike" offender who has a current felony conviction—including those that are not "serious" or "violent"—receives a doubled sentence. *See id.* § 667(e)(1). A defendant found guilty of a "third strike" must serve a minimum sentence of three times the term of imprisonment provided for each current felony or twenty-five years. *See id.* § 667(e)(2)(A).

12. The CDC programs provide services and training to 56.7% of the total inmate population. *See CARSON, supra* note 1, at 5. The following is a list of the programs, the number of inmates assigned, and what percentage that number represents of the total inmate population: support services, 38,152 or 30.1%; vocational education, 10,849 or 8.6%; academic education, 10,557 or 8.3%; PIA, 6923 or 5.5%; conservation camps, 4158 or 3.3%; other, 789 or 0.6%; community work crews, 401 or 0.3%; and joint venture, 154 or 0.1%. *See id.* A prisoner's work obligation "may be a full day of work, education, or other program activity, or a combination [thereof]." CAL. CODE REGS. tit. 15, § 3040(a) (1996).

13. *See CAL. PENAL CODE § 2801(b)* (emphasizing that the PIA shall provide an atmosphere that will enable prisoners to "acquire or improve effective work habits and occupational skills").

were 24% less likely to wind up back behind bars after an eight to twelve year period than inmates sharing a similar education and background who were not involved in work programs.¹⁴ Despite being grounded in such a solid and sensible mission, however, both internal and external problems hamper the PIA. Still, the PIA does not need a complete overhaul.

This Comment examines the role of the PIA in the battle to slow the expansion of California's correctional system. Part II discusses the mission of the PIA by examining theories behind imprisonment and prison work reform programs. Part III provides a background of prison population growth in California as well as a history of the PIA. Part IV considers the effects of pending state legislation and recommends consideration of lessons learned from programs in other states. Despite its shortcomings, the PIA has the potential to permanently return skilled, hopeful convicts to society. In light of California's budget crisis and the dangers of prison overcrowding,¹⁵ the state must make a greater effort to streamline and strengthen the PIA because the program may be just the brakes the system needs.

II. OBJECTIVES OF PRISON WORK PROGRAMS

Incarceration as a means of dispensing criminal justice gained momentum in the United States in the late 1700s.¹⁶ With their newfound freedom from England, Americans repudiated the British legacy of sanctions such as fines, whippings, mechanisms of shame such as the stock and public cage, banishment, and the gallows.¹⁷ Americans believed that instead of punishment, they could rehabilitate prisoners through silence, discipline, and labor.¹⁸ Forcing convicts to work was common practice into the 1900s when most of the nation's prisons were self-supporting.¹⁹ Inmates constructed California's San Quentin and Folsom state prisons, for

14. See Leslie Helm, *Factories with Fences: Oregon's Ambitious Prison Work Program Is Being Scrutinized for Ways to Manage the Rising Cost of a Growing Prison Population*, L.A. TIMES, Jan. 5, 1997, at D1 (referencing the Bureau of Prisons' study of 6000 inmates).

15. See *infra* notes 91-99 and accompanying text.

16. See THE OXFORD HISTORY OF THE PRISON 112, 114 (Norval Morris & David J. Rothman eds., 1995) [hereinafter HISTORY OF THE PRISON].

17. See *id.*

18. See *id.* at 119, 122.

19. See Helm, *supra* note 14, at D1.

example.²⁰ Despite the long history of prison labor, in 1929 Congress passed the Hawes-Cooper Act which outlawed prison labor.²¹ This law was a concession to union pressure during a period of widespread unemployment.²² Chief Justice Warren E. Burger reversed this trend in the 1970s when he began calling for prisons to become productive—"factories with fences," as he termed them.²³ Despite his urging to loosen work regulations, manufacturers' associations and organized labor have stunted full-scale expansion of prison work programs.²⁴ They have argued that prison work programs constitute "unfair competition to labor and management."²⁵ Despite this opposition, California and most other states have created some form of prison work programs.

The trend in criminal justice over the past fifteen years has been to emphasize retributive rather than rehabilitative forms of justice.²⁶ Legislatures, however, have articulated other objectives to advance the twin goals of reduced prison costs and recidivism

20. See *id.*

21. See Hawes-Cooper Act, ch. 79, 45 Stat. 1084 (1929) (codified as amended at 49 U.S.C. § 11507 (1995)).

22. See Helm, *supra* note 14, at D1.

23. See Warren E. Burger, *More Warehouses, or Factories with Fences?*, reprinted in 8 NEW ENG. J. ON PRISON L. 111 (1982) (remarks delivered by Chief Justice Burger at the University of Nebraska in Lincoln, Nebraska, on December 16, 1981).

24. See HISTORY OF THE PRISON, *supra* note 16, at 246.

25. See *id.*

26. The essence of retribution is that society imprisons offenders because they deserve punishment. See Jonathan M. Cowen, *One Nation's "Gulag" Is Another Nation's "Factory Within a Fence": Prison-Labor in the People's Republic of China and the United States of America*, 12 UCLA PAC. BASIN L.J. 190, 214 (1993). Generally, this narrow viewpoint does not consider the consequences beyond such punishment. See also George Fisher, *The Birth of the Prison Retold*, 104 YALE L.J. 1235, 1236 (1995) (commenting that the notion of rehabilitation is even "mocked" statutorily). The court in *United States v. Bergman* stated:

The court agrees that this defendant should not be sent to prison for "rehabilitation." . . . [T]his court shares the growing understanding that no one should ever be sent to prison for rehabilitation. That is to say, nobody who would not otherwise be locked up should suffer that fate on the incongruous premise that it will be good for him or her. Imprisonment is punishment. Facing the simple reality should help us to be civilized.

United States v. Bergman, 416 F. Supp. 496, 498-99 (S.D.N.Y. 1976); see Comprehensive Crime Control Act of 1984, 28 U.S.C. § 994(k) (1988) (directing the United States Sentencing Commission to "insure that the [uniform sentencing] guidelines reflect the inappropriateness of imposing a sentence . . . of imprisonment for the purpose of rehabilitating the defendant"); see also James J. Misrahi, *Factories with Fences: An Analysis of the Prison Industry Enhancement Certification Program in Historical Perspective*, 33 AM. CRIM. L. REV. 411, 411-12 (1996) (noting that the outcome of this emphasis on retribution is an increase in spending on incarceration).

rates.²⁷

California has the authority to impose punishment on those who are legally convicted of breaking its laws.²⁸ In doing so, the state may advance objectives that can be grouped into five categories: punitive, administrative, financial, rehabilitative, and restorative.²⁹ Prioritizing and balancing these objectives is critical to the success of a prison work program. Using examples from prison work programs around the country, this section presents the theories that underlie these objectives and supplies the tools for analyzing the PIA.

A. Punitive Objectives

By definition, penal codes are concerned with the punishment of those who break the law.³⁰ Californians have been vocal about—and active in—issues of crime and punishment. In 1977, for example, the legislature reinstated the death penalty.³¹ In

27. See generally CAL. PENAL CODE § 2801 (declaring the legislature's intention to establish self-sustaining prison industry programs and reintegrate released prisoners).

28. See CAL. PENAL CODE § 681 (West 1982).

29. See Cowen, *supra* note 26, at 214 (addressing the first four classifications and contrasting U.S. prison labor to that in the People's Republic of China).

30. The word "penal" is derived from the Latin word for pain, "poena." THE CONCISE OXFORD DICTIONARY 757 (7th ed. 1982).

31. Death penalty law—on both a state and national level—has had a tumultuous history. California carried out the death penalty 502 times between 1851 and 1967. In February 1972 the California Supreme Court declared the death penalty unconstitutional, holding that it violated the state constitution's ban on "cruel and unusual punishment." See *People v. Anderson*, 6 Cal. 3d 628, 656, 493 P.2d 880, 899, 100 Cal. Rptr. 152, 171 (1972). Four months later the U.S. Supreme Court struck down death penalty statutes in all other states, finding that the statutes gave no guidelines to jurors for imposing death. See *Furman v. Georgia*, 408 U.S. 238, 239-40 (1972). But four years later the U.S. Supreme Court reinstated the constitutionality of the death penalty with the caveat that judges and jurors who impose it must have discretion. See *Gregg v. Georgia*, 428 U.S. 153, 169 (1976). See generally *Facing Death: The Numbers Behind the Ultimate Penalty*, L.A. TIMES, Jan. 21, 1996, at B2 (Valley ed.) (summarizing the history of the death penalty).

Thirteen months later, in August 1977, the California Legislature passed a new death penalty law. See generally *id.* (reviewing the history of capital punishment in California). In August 1992 Robert Alton Harris was the first person executed under the new law. He had spent 11 years on death row. See *id.* Today California houses 435 inmates on death row. See Elizabeth Fernandez, *Execution Rate May Quicken 435 on Death Row, Most in Nation*, S.F. EXAMINER, Feb. 25, 1996, at A1. Since Harris's execution the state has carried out the death penalty twice. See *id.*

Over 3000 inmates sit on death row in the 37 states that have capital punishment. See *id.* In California—as in all states—the lengthy appeals process creates a bottleneck, which results in a growing list of inmates waiting on death row. See *id.*

1994 voters passed Proposition 184, known as "The Three Strikes Law."³² This emphasis on punishment and retribution is also prevalent throughout the country and has been a dominant theme of criminal justice for the last fifteen years.³³ Such a public call for severe penal laws justifies the merits of prison work programs. Forced imposition of work as punishment and as discipline satisfies the public's demand that inmates not enjoy a "Holiday Inn" vacation.³⁴

The nature of prison work assignments varies greatly. Work programs imposing hard labor serve as a means of physically punishing offenders. Chain gangs—perhaps the most notorious example of hard labor in the U.S.³⁵—resurfaced briefly in Alabama in 1995 although the state abolished them a year later.³⁶ Both rote

The average wait in California is 20 years, twice the average wait elsewhere in the U.S. *See id.* The cost to the judicial system of reviewing these appeals is staggering; "[o]ne study found it cost taxpayers an average of \$329,000 more to try, convict and sentence a defendant to death than . . . to obtain a first-degree murder conviction without a death sentence." *The Long, Costly Path to the Death Penalty*, THE PRESS DEMOCRAT, Mar. 11, 1995, at B6.

Legislative efforts of the past few years in California have aimed to shorten the time between a capital punishment sentence and the actual execution. In 1995 the United States Congress passed a crime bill that limits capital appeals and seeks to increase the number of executions. *See* Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 1996 U.S.C.C.A.N. (110 Stat. 1214) 944.

32. CAL. PENAL CODE § 667 (West Supp. 1996); *see supra* note 11 and accompanying text.

33. *See* Misrahi, *supra* note 26, at 411-12 (calling the shift to retributive schemes of justice in the past 15 years a "significant revolution"); *supra* note 14 and accompanying text; *see also* Francis T. Cullen & Lawrence F. Travis, III, *Work as an Avenue of Prison Reform*, 10 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 45, 47 (1984) (commenting that "few among the American public are reluctant to apply stringent criminal sanctions").

Michel Foucault wrote that punishment serves the dual purposes of satisfying the public need for retribution and acting as a deterrent by impressing on the public the severity of the penalty for breaking the law. *See* MICHEL FOUCAULT, DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON 110-12 (Alan Sheridan trans., Vintage Books 1979). He commented that "[a] secret punishment is a punishment half wasted." *Id.* at 111.

34. *See* Cowen, *supra* note 26, at 220 (citing national public opinion polls that showed 87% of the U.S. general population favored "harsher sentences for those convicted of crimes," and 83% felt that "the courts have been too easy in dealing with criminals").

35. *See* Diane M. Haller, *Prison Industries: A Case for Partial Privatization*, 2 NOTRE DAME J.L. ETHICS & PUB. POL'Y, 479, 482 n.16 (1986).

36. *See Settlement Will Ban Alabama's Prison Chain Gangs*, L.A. TIMES, June 21, 1996, at A14. "After Alabama revived the chain gangs last year, Florida, Arizona, Wisconsin and Iowa all adopted forms of the work crews." *Id.* Alabama dropped the program when officials realized that chaining prisoners together was inefficient and unsafe. *See id.* Corrections Commissioner, Ron Jones, who heavily backed the

work and monotonous assignments reflect the idea of work as punishment,³⁷ as do low inmate wages.³⁸ Inmates are often required to work and are charged with a disciplinary infraction for refusal to work, furthering the work-as-punishment attitude.³⁹

B. Administrative Objectives

The administrative objectives fueling prison work programs encompass the advancement of efficient prison management and the minimization of prison disturbances.⁴⁰ Idleness spawns management difficulties since prisoners often use idle time counterproductively.⁴¹ Requiring prisoners to work reduces the idleness of prison life which, in turn, reduces the difficulties plaguing management. "Prison employment . . . is used to help fill in the prisoner's day[,]" leading to a more satisfied, less violent inmate population.⁴² Earning wages and having spending power reduce the likelihood that prisoners will steal from one another.⁴³ Illustrating these basic prison economics, one federal inmate told an interviewer: "If I saw you with a big bag of commissary, and I'm not able to go to the store, I'm going to take yours."⁴⁴ California, like other states, statutorily requires forfeiture of earnings for violations of prison rules.⁴⁵ By earning wages, inmates also develop a strong disincentive to violate the rules.

reintroduction of chain gangs, was demoted to warden of a state prison the month after he announced his intention to put women in chain gangs as well. *See id.*

37. See Josephine R. Potuto, *The Modern Prison: Let's Make It a Factory for Change*, 18 U. TOL. L. REV. 51, 54 (1986). In some prisons more interesting work is assigned to well-behaved prisoners. *See id.* at 54 n.17; Cowen, *supra* note 26, at 220.

38. See Cowen, *supra* note 26, at 220; Potuto, *supra* note 37, at 54. Even low wages, however, serve some positive purposes. *See infra* Part II.C.

39. *See* Potuto, *supra* note 37, at 54.

40. *See* Cowen, *supra* note 26, at 221-22.

41. *See* Potuto, *supra* note 37, at 55.

42. *Id.*

43. *See* 60 Minutes: *Prison, Inc.* (CBS television broadcast, Oct. 20, 1996) (on file with the Loyola of Los Angeles Law Review) [hereinafter 60 Minutes].

44. *Id.* The prisoner elaborates: "I might hit you on your head. I might snatch it from you. I might wait till you leave out [sic] your cell and take it. You have an abundance of that going on." *Id.* This prisoner is serving a life sentence for murdering an FBI agent. *See id.*

45. *See* CAL. PENAL CODE § 2765 (West 1982).

When any prisoner shall wilfully violate the terms of his employment or the rules and regulations of the Department of Corrections, the Director of Corrections may in his discretion determine what portion of all moneys earned by the prisoner shall be forfeited by the said prisoner and such forfeiture shall be deposited in the State Treasury

In addition to reducing an inmate's idle time, work instills a sense of satisfaction, thus minimizing the chance for violent confrontations that often serve as an emotional outlet.⁴⁶ "The availability of opportunities [to work] . . . will give inmates some reason to conform. . . . [W]ork programs that furnish inmates with activity, wages, the chance for self-respect, and hence the desire to conform will ultimately best serve the pragmatic interests of those supervising"⁴⁷ An inmate who works long days on a North Carolina farm commented that "[w]hen you do this work, you can get tired, and you go back in at night and go to sleep."⁴⁸ The simple fact that work exhausts an inmate may contribute to the decrease in violent outbursts.

C. Financial Objectives

Financial considerations provide another substantial motivation for the implementation of prison labor programs.⁴⁹ Prison maintenance costs consume an increasingly large portion of a state's budget.⁵⁰ Prison work programs can stave off that trend. Chief Justice Warren Burger commented that paying for the confinement of prisoners is a "load [that] should be lightened, if not taken off the backs of overburdened American taxpayers."⁵¹

1. Reducing the cost of the prison system

Running prisons costs hundreds of millions of dollars.⁵² Why shouldn't prisons be the *source* of those millions instead? Prison labor can generate revenue for the correctional system and for other segments of the government as well. For instance, in Florida

46. See Cowen, *supra* note 26, at 222 (suggesting that prison labor gives inmates a stake in "prison equilibrium").

47. *Id.* (quoting American penologist Ellen Shubart).

48. Edith Stanley, *It's a Workaday World for N. Carolina Inmates*, L.A. TIMES, Nov. 30, 1995, at A5 (This inmate is serving a sentence of natural life plus thirteen years for kidnapping and rape.).

49. See Cowen, *supra* note 26, at 220-21 (noting that the "naked, exploitative emphasis on the financial benefits of U.S. prison-labor [programs] during the late nineteenth and early twentieth century ultimately led to the enactment of various state and federal controls on prisoner-made goods").

50. See *supra* Part I (noting that the increase in the prison population demands the costly construction of new prisons and hiring of personnel).

51. Burger, *supra* note 23, at 119.

52. California's 1995 budget devoted \$3.7 billion to the correctional system. See Vellinga, *supra* note 5, at A15; discussion *infra* Part III.A (tracing the evolution of the costs of the prison system to the state budget).

half of any earned surplus from the Florida Correctional Work Program Trust Fund exceeding \$5 million at the end of any fiscal year is deposited into the state's General Revenue Fund.⁵³ The other half of the surplus can be utilized by the corrections department for expansion and improvement of the correctional work program.⁵⁴

Currently, prisoners in work programs provide many of the goods and services that keep prisons running.⁵⁵ For example, most states use inmate labor to construct prisons.⁵⁶ Inmates do everything from "virtually every aspect of a construction job, including concrete casting, carpentry, plumbing and electrical work" to landscaping after the facility is completed.⁵⁷ In California, prisoners manufacture mattresses, cleaning materials, and metal products; cut meat; process eggs; slaughter swine and poultry; upholster furniture; roast coffee; and farm—all of which returns to California prisons for consumption.⁵⁸

Further, most inmates employed through the PIA are eligible to earn credits that reduce their prison terms.⁵⁹ Some inmates can earn as much as one day off their sentences for every day worked.⁶⁰ Work-credit programs also saves California money in two important ways. Reduced prison terms directly reduce prison operational costs, which now average \$21,375 annually per inmate.⁶¹

53. See FLA. STAT. ANN. § 946.31 (West 1996).

54. See *id.*

55. See Potuto, *supra* note 37, at 55 (referring to the universal use of prisoners in "institutional maintenance" such as laundry, janitorial, and food services).

56. See *Using Inmates to Build Prisons Said to Ease Costs, Teach Skills*, CRIM. JUST. NEWSL. (Nat'l Council on Crime & Delinq., Ann Arbor, Mich.), Sept. 15, 1987, at 3, 3.

57. *Id.*

58. See Marc Lifsher, *Waste Behind the Walls*, ORANGE COUNTY REG., May 14, 1995, at 24. The Georgia Department of Corrections estimates that their comprehensive prison farming program saves the state \$2 million each year by supplying the correctional institutions with 58% of their food. See *Farm Chores Keep Prisoners Busy, Save State Money*, ATLANTA J. & CONST., June 15, 1992, at C3.

59. See CAL. PENAL CODE § 2933(a) (West Supp. 1997) ("For every six months of full-time performance in a credit qualifying program, as designated by the director, a prisoner shall be awarded worktime credit reductions from his or her term of confinement of six months.").

60. See *id.* Some of the most heinous offenders are ineligible for any work credits. These include felony offenders who have been previously convicted two or more times on charges brought and tried separately, and have served two or more separate prison terms. See *id.* § 2933.5.

61. See CARSON, *supra* note 1, at 4. To some extent this savings is not realized since 59% of offenders released early are imprisoned again. See *infra* note 102 and

Additionally, as the number of inmates who shorten their prison terms through work credits increases, the demand for new prison space decreases.⁶² The CDC estimates that by 1998 it will exhaust all available prison space.⁶³ The cost for a new prison that houses 4400 inmates costs about \$300 million.⁶⁴ Such a steep price tag gives a bottom-line incentive to the CDC to enable as many inmates as possible the opportunity to earn work credits.

2. Other financial benefits of labor programs

Prison work programs fulfill several financial objectives in addition to offsetting operational costs. They enable the state to monitor the distribution of earnings, and help stimulate the private sector. Paying wages to prison workers enables the state to distribute those earnings in ways that benefit society as well as the inmate. For example, the state can make deductions for expenses such as the prisoner's room and board, as well as state and federal taxes.⁶⁵ The state can also send a portion of the earnings to victim restitution programs.⁶⁶ Prisoners can provide financial support to their families.⁶⁷ Further, the state can withhold some money until the prisoner's release. These last two options serve a particularly important financial objective—they decrease the chance that released prisoners will resort to crime as a means of supporting themselves and their families.⁶⁸

Additionally, facilitating private industries' access to the prison work force stimulates the private sector.⁶⁹ Private businesses that open work facilities within prisons or hire inmates to work outside reap a number of specific benefits, which range from the receipt of rent-free space to the ability to pay workers lower

accompanying text.

62. See CARSON, *supra* note 1, at 4.

63. *See id.*

64. *See id.* (assuming two inmates per cell).

65. See Potuto, *supra* note 37, at 62-63.

66. *See id.* at 62.

67. *See id.* (speculating that since some prisoner dependents are probably supported by state funds, this may reduce the drain on state welfare budgets—another indirect financial benefit to the state due to prison work programs); cf. *Smith v. Alaska Dep't of Revenue*, 790 P.2d 1352, 1353 (Alaska 1990) (holding that prisoners cannot be credited with any money the state owes them for their labor until certain disbursements have been made, "child support being the highest priority").

68. *See discussion infra* Part II.D.

69. *See generally* Cowen, *supra* note 26, at 221 (noting the benefits of access to a work force that can meet the private sector's fluctuating production and service needs).

wages. One report commented that businesses can get "the cream of the crop from a pool of cheap prison labor, not to mention the use of . . . [a] brand new air-conditioned factory space, rent free."⁷⁰ A plastics manufacturing company owner enthused that inmates "have a great work ethic. If they get out tomorrow I'd find them jobs. . . . I work them 10 hours a day, seven days a week and they love it, and there's a thousand other guys who'd line up for their jobs."⁷¹

D. Rehabilitative Objectives

Rehabilitation is an effective way to realize a predominant goal of most justice systems—reduction of recidivism rates.⁷² Many released criminals resort to crime because they cannot earn a living by legal means. By providing them with training and skills while in prison, the corrections system may be able to divert some of them from committing more crimes.⁷³ Chief Justice Burger believed that society has an "obligation—a moral obligation—to do whatever can reasonably be done to change [an imprisoned criminal] before he or she goes back into the stream of society."⁷⁴ The Chief Justice emphasized that it is in everyone's best interest to help released prisoners become better human beings who can cope with life.⁷⁵

Prison systems approach rehabilitation in two ways: through employment and skills training, and through teaching good work habits.⁷⁶ As a group, prisoners lack many essential abilities that produce success in the workplace.⁷⁷ Therefore, to be successful,

70. *60 Minutes*, *supra* note 43.

71. Sandy Harrison, *Inmate Work Plan Running in the Red*, L.A. DAILY NEWS, Mar. 27, 1995, at News-1. *But see* discussion *infra* Part III.C.2 (reviewing the problems private employers face by using inmate labor).

72. *See* Potuto, *supra* note 37, at 56. A U.S. Bureau of Prisons study traced more than 7000 inmates for one year after release and found that prison factories and apprenticeship programs could lower the number of inmates sent back to prison by as much as 35%. *See* Sharon LaFraniere, *Study Cites Benefits of Prison Job Training*, WASH. POST, Jan. 2, 1992, at A21. *But see id.* (discussing another study conducted at New York State University finding that the effect of prison work programs on recidivism was insignificant; however, the professor who conducted the study told prison researchers that the Bureau of Prisons' study was better designed).

73. *See* Potuto, *supra* note 37, at 56.

74. Burger, *supra* note 23, at 113.

75. *See id.* at 119. If prisoners who are released continue their "warfare with society[.]" we are the losers. *Id.*

76. *See* Cowen, *supra* note 26, at 223; Potuto, *supra* note 37, at 56.

77. *See* Potuto, *supra* note 37, at 56-57. Many prisoners are illiterate with little or

work programs must impart *meaningful* employment skills and habits to prisoners. According to Chief Justice Burger, this means "something a little more useful than stamping license places [sic]."⁷⁸ If prisoners sense that work programs will not lead to future employment opportunities, they will have no incentive to participate actively in the work program and develop good work habits.⁷⁹

Besides acquiring skills and habits that increase chances of future employment, working inmates acquire social and personal competence. Released prisoners must believe that they can be good workers and must have the ability to interact with fellow workers.⁸⁰ Work programs help cultivate these abilities.⁸¹ A district court judge emphasized these points in *Laaman v. Helgemoe*.⁸² He examined prisoners' working conditions at the New Hampshire State Prison and cited experts who noted that *lack* of work decreases prisoners' self-esteem and self-confidence and "leads to degeneration."⁸³ The court's prison reform order included a requirement that each prisoner be afforded the opportunity to perform useful work.⁸⁴

E. Restorative Objectives

The essence of restorative justice is that crime affects people besides the criminal, and the criminal has an obligation to make

no marketable training and skills. *See id.* (also noting that prisoners often cannot follow directions, which constantly threatens disruption).

78. Michael Isikoff, *Does Inmate Labor Work?*, WASH. POST, Nov. 12, 1990, at A1 (quoting Chief Justice Burger's 1990 comments made in response to a congressional bill designed to restrict the federal prison industries program to four areas). Many states have created joint programs enabling private employers to use a prison facility and prison labor to run a business. *See generally* Haller, *supra* note 35, at 496. This "real world" atmosphere . . . [can] ease the prisoner's transition into society upon release." *Id.*

79. *See* Potuto, *supra* note 37, at 59.

80. *See* Burger, *supra* note 23, at 116 (noting that inmates in general "lack self-esteem, . . . are insecure, . . . [and] are at war with themselves as well as with society").

81. *See id.*

82. 437 F. Supp. 269 (D.N.H. 1977).

83. *Id.* at 293.

84. *See id.* at 329. The California Constitution states that nothing in the inmate labor programs section shall be interpreted as granting inmates a right to work. *See* CAL. CONST. art. 14, § 5. Additionally, courts have repeatedly found that inmates do not have a federal constitutional right to rehabilitative, recreational, or vocational programs. *See, e.g.*, Hoptowit v. Ray, 682 F.2d 1237, 1255 (9th Cir. 1982); Battle v. Anderson, 564 F.2d 388, 403 (10th Cir. 1977); Madrid v. Gomez, 889 F. Supp. 1146, 1262 (N.D. Cal. 1995); Capps v. Atiyeh, 559 F. Supp. 894, 908 (D. Or. 1982).

amends to those impacted by the crime.⁸⁵ This quest for restoration is compatible with elements of the other objectives. To satisfy a restorative goal, prisoners

should have to repair the damage they caused, continue to support their families, pay for their punishment. There is all kinds of work they can do: work in emergency rooms, drive senior citizens to hot meals, earn money to support their families, and pay restitution. You can't do that sitting behind bars.⁸⁶

Joseph Lehman, Commissioner for Corrections in Maine, has been an advocate of restorative justice for years. He commented:

With restorative justice, we hold offenders accountable and make the victim the center of the criminal justice process. The corrections system ought to first assess the amount of coercive authority necessary to ensure public safety, but once you've disposed of that, we can hold the offender accountable, making him right the harm he has done the victim and the community, in a punishment that is as much as possible visible to the public and related to the harm done.⁸⁷

Prison work programs can be the foundation for repairing the damage caused by crime—both to the victims and to the community as a whole.

III. CALIFORNIA'S PRISON WORK PROGRAM

California locked up its 150,000th prisoner by the end of 1996—a state record for total prisoners incarcerated at one time.⁸⁸ The CDC is the state agency responsible for the incarceration, training, education, and care of adult felons and nonfelon narcotic addicts.⁸⁹ The CDC has calculated that the prison population

85. See Karen De Witt, *Put Offenders to Work, Some Crime Experts Say*, SAN DIEGO UNION-TRIB., Dec. 30, 1995, at A-28 (calling restorative justice a "spiritual notion").

86. *Id.* (quoting Dan Tonkovich, head of the Sentencing Project and Justice Fellowship branch in Pennsylvania, on how to treat nonviolent criminals).

87. *Id.*

88. See Dan Walters, *Prisons: How Far Do We Go?*, SACRAMENTO BEE, Jan. 22, 1996, at A3.

89. See BUREAU OF STATE AUDITS, CALIFORNIA STATE AUDITOR, PRISON INDUSTRY AUTHORITY: STATUTORY AND COST CONTROL PROBLEMS ADVERSELY AFFECT THE STATE 1 (1996) [hereinafter AUDITOR REPORT].

could more than double to 300,000 inmates over the next decade.⁹⁰ Do Californians really want so many inmates behind bars? Are they willing to pay the immense cost?

Some legislators are balking at any proposal for prison construction and insisting on reforms in correctional policies.⁹¹ PIA reforms could reduce the urgency to simply continue prison construction.

A. A History of California's Prisons

California's prison system is large and growing rapidly. The system has changed dramatically in the last decade both in size and spending. The state has been incarcerating people at an extraordinary pace; the inmate population grew more than 500% between 1980 and 1995 to 131,000.⁹² In contrast, the average prison population in the U.S. has increased by 300% since 1980.⁹³ By 1995 California was operating thirty-two prisons⁹⁴ and employing 22,000 correctional officers, almost three times the 7570 men and women the CDC employed in 1985.⁹⁵ This rapid growth in the correctional system has necessitated large increases in the CDC budget. In 1980 the CDC accounted for 2%—\$300 million—of California's total budget.⁹⁶ In 1995 California devoted 10%—\$3.7 billion—of its total budget to the state's correctional system.⁹⁷

The "three strikes" law continues to have a costly impact on the correctional system. Craig Brown, undersecretary of the Youth and Adult Correctional Agency, estimates that "three strikes" will force the state to build fifteen more prisons by the year 2000 at a cost of \$4.5 billion.⁹⁸ This will only maintain the current standard of housing 82% more inmates than the prisons were designed to hold,⁹⁹ a number far higher than the national average. By comparison, the Federal Bureau of Prisons operates at 126% capacity, while state prison systems on average operate between

90. See Walters, *supra* note 88, at A3.

91. See *id.* (noting that Senate President Pro Tem Bill Lockyer has said that he will not approve another prison bond issue until he sees reforms in construction policies and correctional programs).

92. See CARSON, *supra* note 1, at 1.

93. See Zachary, *supra* note 8, at 4.

94. See AUDITOR REPORT, *supra* note 89, at 1-2.

95. See Vellinga, *supra* note 5, at A15.

96. See Butterfield, *supra* note 4, at N4; Vellinga, *supra* note 5, at A15.

97. See Vellinga, *supra* note 5, at A15.

98. See Butterfield, *supra* note 4, at N4.

99. See *id.*

114% and 125% capacity.¹⁰⁰

A reduction in the recidivism rate would slow this speeding train. The CDC states that its inmates have a 59% recidivism rate¹⁰¹ in contrast to a 50% rate in the federal prison system.¹⁰² The state's "tough on crime" attitude is short-sighted when its only goal is to lock up criminals. Why aren't tax dollars being used to fund programs that would cut the expense of housing, feeding, and treating so many criminals? As former Governor George Deukmejian opined, "I find it cruelly ironic that hard-working Californians who are crime victims have to subsidize the criminals who committed the crimes against them."¹⁰³

California must take serious, effective steps to usher out of its prisons men and women who have a chance at leading law-abiding lives. The PIA program represents an innovative opportunity to achieve this goal.

B. The Background of the Prison Industry Authority

By statute all prisoners are required to work as prescribed by the Director of Corrections.¹⁰⁴ The Correctional Industries Com-

100. See Larry Williams, *Nation's Prisons Bursting at the Seams*, SAN DIEGO UNION-TRIB., Aug. 19, 1996, at A-2.

101. See *Proposal*, *supra* note 10, at 6. Though the calculation is simple to do, thinking of this number as six out of every ten released prisoners will wind up back in prison is a stark way to illustrate the problem with the system.

102. See Scott Ticer, *Jails Are Jammed, Spending Is Soaring—So States Are Being Forced to Experiment*, BUS. WK., May 8, 1989, at 80. Texas has a recidivism rate of 43%. See Mike Ward, *State Corrections Proposal Looks to the Past*, AUSTIN AM.-STATESMAN, Sept. 6, 1996, at A1. Florida's recidivism rate is 51%. See CARSON, *supra* note 1, at 16. Ohio has a recidivism rate of 34.4%. See Jodi Nirode & Alan Johnson, *Celeste Clemencies Revisited; Recidivism Rate Low, But Ex-Governor's Actions Still Troubling to Some*, COLUMBUS DISPATCH, July 28, 1996, at A1. Surprisingly, some states, such as West Virginia, do not keep records of recidivism rates. See W. VA. *Needs a Better System for Keeping Track*, CHARLESTON GAZETTE & DAILY MAIL, Nov. 14, 1995, at A4.

103. Harrison, *supra* note 71, at News-1.

104. See CAL. PENAL CODE § 2700 (West 1982) (stating that "[t]he Department of Corrections shall require of every able-bodied prisoner imprisoned in any state prison as many hours of faithful labor in each day and every day during his term of imprisonment as shall be prescribed"). The Eighth Amendment of the Federal Constitution serves as the outer perimeter of what can be prescribed. See U.S. CONST. amend. VIII, § 1 (prohibiting cruel and unusual punishment). Prison labor violates the Eighth Amendment when inmates are forced to perform physical labor that "(1) causes undue pain; or (2) endangers the prisoner's life or health; or (3) exceeds the prisoner's physical capacity." *Toombs v. Hicks*, 773 F.2d 995, 997 (8th Cir. 1985) (compelling an inmate with an arm injury to work on a "two-handed hoe squad" may entitle inmate to a claim). A court may also consider such factors as the number of

mission (Commission), the precursor to the PIA, was established in 1947 to run prison industries and was directly administered by the CDC.¹⁰⁵ In the 1981-1982 fiscal year, the Commission generated about \$26.7 million in sales and employed 2300 prisoners.¹⁰⁶ Despite these gains, however, the state legislature determined that the Commission needed revamping.¹⁰⁷ The legislature felt that the program had "failed to provide productive jobs to prisoners, to meaningfully affect the cost of running the prison system, or to reduce the idleness and underemployment which [were] rampant in California's prisons."¹⁰⁸ Thus, the PIA was born in 1983 to replace the Commission and improve various enterprises employing inmates.¹⁰⁹ Among the various vocational and educational programs administered by the CDC, the PIA enterprises are unique. The PIA enterprises offer "real world" work experience that prepares inmates for outside employment after release.¹¹⁰

1. The mission

Both the text of the statute creating and defining the PIA and the statement of the legislature's intent elucidate the goals of the PIA.¹¹¹ These goals are: (1) financial—maintenance of profitable enterprises; operation of a financially self-sufficient organization that provides goods and services to other state agencies, thereby reducing general governmental costs; (2) administrative—reduction of idleness and therefore a decrease in prison violence; (3) rehabilitative—creation of a close relationship with private industry, which will provide an opportunity for prisoners to work,

hours worked per day and the type of labor performed. *See Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (holding that inmates stated a cause of action when they alleged that they had been forced to work a total of 56 hours, seven days per week in a field for over a year and had been deprived of proper rest); *see also Jackson v. Cain*, 864 F.2d 1235, 1239, 1247 (5th Cir. 1989) (holding that defendant's 47 days working "in a barn shoveling unshucked corn that was over a year old and contaminated with rats' nests, insects, and clods of white, sandy dust[;]" working unmasked and covered with corn dust; and pushing an iron wagon approximately 80 feet ten times each day constituted a cause of action under the Eighth Amendment).

105. *See CARSON, supra* note 1, at 2.

106. *See id.*

107. *See id.*

108. *Id.*

109. *See id.* at 1. The Commission was subsequently abolished. *See id.* at 2.

110. *See generally id.* at 11 (noting that academic studies of correctional work programs have indicated that effective programs can reduce the recidivism rate which implies that inmates are better prepared for outside employment).

111. *See CAL. PENAL CODE § 2801 (West Supp. 1996).*

earn money, and acquire or improve work habits and occupational skills; and (4) restorative—reduction in the tax burden on state citizens to support such a large system.¹¹²

A change in the PIA's mission heavily impacted the original design of the work program.¹¹³ In 1982 the CDC and PIA established a goal of 42% employment of prison inmates in PIA programs.¹¹⁴ This goal was never realized.¹¹⁵ Consequently, it abandoned the goal entirely.¹¹⁶ Yet, the CDC currently has an abundance of idle workers; it counts approximately 15,000 eligible who are not in PIA programs.¹¹⁷ These prisoners are not earning work-credits that would reduce their prison terms.¹¹⁸ Therefore, the pressure to start construction of new facilities is heightened.

2. The board of directors

An eleven-member board of directors, the Prison Industry Board (Board), runs the PIA.¹¹⁹ The Board includes the Director of Corrections, the Director of the Department of General Services, the Secretary of the Trade and Commerce Agency, two members of the public appointed by the Speaker of the Assembly, two members appointed by the Senate Rules Committee, two organized labor representatives appointed by the Governor, and two representatives of industry also appointed by the Governor.¹²⁰ The Director of Corrections chairs the Board.¹²¹

The Board assumes many duties and has powers similar to the board of a private business. These include entering into contracts and leases,¹²² ensuring fiscal responsibility,¹²³ hiring and overseeing

112. *See id.*

113. *See CARSON, supra* note 1, at 10.

114. *See id.*

115. *See id.*

116. *See id.*

117. *See id.* at 10-11. The CDC, however, has closed the inmate-job gap for over 60,000 inmates through academic education, vocational education, and support services assignments. *See id.* at 5 fig.3 (listing that 10,557 inmates are involved in academic education; 10,849 are involved with vocational education; and 38,152 are involved in support services). But these cannot replicate the unique "real life" experience that the PIA enterprises provide to inmates. Hence the chances of inmates learning useful skills and habits are reduced. *See id.* at 11-12.

118. *See discussion supra* Part III.B.2.

119. *See CAL. PENAL CODE § 2802.*

120. *See id.*

121. *See id.* § 2803.

122. *See id.* § 2808(a).

123. *See id.* § 2808(b).

a general manager,¹²⁴ evaluating and changing business ventures to meet the PIA's mission,¹²⁵ sponsoring public hearings on issues of unfair competition,¹²⁶ and determining prices of the goods and services offered by the PIA.¹²⁷ The Board may offer its civilian personnel incentives based on productivity and profit-sharing plans.¹²⁸

3. Products and services of the PIA

The PIA employs about 7000 inmates—5.3% of the prison population—as well as 674 state staff.¹²⁹ They work at a variety of small to midsize businesses such as farms, factories, laundries, dental and optical labs, and printing shops.¹³⁰ The PIA runs a total of seventy-three facilities at twenty-three of the state's thirty-one prisons.¹³¹ A number of state laws dictate which markets the PIA may sell into; for the most part, only persons residing in state-operated institutions may purchase goods produced or manufactured in state prisons.¹³² Additionally, state law generally *requires* that state agencies purchase from the PIA.¹³³

Both the quality and price of PIA goods and services have prompted criticism. In a study commissioned by the state, the accounting firm of Ernst & Young found that 71% of the PIA's larg-

124. See *id.* § 2808(e). The statute requires that the Board hire a general manager with "wide and successful experience with a productive enterprise" and "a demonstrated appreciation of the problems associated with prison management." *Id.*

125. See *id.* § 2808(h) (noting that they include operating a self-sufficient organization, providing as much employment as possible for inmates, and providing diversified work to minimize deleterious impacts on state private industry).

126. See *id.* § 2808(i).

127. See *id.* § 2808(j).

128. See *id.* § 2809.

129. See CARSON, *supra* note 1, at 1.

130. See *id.* at 1, 3 fig.2.

131. See Stephen Green, *Prisoner Work Program Needs Reform, Report Says*, SACRAMENTO BEE, May 1, 1996, at A3; CARSON, *supra* note 1, at 1.

132. See CAL. PENAL CODE § 2807(b). This includes any county, city, district, or political subdivision, or any agency of these divisions. See *id.* The state also permits sales to private parties in other countries, but this market has not been exploited. See CARSON, *supra* note 1, at 3.

133. See CARSON, *supra* note 1, at 3-4. Accounting for about 56% of sales during 1994 and 1995, the California Department of Corrections is certainly the largest consumer of such goods and services as inmate clothing, prison furniture, laundry services, and agricultural produce used for prison meals. See *id.* at 4. The Health and Welfare Agency is the second largest customer, primarily purchasing eyeglasses for Medi-Cal patients. See *id.* The Department of Motor Vehicles—the third largest purchaser—buys license plates, signs, and specialty printing. See *id.*

est customers are "particularly upset by long delivery times and higher prices."¹³⁴ The auditors report that the PIA inflates costs for products that earn a profit in order to subsidize those that cannot make a profit.¹³⁵ The auditors also point out that many inmates are trained "in fields with a labor surplus, which utilize outmoded equipment and production techniques, or require licenses that are difficult for convicted felons to obtain."¹³⁶ According to the auditors, this kind of training reflects a lack of true effort to meet the PIA's goals.¹³⁷

4. The PIA's fiscal performance

In the spring of 1996, the Legislative Analyst's Office (LAO) issued a report on the PIA's fiscal performance.¹³⁸ The LAO found that, although the PIA's financial performance has improved significantly, the state has received little direct financial return from its investment in the PIA.¹³⁹

In the 1995-1996 fiscal year, the PIA made a \$10 million profit on sales exceeding \$152 million.¹⁴⁰ Additionally, it has been building up a substantial cash reserve and paying off its debts.¹⁴¹ As a result, the PIA's financial status has significantly improved because it can reduce future borrowing expenses by dipping into this reserve.¹⁴² This has the added benefit of boosting the PIA's annual net income.¹⁴³

The LAO attributes the increase in the PIA's productivity to

134. AUDITOR REPORT, *supra* note 89, at S-3.

135. The auditors contend that this means the PIA has failed in its legal mandate to reduce costs for state agencies. *See id.* at I-8, I-17 to I-20.

136. *Id.* at I-8.

137. *See id.; supra* Part II for a discussion of the five goals: punitive, administrative, financial, rehabilitative, and restorative.

138. *See CARSON, supra* note 1.

139. *See id.* at 6 fig.4.

140. *See id.* at 1. Profit is income after the cost of goods, sales, and administrative expenditures have been deducted. *See id.* at 6. The LAO report projects the profit for the 1995-1996 fiscal year to be about \$5 million. *See id.*

141. *See id.* at 6-7. As of June 30, 1995, the cash reserves had reached \$30.3 million and were projected to exceed \$33 million by June 30, 1996. *See id.* at 6. This is a noticeable improvement over the year-end cash balance throughout the 1980s, which never exceeded \$6.1 million. *See id.* The PIA has been aggressively paying off its long-term debts, and the debt had been reduced to \$3.6 million as of June 30, 1995. Moreover, the PIA's February 1995 payment of \$4.5 million was made ahead of schedule. *See id.* at 7.

142. *See id.* at 7.

143. *See id.*

an increase in purchases from state agencies that are enjoying an improved state economy.¹⁴⁴ The CDC, in particular, is placing larger orders for goods like PIA-made clothing to meet the needs of the rapidly growing inmate population.¹⁴⁵ The state can expect further financial growth in the PIA as the organization pays off start-up costs and recoups its losses from various poor investment decisions.¹⁴⁶

Despite strong financial improvement, the PIA's net income statement inflates its true financial performance. The statement fails to reflect large state subsidies for capital outlays, below-market rents, workers' compensation, benefits for inmates, costs of guarding workers, and the premium paid by other state agencies for the purchase of prison-made goods.¹⁴⁷ Aside from several interest-free loans to the state from the PIA-controlled Prison Industry Revolving Fund, the state has received no direct financial return on its \$91 million PIA investment to date.¹⁴⁸ Although any surplus PIA money must be transferred to the state General Fund, the PIA has never made such a transfer.¹⁴⁹ Continued subsidies from the state are inconsistent with the PIA's goal of self-sufficiency.

In contrast to the big picture of debatable financial success, from an inmate's perspective the program can come close to ensuring individual financial stability in the future. Prisoners employed by the PIA recognize their good fortune in procuring a job that will help them upon release. Although the prisoners do not earn much on a hourly basis—about fifty cents per hour¹⁵⁰—many are grateful for the opportunity to learn managerial skills.¹⁵¹ One inmate, a foreman of an upholstery shop, plans to manage a stadium

144. *See id.*

145. *See id.*

146. *See id.*

147. *See id.* at 8.

148. *See id.* at 9.

149. *See id.* at 10.

150. The Board sets wages for employees. *See CAL. PENAL CODE § 2811.* The highest paid laborers are firefighters, who earn 95 cents per hour. *See Proposal, supra* note 10, at 6. The cap on how much an inmate can earn is half minimum wage. *See CAL. PENAL CODE § 2811.* The Ninth Circuit held that inmates are not entitled to minimum wage and therefore dismissed suits filed by 79 current and former California inmates who contended that they were employees of the CDC and therefore entitled to the federal minimum wage of \$4.25. *See Burleson v. California*, 83 F.3d 311, 312 (9th Cir. 1996). The court found that inmates' labor "belongs" to the corrections department. *See id.* at 315.

151. *See Lifsher, supra* note 58, at 24.

concession stand and tend bar upon his release.¹⁵² In the meantime, he is rushing to train a replacement so that his departure will not adversely affect production.¹⁵³ A coworker commented that many inmates "come here not knowing if they can do it, and when they learn, they do pretty good."¹⁵⁴ He added that skilled upholsterers earn between ten and fifteen dollars an hour on the outside.¹⁵⁵

C. Problems with the PIA and Recommendations

The PIA is an important effort by the state to attack the staggering expense of running the country's largest state prison system and to prepare its inmates to lead law-abiding lives. Nevertheless, the state must address a number of problems in order to maximize the PIA's potential to earn revenue and reduce recidivism. Certainly, the PIA has been hobbled by a political, economic, and correctional environment which has changed drastically since the inception of the PIA.¹⁵⁶ Stricter sentencing laws have resulted in a prison population that has more than quintupled since 1983.¹⁵⁷ In addition, the 1990s marked the demise of a flush economy and the beginning of hefty fiscal constraints.¹⁵⁸ Meanwhile, the state's economic base has shifted from manufacturing to more diverse, service-based businesses.¹⁵⁹ Though the PIA responded to these changes with some administrative changes in operation, the state has made no changes in the statutory framework.¹⁶⁰

Numerous improvements are necessary for the state to realize its goals. California can learn valuable lessons from other states, as well as from the federal government.

1. The PIA must develop and pursue a clear mission

A clear mission will enable the PIA management to prioritize its objectives and devote resources to them accordingly. The change in management philosophy since 1982 accounts for a dis-

152. See *id.*

153. See *id.*

154. *Id.*

155. See *id.*

156. See CARSON, *supra* note 1, at 12, 14.

157. See *supra* notes 1-3 and accompanying text.

158. See CARSON, *supra* note 1, at 7.

159. See *id.* at 15.

160. See, e.g., *id.* at 16.

tracting, shifting emphasis on various objectives.¹⁶¹ Whereas the PIA concentrated on maximizing employment in the 1980s, it has shifted to productivity and improved customer satisfaction in the 1990s.¹⁶²

Training and utilizing inmates for labor can further all of the PIA's statutory objectives: increasing financial revenue, teaching usable skills, and filling prisoners' idle time.¹⁶³ Yet striving for one goal may require the exclusion of another. The PIA currently focuses on labor-intensive enterprises that provide a greater number of jobs.¹⁶⁴ This suits the quest to employ as many inmates as possible and thereby reduce inmate idleness. The private sector, however, has turned to high technology, which often requires a pared-down work force.¹⁶⁵ As a result of this shift, another PIA objective—imparting marketable skills to inmates—cannot be achieved by training prisoners for labor-intensive jobs.¹⁶⁶

The primary emphasis should be on the general financial benefits of the PIA to Californians.¹⁶⁷ Currently, financial objectives are third.¹⁶⁸ The PIA seeks

[t]o operate a work program for prisoners which will ultimately be self-supporting by generating sufficient funds from the sale of products and services to pay all the expenses of the program, and one which will provide goods and services which are or will be used by the Department of Corrections, thereby reducing the cost of its operation.¹⁶⁹

In contrast, Florida's prison work program, the Prison Rehabilitative Industries & Diversified Enterprises (PRIDE), derives its authority from a statute that places its financial goal first: to “[i]ncrease benefits to the general public by reimbursement to the state for a portion of the costs of incarceration.”¹⁷⁰ Such a primary

161. *See id.* at 10.

162. *See id.*

163. *See CAL. PENAL CODE § 2801* (West Supp. 1996); *supra* notes 110-11 and accompanying text.

164. *See CARSON, supra* note 1, at 10.

165. *See id.* at 10 (noting that high technology is a labor-saving enterprise).

166. *See id.*

167. *See generally CARSON, supra* note 1, at 16 (listing financial self-sufficiency as one of its top two reform goals).

168. *See CAL. PENAL CODE § 2801(c).*

169. *Id.*

170. *FLA. STAT. ANN. § 946.006(3)(a)* (West 1996). In the early 1980s Florida created PRIDE, a private, nonprofit organization, which has been lauded for its self-

emphasis on reducing the public's financial burden will attract more legislative and popular support.¹⁷¹

Lauding the rehabilitative effects of the PIA inevitably attracts criticism from the "lock 'em up and throw away the key" school of punishment. But every key that the state throws away is costly, and taxpayers directly bear this burden.¹⁷² By refining the focus of the PIA mission to stress the benefits to the public in terms of reductions in cost *and* future crime, the concept of working inmates becomes more attractive and practical.

Given the current environment, a financially ambitious and customer-oriented approach—rather than one focused on maximizing the number of working inmates—may sustain the PIA over time without the state's financial support.¹⁷³ The statute does embrace a financial mission. To effectuate financial goals, the state has wisely chosen an objective "[t]o create and maintain working conditions within the enterprises as much like those which prevail in private industry as possible, to assure prisoners employed therein the opportunity to work productively, to earn funds, and to acquire or improve effective work habits and occupational skills."¹⁷⁴ This reflects a commitment to preparing inmates for working lives outside of prison.

The PIA's goals must also reflect administrative objectives of encouraging efficient prison management and minimizing prison disturbances.¹⁷⁵ Although California hires more than 22,000 men

sufficiency, thrifty management, effectiveness in teaching usable job skills to inmates, and contribution to a reduced recidivism rate. *See* Pat Flynn, *Prisoner Industries Unchained in Florida*, SAN DIEGO UNION-TRIB., Aug. 12, 1996, at A1. As of June 1996 PRIDE ran 41 industry facilities and 12 operations facilities; and as of June 1995 it employed 2480 inmates, approximately 4.1% of Florida's inmate population. *See AUDITOR REPORT, supra* note 89, at E-3.

171. Because Californians have overwhelmingly supported tough crime laws and policies, *see discussion supra* Part II.A, an appeal to the rehabilitative potential of a program simply is not likely to garner the support that a financially promising program would. But because financial and rehabilitative results are wholly dependent on each other, semantics will determine how much support legislators and the public will give the PIA.

172. *See CALIFORNIA STATISTICAL ABSTRACT, supra* note 2, at 160 (listing taxes as the largest source of revenue to the state annually).

173. *See AUDITOR REPORT, supra* note 89, at VI-2. Though the PIA may break even on paper, the hidden costs—such as forcing other state agencies to pay higher than market prices for goods—may push the tolerance and support of the PIA supporters.

174. CAL. PENAL CODE § 2801(b).

175. *See discussion supra* Part II.B.

and women to run its state correctional facilities,¹⁷⁶ its statute mentions nothing about achieving any administrative objectives.¹⁷⁷ Florida wisely states in its second objective that correctional work programs are designed to “[p]rovide purposeful work for inmates as a means of reducing tensions caused by overcrowding.”¹⁷⁸ This goal reflects respect for the difficult task of running prisons and an appreciation for the prison staff.

The statutory language of the PIA should also reflect a commitment to helping released inmates find a working life. Released inmates face bleak job prospects.¹⁷⁹ The legislative history of the PIA lists “post-release job placement” as one of the elements of reintegrating ex-offenders into the outside working population.¹⁸⁰ Florida’s statute incorporates this critical final step of job placement in its correctional work program objectives, instructing the Department of Corrections to develop “[a] logical sequence of vocational training, employment by the correctional work programs, and postrelease job placement for inmates.”¹⁸¹ By expressly mandating that the PIA establish a process of providing skilled inmates with at least modest prospects of finding a job, the CDC is bound to see fewer of those inmates return to prison.

2. Privatize or not?

Statutory language suggests that the PIA should operate similar to a private business and even contains provisions that would leave the PIA’s authority unfettered by the traditional, procedural requirements of the civil service system.¹⁸² Despite this statutory intent, just before the PIA started its operation, the state personnel board stated that the civil service requirements of the California Constitution superseded the PIA statute.¹⁸³ In all practicality, this suppressed the PIA’s autonomy in non-inmate personnel matters; now it must acquire personnel approval from the

176. See Vellinga, *supra* note 5, at A15.

177. Overall, the state is very generous toward its CDC workers. California correctional officers are paid 56% more than their counterparts nationally. *See id.*

178. FLA. STAT. ANN. § 946.006(3)(b).

179. See Jacobs, *supra* note 9, at B5 (noting that a convicted felon who obtains a job will face a drop in earnings, and commenting that a drop in wages directly correlates to a higher tendency to resume criminal activity).

180. See 1982 Cal. Stat. ch. 1549, § 3(d), at 6034.

181. FLA. STAT. ANN. § 946.007(5).

182. See CAL. PENAL CODE § 2808 (providing that “[t]he board shall . . . do all the things which the board of directors of a private corporation would do”).

183. See CARSON, *supra* note 1, at 12.

Department of Personnel Administration.¹⁸⁴ Dependence on another department blunts the PIA's entrepreneurial edge.¹⁸⁵ These constraints limit the PIA's

ability to hire, fire, and reassign staff with the skills it needs in a rapidly changing business environment. [The constraints] also frustrat[e] efforts to implement a pay-for-performance salary structure. The BSA has estimated that some civil service workers at the PIA earn 30 percent more than their private-sector counterparts.¹⁸⁶

Several other state government sectors control aspects of PIA operations as well. State procurement processes require that the PIA route purchase orders through the state's Department of General Services, a bureaucratic exercise in paperwork that can take from three to nine months.¹⁸⁷ In addition, the CDC internal committees and security personnel—rather than the PIA—make the ultimate hiring decisions.¹⁸⁸ The PIA sets academic and work experience requirements for many of its positions while the CDC carefully identifies individuals who pose a security risk.¹⁸⁹ Although security is crucial to a productive work environment, providing the PIA with information and then vesting the PIA with final hiring decisions would align it more closely with a private business, where a single authority is ultimately responsible for all aspects of the business.¹⁹⁰

The PIA presently functions as a semi-autonomous state agency.¹⁹¹ Whether privatization is the next logical step for the PIA is a subject of great debate. Proponents of privatization argue that it facilitates achievement of PIA's original statutory objective of a self-sufficient and business-like operation.¹⁹² It would minimize the operational and governmental constraints impeding the PIA,¹⁹³ and a profit-oriented, entrepreneurial culture would attract

184. *See id.*

185. *See id.*

186. *Id.* at 12-13.

187. *See id.* at 13.

188. *See id.*

189. *See id.* at 12-13.

190. Since the cost of disorder on the factory floor is so great to the PIA, it will not be inclined to hire an inmate who has a history of violence simply because that person has some job skills or experience.

191. *See CARSON, supra* note 1, at 7.

192. *See id.* at 1 (recommending privatization).

193. *See id.*

a larger pool of potential non-inmate workers.¹⁹⁴ A privatized PIA could streamline its personnel and accounting departments, thereby avoiding the costly and time-consuming requirements of the Department of Personnel Administration and Department of General Services.¹⁹⁵

Several hurdles render privatization an impractical alternative. Privatization would require extensive rewriting of the applicable statutes. Further, it is risky for the state to relinquish a great deal of control.¹⁹⁶ PRIDE is the obvious model of a successful private, nonprofit organization, but as of June 1995 PRIDE provided jobs to only 2480 inmates, slightly less than one-third of the number the PIA employs.¹⁹⁷ Complete failure of a program the size of the PIA is simply risky.

Inherent characteristics of the PIA labor pool might also stymie privatization efforts. Certainly, cheap labor is a great advantage to the PIA in competing for work. From 1994 to 1995, however, the PIA lost 1.3 million labor hours—or about 14% of its total production schedule—due to lock-downs and security problems.¹⁹⁸ Not only do lock-downs require that inmates be confined to their cells, thereby clearing the work floor, but lock-downs often mean that no vehicles may enter or leave the prison.¹⁹⁹ This hampers deliveries and pick-ups in an erratic and time-consuming way that the private sector neither understands nor appreciates. This problem is an inherent, permanent cost of running a prison-based business.

Those who oppose privatization present several alternatives such as eliminating the PIA Board and making the PIA a division

194. *See id.* at 17.

195. *See id.* at 12-13, 18-19.

196. *See AUDITOR REPORT, supra* note 89, at G-24 (noting that because the PIA operates in a government setting, it would be impossible for it to run in an entirely profit-making manner).

197. *See id.* at E-3.

198. *See CARSON, supra* note 1, at 13 (estimating the loss in sales production to be about \$18.4 million per year). Ironically, stringent security has the unintended, beneficial effect of essentially eliminating employee theft—a significant problem in workplaces outside the prison. *See LITTLE HOOVER COMMISSION, PUTTING VIOLENCE BEHIND BARS: REDEFINING THE ROLE OF CALIFORNIA'S PRISONS* 100 (1994).

199. *See generally AUDITOR REPORT, supra* note 89, at 10 (listing the need to constantly account for inmate location, to perform standing counts, and to make inmate searches at various points of ingress and egress as examples of unproductive time); Frederic M. Biddle, *Business Behind Bars*, *BOSTON GLOBE*, Sept. 3, 1989, at 33 (noting that lock-downs leave trucks stranded outside or inside the prison gates).

of the CDC, limiting the Board's responsibility, or reforming the Board.²⁰⁰ A current legislative bill proposes to eliminate the PIA and reestablish it as a public benefit, tax-exempt, nonprofit corporation in which the state would maintain a present ownership interest.²⁰¹

If the state's goals are to maximize revenue, teach usable skills, and reduce inmate idleness—all in the shortest amount of time—maintaining the status of a semi-autonomous state agency is the most practical alternative. The PIA, however, must have more freedom to run itself. The PIA needs to have unfettered authority in several areas to operate most efficiently as the semi-autonomous state agency intended by the statutory language but not fully recognized in practice. First, this freedom must include a clear demarcation of authority. Presently, the PIA General Manager serves under the Board but also reports to the Director of the CDC, theoretically giving the latter veto power over Board decisions.²⁰² This unclear chain of authority has led to weak internal governance.²⁰³ The statutes should be revised to provide the Board with the final veto. The Board has been given the mandate to run a successful program, and it must have the power to make decisions to do so.

Presently, Board members are part-time, unsalaried appointees who meet at least four times a year as required by statute.²⁰⁴ Board members should receive some type of salary.²⁰⁵ This serves as a long-overdue compensation for the time Board members spend, as well as a way to make the job more attractive to people who have the time and experience to do the job well. Finally, the Board should meet more regularly to ensure that the PIA is running smoothly.²⁰⁶

The state has given the Board the heavy task of running a \$152 million-per-year enterprise, yet it has withheld some of the

200. See AUDITOR REPORT, *supra* note 89, at VI-3 to VI-4.

201. See *Prison Industry Authority: Hearing on S.B. 617 Before the Senate Rules Committee*, 1995-1996 Reg. Sess. 2-4 (Cal. 1995). The proposal would permit limited sales to the private sector. See *id.* This bill incorporates recommendations from the Legislative Analyst's Office report as well as aspects of prison work program statutes from other states. See *id.*

202. See CARSON, *supra* note 1, at 14.

203. See *id.*

204. See *id.*

205. See *id.* at 19.

206. See *id.*

necessary tools. Since the Board lacks the resources to properly evaluate the PIA's success and cannot make final decisions in such essential areas as hiring, budgets, and proposals, it does not have adequate control over the PIA.²⁰⁷ This general confusion has led to a number of problems: too many product lines, excessive inventory and warehouse space, an inadequate system to control product costs, and a large number of enterprises running in the red.²⁰⁸

Even proponents of privatization support increased checks and balances to ensure that the PIA spends its resources efficiently and strives to fulfill its statutory mandates.²⁰⁹ These would include continuing to provide an annual report to the legislature—though perhaps one with more detail.²¹⁰

Another important element of financial self-sufficiency is modification of the requirement that state public agencies buy certain goods from state prison industries.²¹¹ Senator Richard Polanco recently sponsored legislation that addresses this issue.²¹² Both Texas and New York governmental agencies are required to purchase products from Texas Correctional Industries (TCI) and Corcraft, respectively, but only if the products meet the customer's

207. *See id.* at 12, 14, 19.

208. *See AUDITOR REPORT, supra* note 89, at II-1; CARSON, *supra* note 1, at 14. The PIA would benefit tremendously from reengineering. It runs 31 industries and 73 factories while the federal government—employing more than twice the number of inmates—runs 18 industries and 54 factories. *See AUDITOR REPORT, supra* note 89, at E-6.

209. *See CARSON, supra* note 1, at 19.

210. *See id.* The PIA is already subject to regular state audits. *See id.* at 5.

211. The following state agencies are required to maximize utilization of PIA products: the State and Consumer Services Agency; the Business, Transportation and Housing Agency; the Health and Welfare Agency; the Resources Agency; the Youth and Adult Correctional Agency; the California Environmental Protection Agency; the Department of Food and Agriculture; the Attorney General; the Secretary of State; the Treasurer; the Controller; and the Superintendent of Public Instruction. *See CAL. PENAL CODE* § 2807 (West 1982 & Supp. 1996).

212. The state legislature recently passed a bill requiring that every contract entered into by a state agency must specify that no foreign goods or equipment be produced by forced labor. *See CAL. PUB. CONT. CODE* § 6108 (West Supp. 1997). This law is an attempt to provide state enforcement of the Smoot-Hawley Tariff Act of 1930, the federal law that prohibits the importation of any goods made with forced labor. *See* 19 U.S.C. § 1307 (1994). Critics point out the hypocrisy of condemning other countries for use of forced labor while requiring that certain agencies purchase products made in California by prisoners. *See Hearing on S.B. 2457 Before the Senate*, 1995-1996 Reg. Sess. 100 (Cal. 1996) available in LEXIS, Statenet Library. This argument is not persuasive; although this country is limited in how it can monitor human rights violations in other countries, it has easy access to U.S. prisons.

price, quality, and delivery standards.²¹³ Only certain federal government departments, such as the Department of Defense, General Services Administration, and the Department of Veterans Affairs must purchase products from the federal government's prison industry agency, UNICOR.²¹⁴ None of Florida's government agencies are required to purchase PRIDE products.²¹⁵ Following the lead of Texas and New York, California should add the proviso that the price, quality, and delivery standard of PIA products must be competitive. This would address the accusations that some PIA products are shoddy and their delivery times are late.²¹⁶ Additionally, the PIA's self-sufficiency claims could not be undermined by charges that other state agencies are paying the price for the PIA's bottom line.

3. Compete in the private sector

With products that were competitive in price and quality, prison industries could make a greater contribution to inmate workers and state coffers if they could sell prison-made products

213. See AUDITOR REPORT, *supra* note 89, at E-2, E-4. Texas Correctional Industries (TCI) employs 7696 inmates, approximately 6.7% of the total Texas inmate population, at thirty-seven manufacturing facilities and six service facilities. *See id.* at E-2. Texas Governor George W. Bush has created a World Wide Web site that advertises the state's inmate work programs—complete with photographs of inmates constructing new prisons. *See Bush, Bullock Announce Plan to Put Prisoners to Work Cleaning up Parks; Agreement Worth Millions in Labor* (visited Mar. 6, 1997) <<http://www.texas.gov/cemetery/html>>.

The New York Department of Correctional Services (DCS), Division of Industries/Corcraft run a more streamlined operation than Texas—fourteen manufacturing facilities and two service facilities. *See AUDITOR REPORT, supra* note 89, at E-4. Two thousand six hundred inmates, 3.8% of the state's total inmate population, work for Corcraft. *See id.*

214. *See AUDITOR REPORT, supra* note 89, at E-5. Federal Prison Industries, Inc. (FPI) operates under the trade name UNICOR as a wholly-owned federal government corporation. *See id.* UNICOR runs 54 manufacturing facilities and 17 service facilities, employing 15,972 inmates, approximately 19% of the total federal inmate population. *See id.*

215. *See id.* at E-3.

216. The *Orange County Register* conducted a three-month study and found that the PIA "has a history of providing shoddy, overpriced products." Lifsher, *supra* note 58, at 24. "Not one single item in PIA is competitive," stated a longtime businessman and owner of a Los Angeles-based construction company. *Id.* The State Auditor's Office found that in terms of overall satisfaction with the PIA, 9% of customers were extremely dissatisfied; 31% were dissatisfied; 30% were not quite satisfied; 29% were satisfied; and 1% were extremely satisfied. *See AUDITOR REPORT, supra* note 89, at D-4. Seventy-one percent rated PIA's overall performance worse than other suppliers, while 28% rated it the same, and only 1% rated it better. *See id.*

and services to the private sector. Because organized labor will object vociferously to this measure, establishing clear rules for fair competition is integral,²¹⁷ this means limiting how much the PIA may infringe upon civilian labor markets. The legislature must set the amount of allowable infringement, for instance, 5% of the local business of a given type. Statutes currently require labor representation on the PIA Board and that the Board hold public hearings for persons and companies that might be affected by current or future plans of the Board.²¹⁸ The Board would have to continue to hold these hearings, perhaps monthly, to ensure that the PIA does not exceed its defined allowance of civilian business.

4. Establish hiring policies that evaluate potential for productivity and rehabilitation

The PIA and CDC must establish policies on how to select inmates who satisfy certain criteria: who are best suited for the work; who have enough sentence left to serve so that the enterprise is able to harvest the fruits of trained labor; and who seem intent on putting their skills to work on the outside.

The PIA workforce has a turnover rate of 145% per year, suggesting that the CDC is assigning jobs to inmates who have little time left to serve.²¹⁹ The prison pool presents the PIA with many inmates who need to be trained from scratch.²²⁰ Investing expensive and time-intensive training in inmates only to lose them before they can work productively is a frustrating endeavor. Though it may satisfy one PIA goal—preparing prisoners for jobs on the outside—it makes the goal of self-sufficiency impossible.

Conversely, the PIA must be wary of hiring inmates who have too much time left to serve.²²¹ A Texas senate committee proposal

217. See Biddle, *supra* note 199, at 38.

218. See CAL. PENAL CODE §§ 2802(f), 2808(i).

219. See CARSON, *supra* note 1, at 13.

220. See *id.*

221. As more criminals sentenced under the “three strikes” law enter the system for long periods of time, the pool of inmates with only a few years left on their sentences decreases. See *supra* note 11 for a discussion of the “three strikes” law. Another inevitable problem with the increasing number of second- and third-strike offenders is that the population of older inmates will burgeon. Studies disagree on what age defines “elder.” See Ronald H. Aday, *Golden Years Behind Bars: Special Programs and Facilities for Elderly Inmates*, 58 FED. PROBATION 47, 48 (1994) (noting that authors define elder as 50 to 65 and older). Studies generally agree, however, that vocational and work programs are not intended to benefit elder inmates. See *id.* at 53 (noting that since long-term, older offenders are not likely to

heavily concentrates the state's rehabilitative efforts on people who are within two years of their release date.²²² The chair of the committee, State Representative Allen Hightower, commented that “[e]xperience has shown that [convicts] don't gain too much from the [rehabilitation] programs until they can see the light at the end of the tunnel—when they get near the end of their sentence. So why spend a lot of money on people when it won't help?”²²³

5. Gradually expand the PIA program to involve more inmates

Despite the modest success of the program, the PIA should expand carefully. Theoretically, if more inmates learn skills, the recidivism rate will drop, and California's taxpayers will spend less on prisons. Though this intention is good, simply demanding an expansion and tossing money to the CDC ignores significant structural obstacles. The PIA must expand in conjunction with a number of fundamental changes such as those suggested in this Comment. Expansion would be a natural and healthy consequence of these recommendations.

A pending state bill would require that the CDC “develop a plan to enable every eligible inmate to participate in a work, educational, or rehabilitation program by the year 2000.”²²⁴ The bill would limit CDC expenditures for development of the program to \$100,000.²²⁵ The impetus for the bill was a report issued by the Little Hoover Commission entitled *Putting Violence Behind Bars: Redefining the Role of California's Prisons*.²²⁶ The report prompted the legislative declaration that inmates “should work as hard as the taxpayers who provide for their upkeep.”²²⁷

return to the workforce, these programs serve no purpose); Jason S. Ornduff, *Releasing the Elderly Inmate: A Solution to Prison Overcrowding*, 4 ELDER L.J. 173, 184 (1996) (finding that prison staff discourages elderly inmates from participating in such programs and reserves them for younger inmates).

222. See Ward, *supra* note 102, at A1. Careful selection of program participants with a short time left to serve clearly eliminates a substantial number of inmates. Those who are serving life terms—the ones who face the most idleness and least hope—are not good candidates for the PIA programs. The CDC, however, runs a number of vocational and educational programs, which might be better suited to these types of offenders. See CARSON, *supra* note 1, at 5 fig.3 (listing the work and educational programs sponsored by the Department of Corrections).

223. Ward, *supra* note 102, at A1.

224. A.B. 344, 1995-96 Reg. Sess. (Cal. 1995).

225. See *id.*

226. LITTLE HOOVER COMMISSION, *supra* note 198.

227. A.B. 344, 1995-96 Reg. Sess. (Cal. 1995).

Although its intentions are sensible, this bill was hastily conceived. The CDC has 19,000 inmates eligible for work, but it faces three massive obstacles: deficient staffing and equipment at state prisons, security concerns due to construction design, and gross overcrowding.²²⁸ The CDC estimates the cost of addressing the first two obstacles at \$55 million.²²⁹ The third obstacle is a tricky paradox. On one hand, the state can only reduce overcrowding by decreasing recidivism. On the other hand, the state cannot reduce recidivism because the current overcrowding prevents the state from providing a safe and productive atmosphere where it can teach skills that lead to reduced recidivism. Expansion must be an overall objective in prison work programs, but the solution is a more serious and well-conceived investment in the CDC.

6. Measure mission performance

The most effective way to evaluate whether the prison work programs have imparted useful skills to released inmates is to track recidivism rates carefully. Neither the PIA nor the CDC can provide any data on these rates for PIA workers.²³⁰ No agency has tracked whether PIA enterprises are more effective at reducing recidivism rates than other prison work and educational programs.²³¹

Because the PIA provides work to only 5.5% of the total prison population, its impact on the overall recidivism rate is probably negligible.²³² Yet the state's operational cost of a second-strike offender returning as a third-striker with a mandatory minimum twenty-five year sentence is at least \$428,000, not including an average of \$124,000 to build a prison cell for such a high-security criminal.²³³ Even modestly reducing the number of third-strike offenders would significantly reduce the CDC budget. Florida statutorily requires that the Department of Corrections establish procedures to evaluate whether work programs are related to successful post-release adjustments.²³⁴ The recidivism rate of workers in Florida's PRIDE program is 15% over four years,

228. *See id.*

229. *See id.*

230. *See CARSON, supra* note 1, at 12.

231. *See id.*

232. *See id.* at 10. Approximately 110,000 inmates are released on parole each year. *See id.* at 12.

233. *See id.* at 12.

234. *See FLA. STAT. ANN. § 946.009(2)(a)* (West 1996).

compared with 51% for Florida's general inmate population.²³⁵ By tracking recidivism rates, California could set realistic goals for reducing recidivism and offer incentives to non-inmate prison workers to achieve these objectives.

IV. CONCLUSION

Perhaps the most ominous aspect of the escalating growth of California's correctional system is that it shows no sign of stopping. Slowing this train does not necessitate that the state abandon its "tough on crime" policies. It does require, however, an investment in presenting alternatives to crime and harvesting the fruits of the labor force the state has at its disposal.

Almost 60% of inmates in California prisons have been behind bars before.²³⁶ They must have received little guidance while incarcerated on viable alternatives to a life of crime. The PIA is a manageable program through which the state can achieve its objective of providing these alternatives. Through streamlining and slow expansion, the PIA can generate more released inmates who are armed, not with weapons and a bad attitude, but with the practical skills and experience necessary to succeed in a lawful profession. This outcome achieves the rehabilitative and restorative objectives to reform criminals into productive members of society.

The icing on the cake is that the state can reap a number of other benefits while rehabilitating its inmates. Financially, the PIA should be able to support itself and gradually become a financially successful enterprise. Though generally it is an unfortunate fact, the PIA is not limited by its labor force. As steadily as it can effectively train and release one inmate, another can move into the vacated slot. Administratively, a well-run PIA ensures a more peaceful inmate population, thereby creating a less stressful and violent environment for those who work for the CDC and the inmates who reside in prison.

Finally, the public's desire for punishment is not compromised. The state will still send criminals to prison for long sentences, thereby providing comfort to society. Comfort, however, has a cost. Are Californians willing to simply write a blank check? The number of programs that the state will have to cut or sacrifice

235. See CARSON, *supra* note 1, at 15-16; see also *supra* note 85 and accompanying text (discussing studies on the impact of work programs on recidivism rates).

236. See *Proposal*, *supra* note 10, at 6.

to support prison expansion is unknown. Certainly, it will be large. The magnitude of tax increases that the state may have to levy is also unpredictable. In the absence of real and immediate changes, however, the inevitability of program cuts and tax increases is clear. The PIA provides a remarkably practical and creative means of cutting the cost while the state still can.

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