

THE FUTURE OF CRIMINAL JUSTICE REFORM AND PUBLIC SAFETY

A CALIFORNIA 100
REPORT ON POLICIES AND
FUTURE SCENARIOS



VISION & STRATEGY FOR
THE NEXT CENTURY





ABOUT CALIFORNIA 100

The California 100 Initiative envisions a future that is innovative, sustainable, and equitable for all. Our mission is to strengthen California's ability to collectively solve problems and shape our long-term future over the next 100 years.

California 100 is organized around 15 policy domains and driven by interrelated stages of work: research, policy innovation and engagement with Californians. California 100's work is guided by an expert and intergenerational Commission. Through various projects and activities, California 100 seeks to move California towards an aspirational vision—changing policies and practices, attitudes and mindsets, to inspire a more vibrant future.

This California 100 Report on Policies and Future Scenarios was produced as part of California 100's research stream of work, in partnership with 20 research institutions across the state. California 100 sponsored grants for data-driven and future-oriented research focused on understanding today and planning for tomorrow. This research, anchored in California 100's 15 core policy domains, forms the foundation for the initiative's subsequent work by considering how California has gotten to where it is and by exploring scenarios and policy alternatives for what California can become over the next 100 years.

The California 100 initiative is incubated through the University of California and Stanford.

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READ MORE ABOUT THE FUTURE OF CRIMINAL JUSTICE REFORM AND PUBLIC SAFETY IN CALIFORNIA

For additional background information, read the related Facts-Origins-Trends report at California100.org. The Facts-Origins-Trends report contains all of the references and citations to support the content of this report.

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This Report is one of 15 reports that will be released in 2022 as part of the California 100 Initiative. We are proud to partner with the following research centers and institutes across California on our work:

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University of California, Irvine's distinctive, interdisciplinary Department of Criminology, Law and Society conducts research and teaching activities that focus on the causes, manifestations, and consequences of criminal behavior, methods of social control, and the relationships and interactions between law, social structure and cultural practices. The department faculty have strong expertise in a number of sub-areas including race and justice; inequalities and the legal system; immigration policies and their impacts; global and comparative socio-legal studies; punishment and society; socio-legal theory; incarceration and re-entry processes; miscarriages of justice; psychology and law; violence and responses to violence; spatial patterns of crime and social control; social networks and crime; and public policy, criminal justice and crime. It is the only criminology department, and one of only two law & society units, in the University of California system. The department is currently tied for 2nd ([US News and World Reports](#) Chronicle of Higher Education) in the nation among doctoral degree-granting programs in criminology and criminal justice.

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The School of Government and Public Policy (SGPP) at the University of Arizona is a multi-disciplinary school with a broad portfolio of innovative programs and degrees at the undergraduate and graduate levels. SGPP offers undergraduate degrees in criminal justice studies, law, political science, and public administration and policy; as well as graduate programs in public administration, public policy, and international security studies and political science. SGPP faculty engage in high-caliber research, teaching, community outreach, and civic leadership, preparing our graduates for leadership positions in the public, nonprofit, and private sectors. Faculty consists of leaders across the subfields of our disciplines, as well as in critical areas like conflict and security, democracy and dictatorship, environmental sustainability, law and policy, political and policy networks, and political psychology. SGPP is one of the largest schools at the University of Arizona and is uniquely situated to serve as a model for public affairs education.

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FOREWORD

“As California Goes, So Goes the Nation, Alas.” That was a headline from a *Los Angeles Times* opinion column on April 30, 1989, which noted that, even though “Californians have long considered their state the cutting edge of social and political change... [it] no longer seems the vanguard of political innovation. Other states rarely look to California for policy initiatives.”

Fast-forward to 2022, and few would proclaim that California lacks in policy innovation. Quite the contrary. The state has enacted a variety of policies ranging from expansions in immigrant rights and voting rights to health care and higher education, and from large-scale experiments in guaranteed income to ambitious moves towards net-zero emissions in a variety of sectors. And despite the periodic waves of “doom and gloom” reporting about the state, California’s economic output over the last 25 years has grown faster than the national average, and on par with GDP growth for the state of Texas.

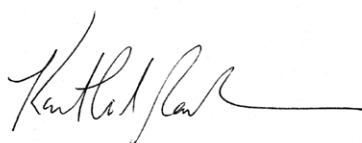
Even so, much remains to be done. The California Dream has always been marred by a high degree of racial exclusion, and it remains out of reach for millions in the state—whether measured by health outcomes, unaffordable housing, or massive disparities in income and wealth. California also recognizes that future progress depends on recognizing and correcting historical wrongs. Its Truth and Healing Council, for example, will provide recommendations aimed at prevention, restoration, and reparation involving California Native Americans and the State. If California’s racial diversity represents America’s demographic reality by 2100, our work is essential—not only for the long-term success of the state, but also for our country’s innovative and equitable future.

This future-focused work is especially pressing today. The COVID-19 pandemic has scrambled a state and nation already undergoing significant changes in economics, politics, and society. The harmful consequences of climate change are at our doorstep,

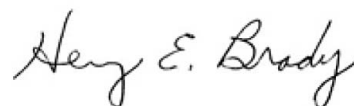
with forest fires and droughts that grow in frequency and intensity each year. The weakening of local media and the growth of disinformation threaten both our civic health and our public health. And staggering inequities in income and wealth, home-ownership and health, threaten the state's reputation as a haven for migrants, domestic and international alike.

In addition to immediate threats that affect our long-term future, we also see plenty of opportunity. Record increases in federal and state spending mean that billions of additional dollars are flowing to state, local, and tribal governments in California. Many jurisdictions are looking to invest in infrastructure that meets the long-term needs of their communities. Philanthropic institutions and individual donors are also looking to make transformative investments that have enduring impact. We have an opportunity to inform and enrich all of these plans and conversations.

Most institutions and organizations in California are focused on immediate challenges, and don't have the luxury of time, dedicated talent, and resources to focus on long-term futures. California 100 is grateful for the opportunity to provide added value at this critical time, with actionable research, demonstration projects, and compelling scenarios that help Californians—government agencies, stakeholder groups, and residents alike—to envision, strategize, and act collectively to build a more innovative and equitable future.



Karthick Ramakrishnan, Ph.D.
Executive Director



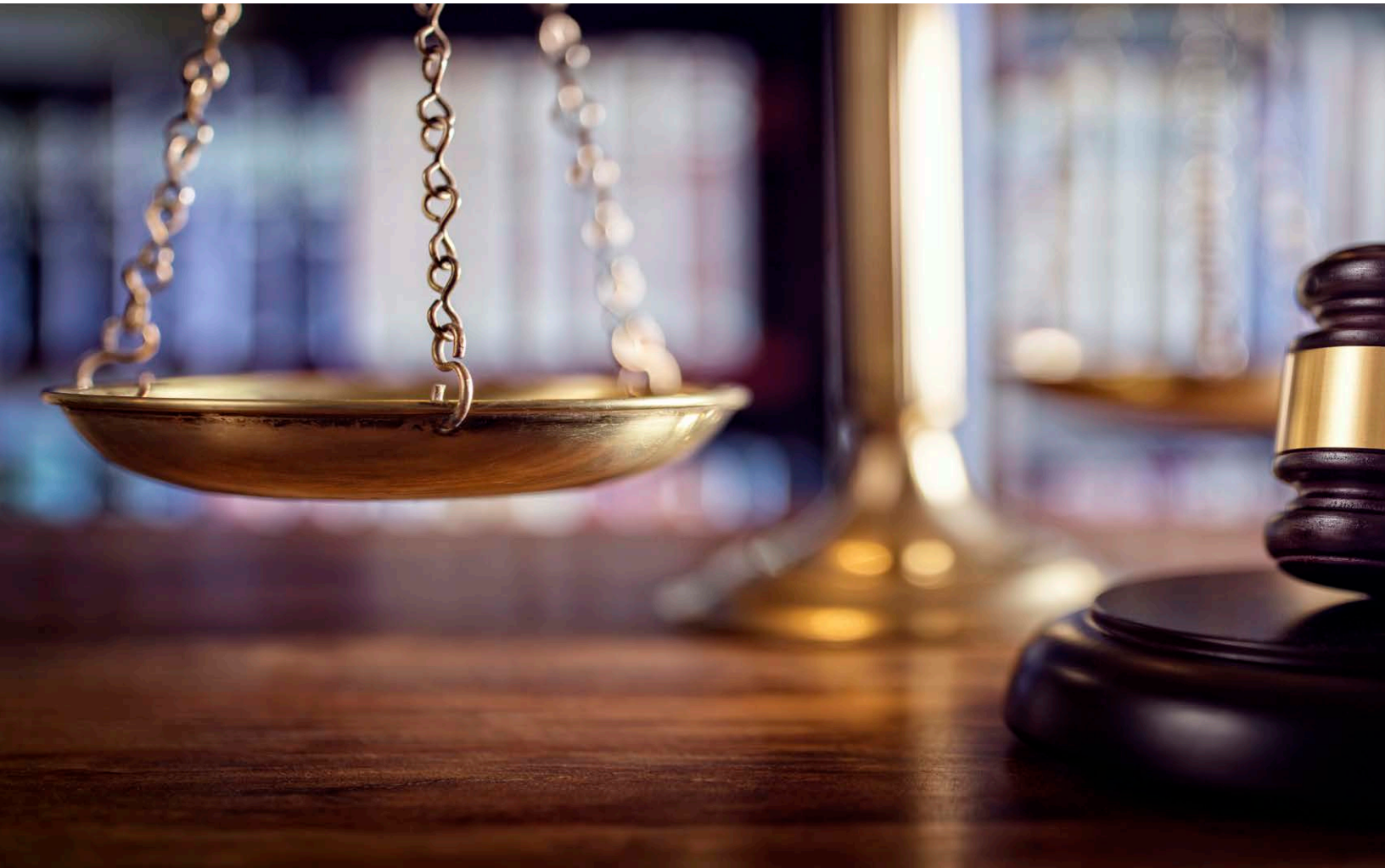
Henry E. Brady, Ph.D.
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THE CALIFORNIA EXPERIMENT ON CRIMINAL JUSTICE REFORM:

CAN WE DOWNSIZE OUR PRISONS AND JAILS
WITHOUT COMPROMISING PUBLIC SAFETY?

When it comes to criminal justice, as California goes, so goes the nation. In the 1990s and early 2000s, the state led the way in ramping up mass incarceration and passing laws such as three-strikes and truth-in-sentencing that had adverse consequences, especially for low-income communities and communities of color. States across the country emulated California's tough-on-crime tactics. Now, California is again leading on criminal justice reform, but this time setting the tone for a smarter and more equitable system. How did California get to where it is today?



California is again leading on criminal justice reform, but this time setting the tone for a smarter and more equitable system.

Perhaps more than any other state, California is immersed in a period of fundamental reform to its criminal justice system. Since 2011, the state has passed a series of reforms, most of which were intended to reduce its massive prison population. So far, these reforms seem to be working. With an incarceration rate of 310 (per 100,000), California is now well below the national average of 639 (per 100,000).

The COVID-19 pandemic furthered California's trend in decarceration, as the state reduced prison and jail populations to slow the spread of the virus. These significant reforms, and decarceration more generally, have not harmed public safety. While some types of crime have increased during the pandemic, overall crime rates have remained near historic lows. In 2019, California's property crime rate reached its lowest level since 1960, while the violent crime rate was in line with rates in the late 1960s.

At the same time, however, corrections costs remain high, racial inequities persist throughout California's criminal justice system, including in arrest and incarceration, and surveys reveal that Californians still perceive bias in the state's criminal justice system. Many are now calling for new reforms to other aspects of the system, including sweeping police reform in an effort to target racial disparities.





When it comes to public safety and criminal justice reform, what has California done right in this transformation, where has it fallen short, where is California now, and where is it going?

This report focuses primarily on sentencing and corrections, or the *back-end* of criminal justice in California, largely because correc-

tional reforms have dominated the state's policy landscape over the past decade. However, given the current moment, many now call for reforms to policing and prosecution, or the front-end of the state's criminal justice system. These front-end reforms warrant consideration moving forward, which we discuss in our scenarios.

THE CURRENT STATUS OF CRIMINAL JUSTICE IN CALIFORNIA

Individuals' beliefs about incarceration and punishment affect their notion of how society should respond to those who violate the law.

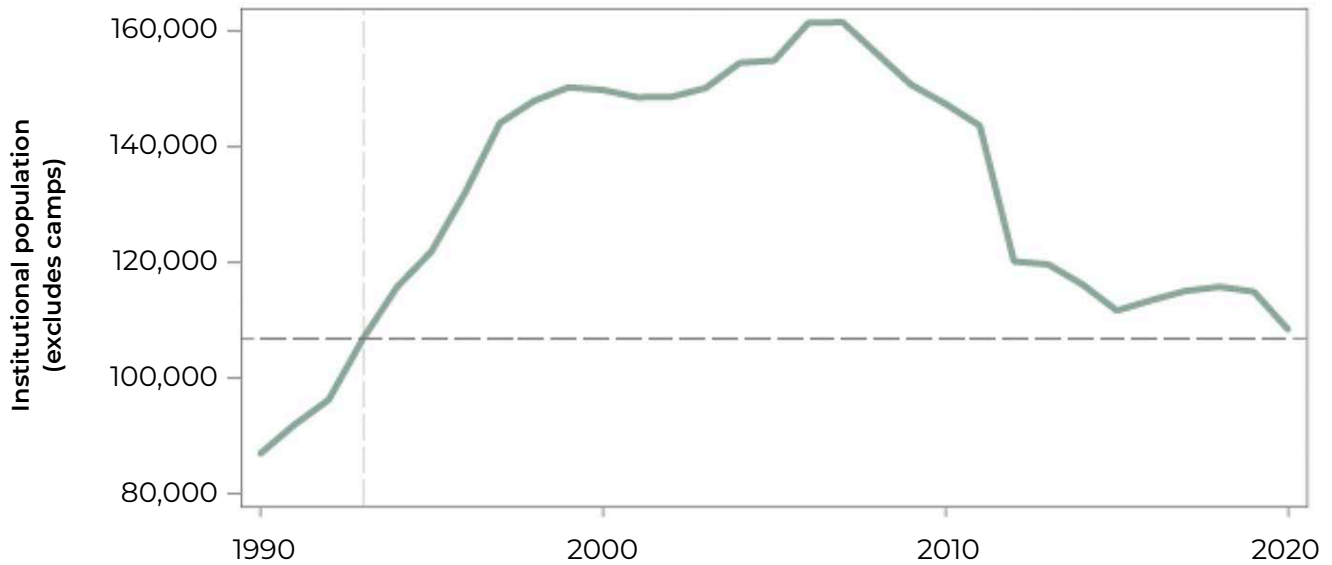
Often unnoticed in these calculations is that incarceration is costly for society, for those who work in prisons, and for those incarcerated because they lose years of life, bear the stigma of incarceration, and might become more prone to commit crimes in the future. Although some decisions about incarceration involve value judgments, others can be examined empirically by considering what incarceration does to individuals and whether it has the intended effects. Deterrence, for example, assumes that individuals who may commit a crime would factor in the costs of their crim-

inal behavior before doing so. Incapacitation assumes there is little that can be done to prevent crime among repeat offenders, especially when they are younger adults, and that removing them from society is necessary to reduce crime. Rehabilitation assumes there can be changes in the individual or in the individual's circumstances (such as earning a high school degree in prison) that can change their likelihood of reoffending. Restorative justice assumes that people who commit crimes will change their behavior if they know and understand the costs to victims and to society at large. The significant changes in California's criminal justice system over the past three decades provide information and evidence that have taught us a great deal about the impacts of prisons. Indeed, these competing rationales for punishment help contextualize California's correctional history, including its correctional crisis and recent reforms focused on prison-downsizing, as well as suggest possible scenarios for California corrections moving forward.



Figure 1

California's Prison Population is Nearly As Low As It Was in 1993



SOURCE: Historical CDCR Population Reports, archived by PPIC and CDCR's weekly population report for May 20, 2020. [PPIC Blog](#), June 2020



In 2011, California's prison system reached a breaking point. For several decades the state had pursued policies of deterrence and incapacitation through three-strikes and truth-in-sentencing laws that limited parole and increased the time offenders spent in prison. California's prison population had risen dramatically, and its prisons had become overcrowded to more than twice their capacity despite constructing 23 new facilities between 1980 and 2010. Spurred on by budget pressures and a court order, the state implemented reforms designed to reduce its correctional population. Within a matter of years, the court ordered reductions were met. The state went beyond the court's prescription when it released a similar number of individuals in an effort to mitigate the spread of COVID 19 in its facilities. California's prison population is now nearly as low as it was in 1993.

In essence, over the past decade, California has been transforming its criminal justice system, having passed reforms intended to reduce its massive prison population. The COVID-19 pan-

demie furthered the trend in decarceration, as the state reduced prison and jail populations to slow the spread of the virus. Notably, these reforms and decarceration have not harmed public safety. Crime rates remain near historic lows.

At the same time, California has spent—and continues to spend—an unparalleled amount on incarceration and its corrections system. Was this a sound investment? On the one hand, California's recent decarceration efforts do not appear to have come at the expense of steep crime rate increases. On the other hand, reductions in California's correctional population have not been matched by similar reductions in correctional costs.

Yet, and perhaps of greater concern, racial disparities in incarceration have diminished only slightly, and the consequences of these disparities are now clearer than ever. The California experiment has taught us that overreliance on incarceration comes at a significant cost, yields diminishing returns in crime control, and exacerbates racial inequalities.

CORRECTIONAL COSTS

Although California has substantially reduced its correctional population, the state continues to fund California’s Department of Corrections and Rehabilitation (CDCR) at rates comparable to its budget when California had its highest incarceration rate. Specifically, for fiscal year 2020-21, CDCR received a budget allocation of \$12.4 billion. Most recently, the Governor has proposed an increase in CDCR’s budget to \$14.2 billion for the 2022-23 fiscal year. When California’s prison population

was at its highest in 2006-07, CDCR received a total budget of \$10.5 billion, or \$13.9 billion when adjusted for inflation, only \$1.5 billion higher than our current spending. This shows that California has not substantially reduced CDCR’s budget despite reducing the incarcerated population throughout the State.

This level of funding is, perhaps, more egregious considering California’s highest allocation for CDCR came during FY 2016-17 when

Figure 2

California Now Spends Nearly Equal Amounts on Corrections As It Does on Higher Education

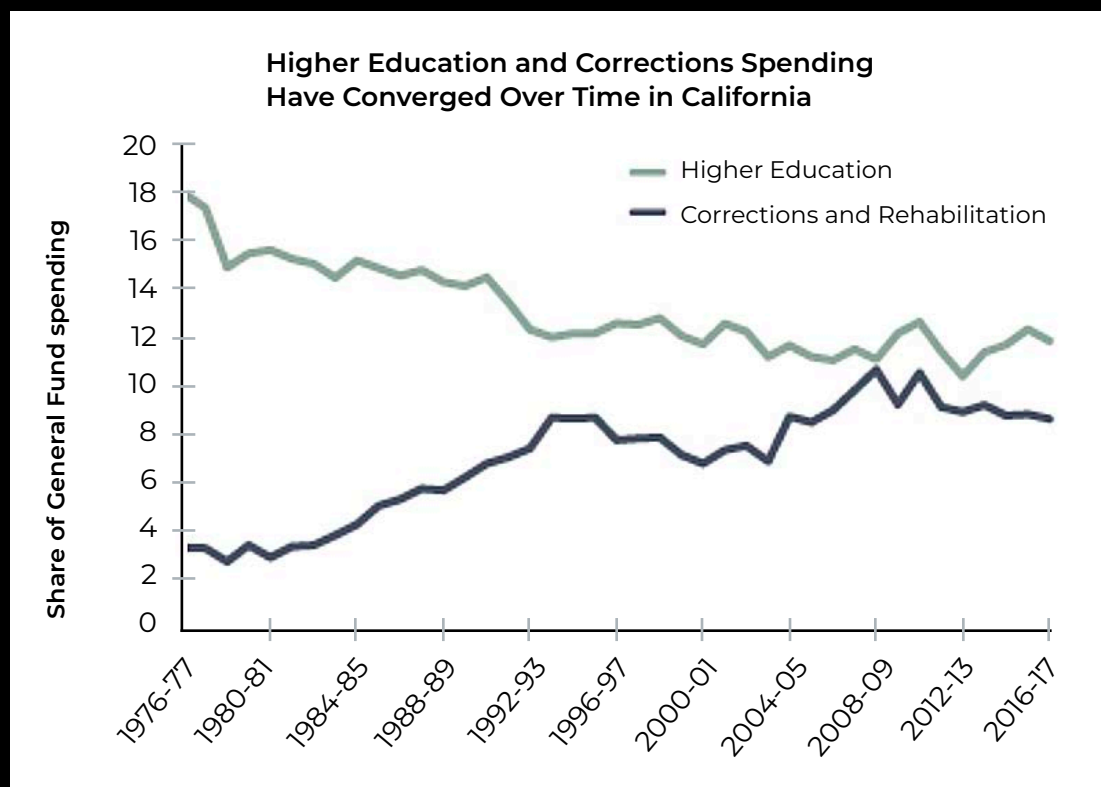


FIGURE SOURCE:
[PPIC Blog](#),
 August 2016

DATA SOURCE:
 California Department
 of Finance Chart C-1
 Program Expenditures
 by Fund



it received a budget of \$14.5 billion, or \$16.5 billion when adjusted for inflation. As we explore in Figure 7 on the pages below, 2016 saw some of the lowest incarceration rates in the past 20 years, despite the State's greatest budget allocation on record for CDCR. When we examine these costs on a per capita basis, we see that in 2006-07 the state spent \$81,470 (in FY20-21 dollars) per incarcerated individual. Despite substantial reforms that we explore in this report, today the state spends significantly more at \$98,945 per incarcerated individual.

California's total spending on corrections now approaches the state's total spending on higher education. In fact, one year in the University of California system costs significantly less than one year behind bars: state allocations to UC campuses are roughly \$6,000 per student and in-state residents pay tuition and fees totaling about \$15,000 compared to nearly \$99,000 in state funding per incarcerated individual. Figure 2 on page 15 clearly illustrates the state's converging costs between funding corrections and higher education.

One reason correctional costs do not mirror correctional population levels in California is that facility construction and maintenance, pensions for retired correctional officers, and staffing for upkeep are fixed costs that do not diminish even if no individuals are housed in the system.

Moreover, the California Correctional Peace Officers Association became a powerful union

as the incarcerated population grew in California, and it is not likely to cede its political capital and wealth in favor of policies towards prison downsizing. These factors also partially explain why the cost to incarcerate someone for a year in the California prison system has grown from just under \$50,000 per year in FY 2010-11 to over \$100,000 per year in June 2021. If a portion of correctional expenditure is fixed (i.e., unchanging in response to prison population trends) then reducing the number of individuals incarcerated in California's prisons removes a portion of the cost per individual per year numerator while leaving the denominator (i.e., total cost) unchanged. Thus, both increases in correctional spending and prison population reductions can cause the per year incarceration cost to increase. This is perhaps best illustrated by the wave of releases intended to mitigate COVID-19 spread in 2020 and 2021. Prior to these population reductions, in FY 2018-19, the per-year incarceration costs had been roughly \$81,000 (\$86,674 in FY20-21 dollars); by June 2021, the cost had increased 25 percent to over \$100,000 per year. Therefore, despite a decline in both the prison population and prison staff, California's prison spending rose \$560 million between 2010 and 2015 (\$646 million in FY20-21 dollars), primarily because salary, pension, and other employee and retiree benefits continued to increase, and also as a result of union negotiated increases.

Of more substantial concern, although California's correctional costs have increased four-fold over the past 50 years, crime rates have not fallen proportionately, suggesting the state is reaping diminishing crime-control returns on its incarceration investments.



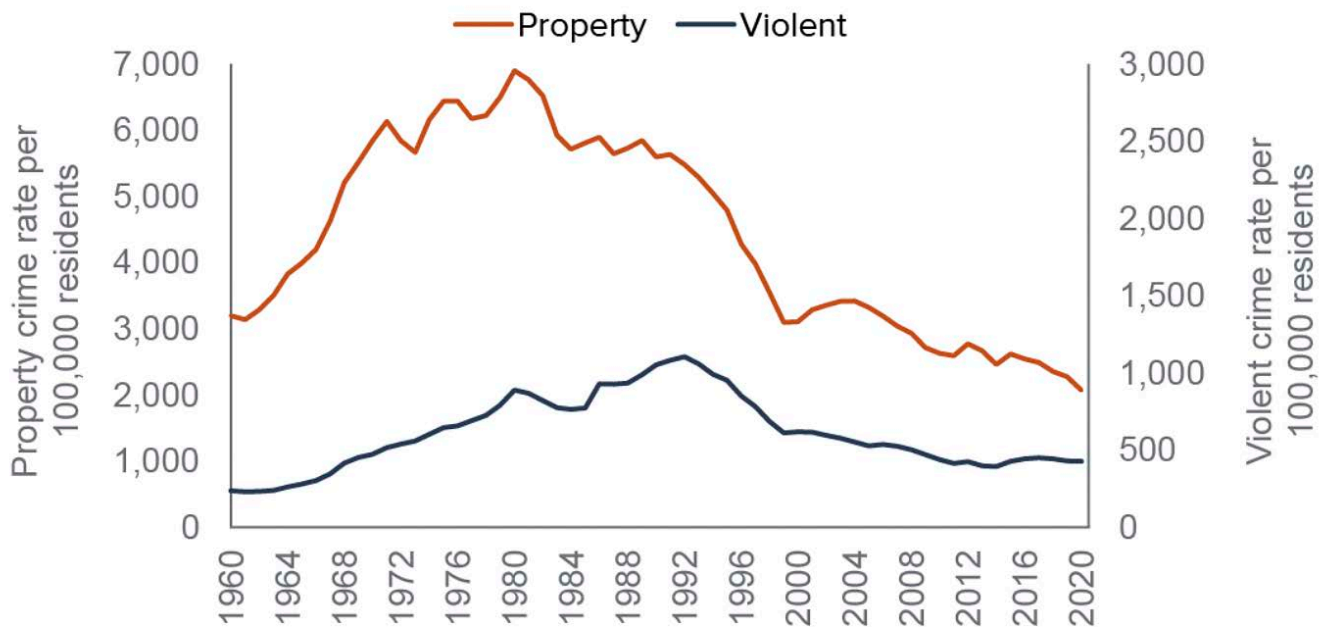
PUBLIC SAFETY

While some types of crime have increased during the pandemic, overall crime rates in recent years have nearly reached historic lows.

In 2019, California's property crime rate reached its lowest level since 1960, while the violent crime rate was in line with rates in the late 1960s, as shown in Figure 3. In essence, prison downsizing in the 2010s did not harm public safety, as many critics charged, raising questions about the nature of the relationship between incarceration and crime.

Figure 3

Crime Trends in California Have Declined Over Time



SOURCE: [PPIC Fact Sheet](#), February 2021



While many assume that rising incarceration levels invariably lead to lower crime rates, theory on the incarceration-crime relationship offers several contradictory predictions.

On the one hand, some perspectives suggest that prison is crime-suppressive, arguing that prisons incapacitate the criminally active, that the threat of prison may deter criminal activity, and that prison may be transformative through rehabilitation. On the other hand, other perspectives maintain that prison is criminogenic, in part through a hardening of those incarcerated. If the former arguments are correct, we would expect a negative relationship between incarceration levels and crime. But if the latter

is correct, incarceration may be associated with increasing crime levels.

At low levels, incarceration does seem to reduce crime; however, diminishing crime-abating returns set in at relatively low incarceration rates. In other words, even marginal increases in incarceration yield small crime-prevention effects. Moreover, in the context of the recent steep rise in U.S. incarceration rates, some researchers document a criminogenic effect: “[O]ur results demonstrate that imprisonment leads to future imprisonment. In other words, prison’s figurative revolving door has real causal force, rather than being the simple consequence of imprisonment of individuals at higher risk for future offending... These results imply that the rise in incarceration was to some degree self-generating, as imprisonment creates more imprisonment” (Harding et al. 2017:4).



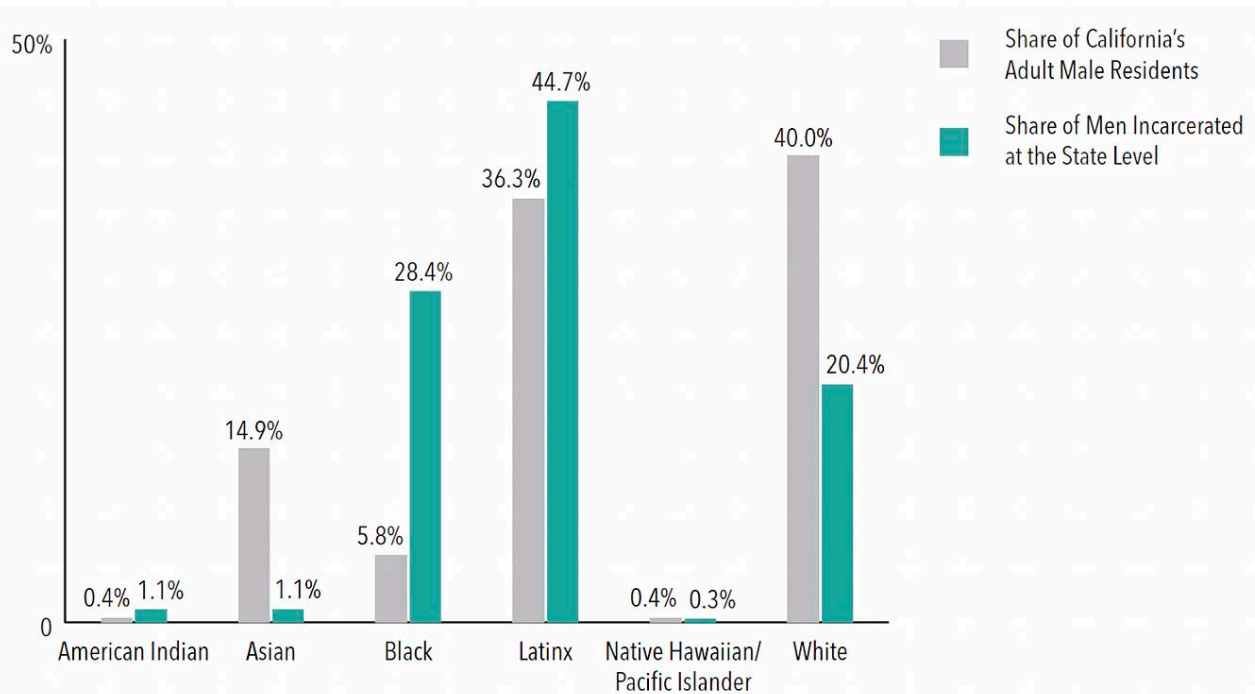
RACIAL DISPARITIES

Despite minor reductions in racial and ethnic disparities following criminal justice reforms and downsizing due to COVID-mitigation efforts, disparities in California's criminal justice system persist today. According to a 2019 report, African Americans have higher arrest

rates than whites in nearly all of California's 58 counties. And, although California ranks 32nd in overall incarceration rates, it ranks 8th in the U.S. in terms of Black-White disparity in incarceration rates, as shown in both Figure 4 and Figure 5 below.

Figure 4

American Indian, Black, and Latino Men are Disproportionately Incarcerated in California

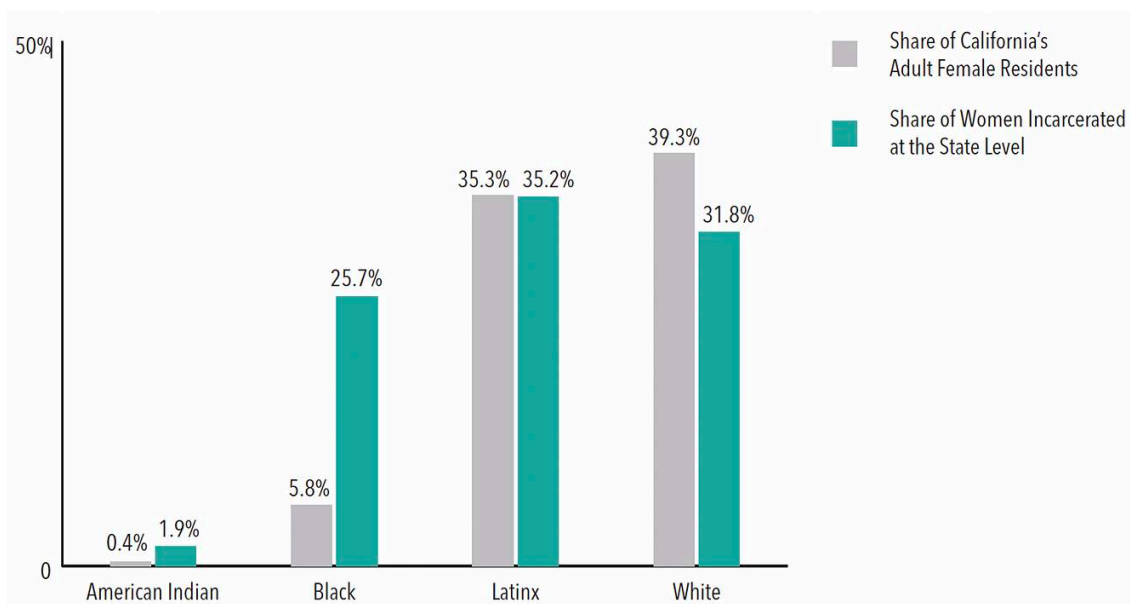


SOURCE: California Budget & Policy Center analysis of CDCR and U.S. Census Bureau data, [June 2021](#)

NOTE: Reflects California Population as of July 1, 2019; state-level incarceration as of June 30, 2019; Excludes the relatively small number of incarcerated men whose race/ethnicity was not provided.

Figure 5

American Indian and Black Women Are Overrepresented Among Incarcerated Women in California



SOURCE: California Budget & Policy Center analysis of CDCR and U.S. Census Bureau data, [June 2021](#)

NOTE: Reflects California Population as of July 1, 2019; state-level incarceration as of June 30,

2019; Excludes the relatively small number of incarcerated women whose race/ethnicity was not provided. The total number of incarcerated women who were Asian or Native Hawaiian/Pacific Islander could not be determined due to data limitations.

Racial disparities in incarceration amidst a proliferation in punishment—both in California and the nation overall—has led scholars to characterize prisons as a major stratifying institution in society. Stratifying institutions sort individuals into more or less advantaged social categories, and both reflect—as well as create—inequality by differentially conferring access and opportunity across social groups. Beyond this, contact with the criminal justice system (stops, arrests, charges, incarceration, etc.) has been shown to reduce individuals'

trust in government, sense of citizenship, and engagement with civic processes and institutions. Frequent contacts with police, courts, and correctional facilities appear to negatively shape people's perceptions of government and the state's capacity to respond to citizens' concerns. At the individual level, these perceptions can lead to non-participation in governance. When criminal justice contacts are differentially experienced across groups and communities, the implications can be far more troubling.



ORIGINS:

CALIFORNIA'S CORRECTIONS CRISIS AND CRIMINAL JUSTICE REFORM

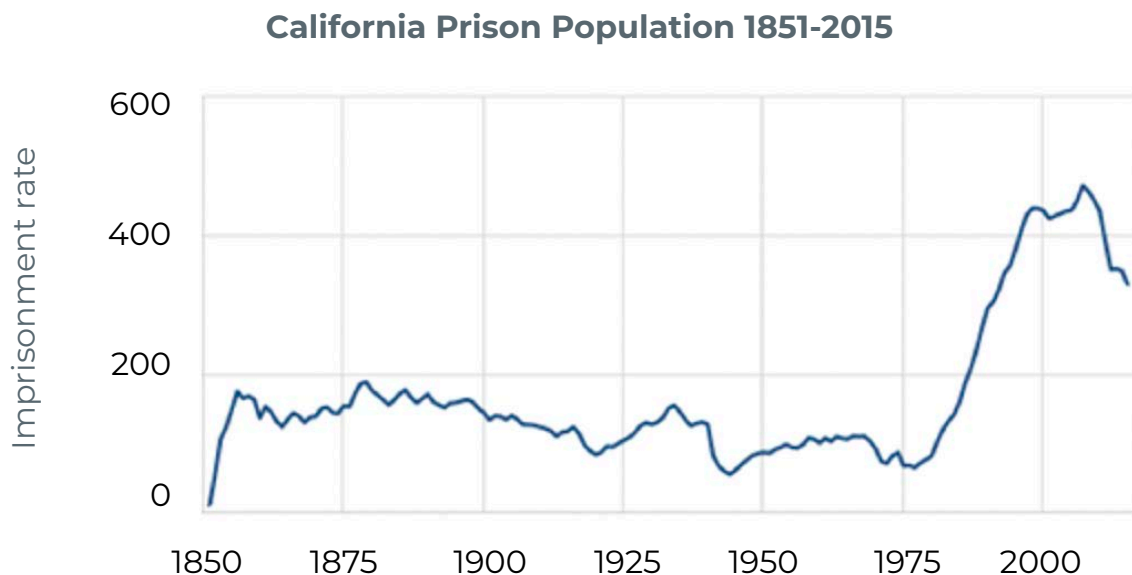
For years, California was home to the nation's largest state prison system. Dating back to the 1970s, tough on crime policies—truth-in-sentencing, increased mandatory minimum sentences and sentence enhancements, Three Strikes, and the War on Drugs—led to dramatic increases in the prison population. Between 1980 and 2006, the state prison population grew more than sevenfold. Over the same period, expenditures rose markedly and corrections' share of the state budget nearly tripled. Although California's number of prisons grew from 11 to 33 during this time, the prison population still outpaced capacity. As Figure 6 shows,

at its apex in 2006, the state's prison population peaked at over 170,000 individuals despite the fact that California prisons were only designed to hold a maximum of nearly 80,000.

Critics charged that California was incarcerating too many people for too long given the cost of incarceration and the likelihood—since borne out by research—that incarceration at that level did little to reduce the crime rate. Rather, these high rates of incarceration may simply have reduced the life-chances of incarcerated inmates who faced serious obstacles once released.

Figure 6

California Saw Excessive Incarceration Growth Over the Past 40 Years





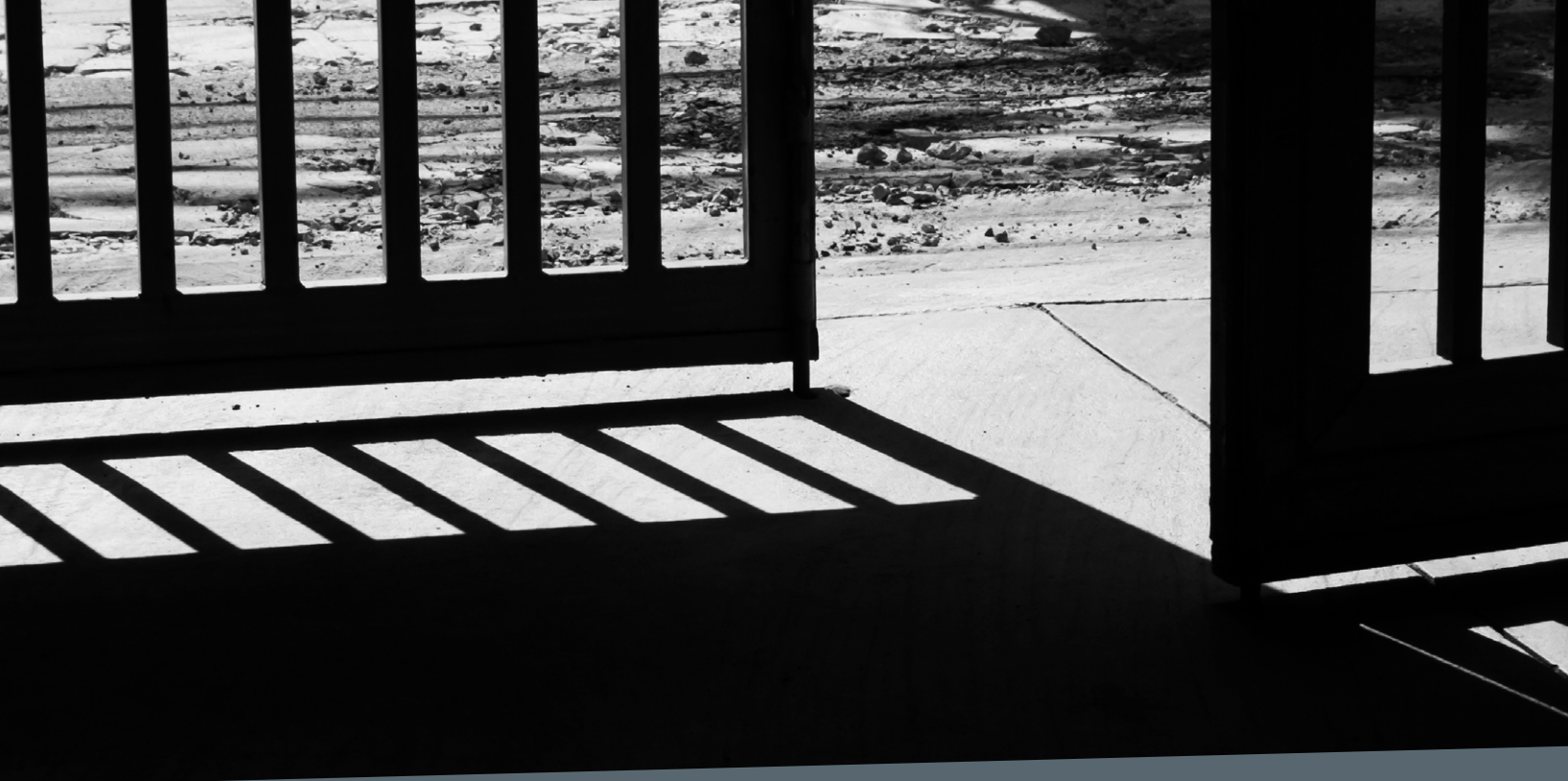
PRIMED FOR REFORMS

A sequence of events shifted California's focus toward decarceration. First, fiscal impacts of the 2008 economic recession induced state leaders to scour their budgets for savings.

At a cost of roughly \$52,000 per year per individual, the state paid an enormous bill to incarcerate so many individuals, many of whom committed low-level, non-violent crimes and/or had violated parole. Second, California experienced a bipartisan shift in public opinion regarding the use of prison as a method of crime control, a trend that paralleled what was happening at the national level. Evidence of dissatisfaction with the status quo was evident in public opinion polls, which overwhelmingly reflected support for policy changes that reduced incarceration. Public attitudes also strongly supported probation and parole as effective system tools for rehabilitation along with increased investments in community supervision. The shift in public opinion, at least in California, reflected the

realization that enhanced sentences did not lower the state's high recidivism rate which, at nearly 70 percent, was among the highest in the nation.

And third, California experienced federal court intervention due to the conditions of confinement in state prisons. Extreme overcrowding led the U.S. Supreme Court to take an historic step. In *Brown v. Plata*, the Court ruled that overcrowding in California's prisons amounted to cruel and unusual punishment in violation of the Constitution's Eighth Amendment. The decision was the result of nearly 20 years of litigation in which the lower federal court found that the "convergence of tough-on-crime policies and an unwillingness to expend the necessary funds to support the population growth has brought California's prisons to the breaking point" (*Plata/Coleman v. Brown* 2009:182; Schlanger 2016). The Court's decision required the state, over a two-year timeframe, to reduce its prison population by 33,000 people to 137.5 percent of design capacity, the minimum reduction necessary for the prison system to provide adequate health care. This represented an unprecedented challenge. California responded to the Court's mandate by enacting several controversial reforms.



CALIFORNIA'S CRIMINAL JUSTICE EXPERIMENT: PRISON DOWNSIZING REFORMS

Starting in 2011, the state implemented a series of criminal justice reforms. Generally, these reforms led to significant decarceration and met the Court's mandate to reduce the population in its overcrowded prisons.

REALIGNMENT

In 2011, state law for "Public Safety Realignment" through AB 109 made fundamental changes to California's correctional system, realigning responsibilities for lower-level non-violent offenders and parolees from state to

local jurisdictions. Specifically, AB 109 required individuals with non-violent, non-serious, and non-sexual offenses to serve their sentences in county jails instead of state prisons, shifting responsibility for punishment from prisons, which are state or federal operations, to jails, which are run by counties and elected sheriffs. Realignment also authorized counties to utilize home detention with electronic monitoring, day reporting centers, work release, and other community supervision programs as alternatives to incarceration. Finally, under Realignment, most parolees who violated the terms of their release but had not been con-

victed of a new felony were no longer to be sent to prison. Instead, they were to serve a short sentence in county jails or otherwise be sanctioned locally.

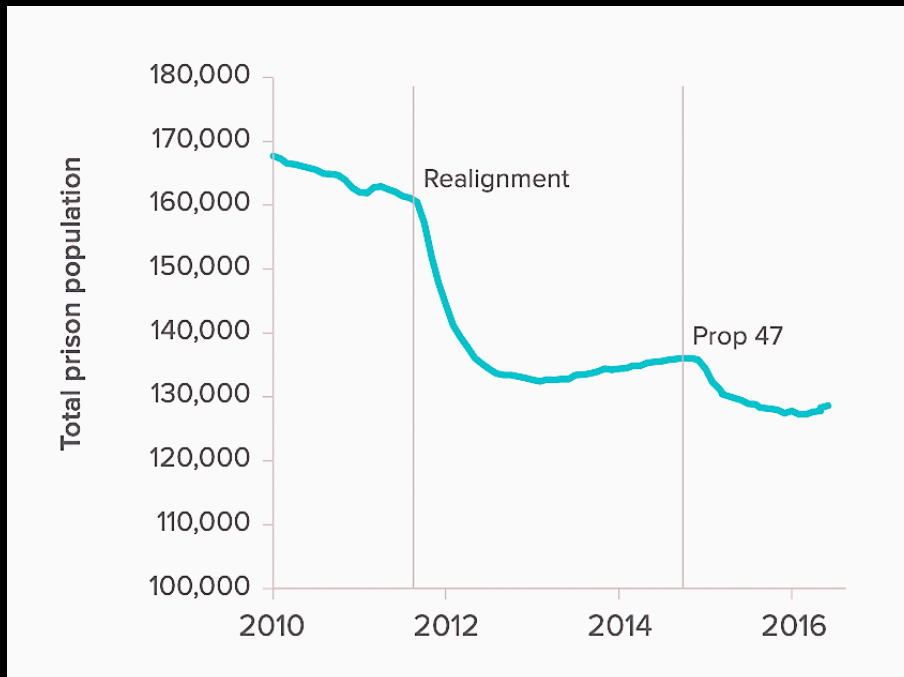
The result was a sharp and permanent reduction in the state's incarceration rate, driven largely by a reduction in new prison admissions. By October 2014, three years into Realignment, the prison population stood at 140.9 percent of capacity—a big drop—but still roughly 2,850 people above the mandated target. Importantly, the county jail population did not rise nearly as much as the prison population fell, thereby reducing the total number of people incarcerated in California.

Decarceration trends were not uniform across California's 58 counties. Twenty-eight counties reported larger than average declines in prison commitments after implementation, and 18 of these showed declines of more than 50 percent in the number of new individuals committed to CDCR facilities since implementation. Such differences reflected, in part, variation in how counties across the state responded to AB 109 as well as fundamental differences in their implementation plans. Some counties (e.g., Los Angeles, San Bernardino, Kern) added more bed space in their jails; others (e.g., Contra Costa) placed more individuals on probation; and, still others (e.g., San Francisco, Santa Cruz, Alameda) provided additional rehabilitative services to parolees. Despite this variation, Realignment progressed rapidly toward its goal of complying with the Plata order and reducing the state's prison population. Still, the decline was not sufficient to meet the judicial target.

PROPOSITION 47 (2014) & PROPOSITION 57 (2016)

Proposition 47 or the Safe Neighborhoods and Schools Act, passed in 2014, reduced certain drug possession felonies to misdemeanors and required misdemeanor sentencing for a variety of crimes, such as theft offenses and drug possession. It also authorized incarcerated individuals that were serving sentences for felony convictions that became misdemeanors under the new law to request resentencing. A unique component of Prop 47 was its focus on crime prevention. As state prison and jail populations were expected to fall, state savings were expected to grow by millions and would be reinvested in prevention efforts. Through the creation of a Safe Neighborhoods and School Fund, the measure required money saved as a result of Prop 47 to be spent on "school truancy and dropout prevention, victim services, mental health and drug abuse treatment, and other programs designed to keep offenders out of prison and jail."

Proposition 57, or the Public Safety and Rehabilitation Act of 2016, increased parole chances for felons convicted of nonviolent crimes and allowed them more opportunities to earn credits for good behavior. The measure also allowed individuals convicted of nonviolent felony crimes who served full sentences for their primary offense and passed screening for public security to become eligible for parole. As Figure 7 on the following page shows, California reached the target required by Plata in 2016.

Figure 7**Prison Populations Decline Following Reforms During the 2010s**

SOURCE: Public Policy Institute of California. California Department of Corrections and Rehabilitation, Monthly Population Report, January 2010–June 2016.

https://www.ppic.org/content/pubs/report/R_916MLR.pdf

NOTE: Total prison population as of the last day of the month.

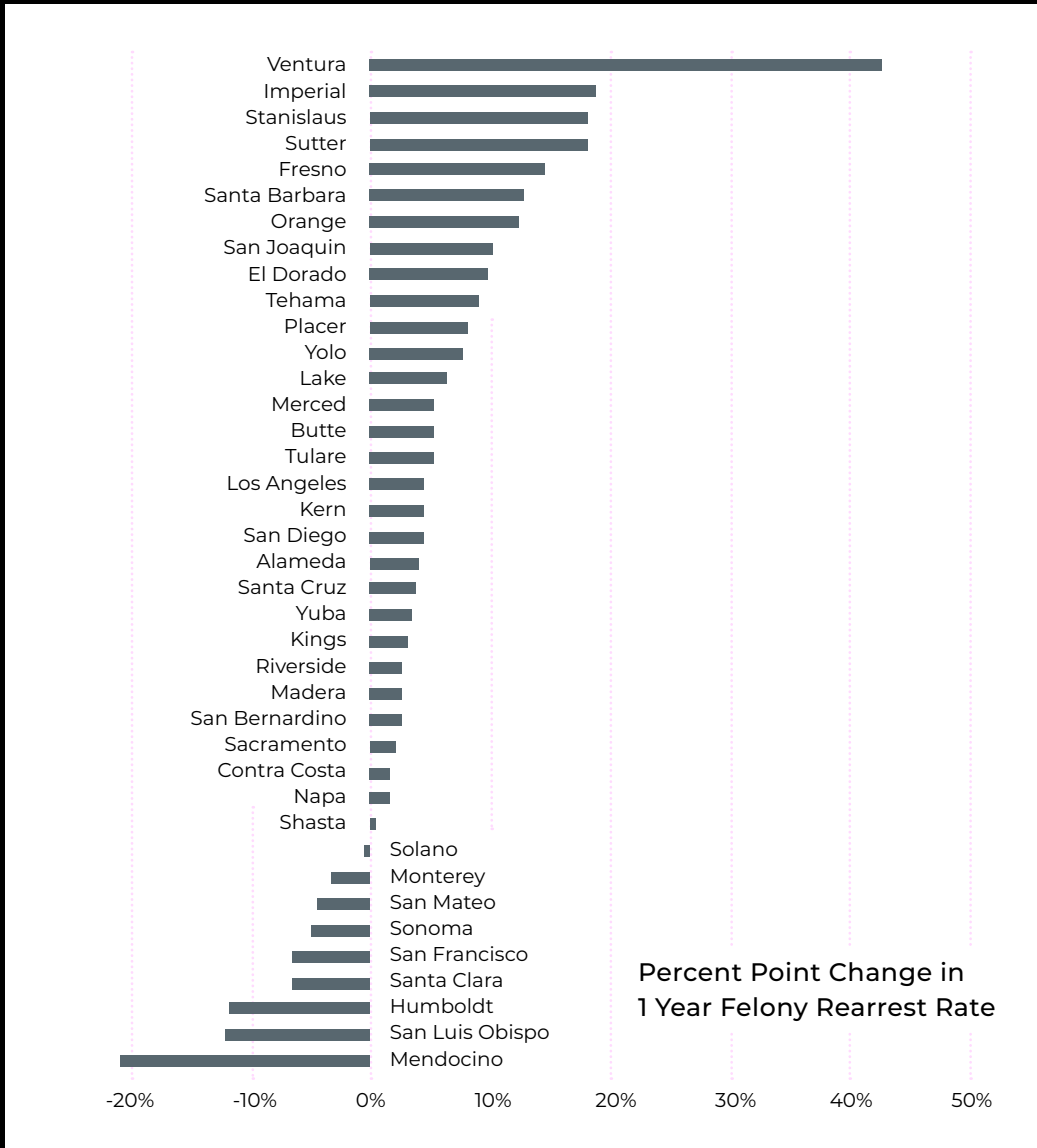
CRIMINAL JUSTICE REFORMS: CONSEQUENCES FOR CRIME AND PUBLIC SAFETY

Research suggests that California's prison downsizing reform measures had no impact on violent crime rates and only marginal impacts on property crime rates statewide. Research also suggests that these reforms did not increase recidivism rates. For example, researchers Bird and Grattet conducted a county-level examination of Realignment's impact on recidivism, or reoffending behavior, in 2016. Descriptive analyses revealed signifi-

cant variation across California counties in 1-year felony re-arrest rates, as Figure 8 shows. Of interest was the extent to which county differences in general approaches to Realignment—for example, enforcement-focused counties allocated more funds to jail beds and law enforcement while re-entry focused counties allocated more funds to programs and services—might explain this variation.

Figure 8

Counties Throughout California Varied In Their Approach to Realignment, Which Affected Recidivism Outcomes



SOURCE: California Department of Corrections and Rehabilitation. Authors' computation. Bird and Grattet (2016: Figure 2, pg. 190).

NOTE: The bars referred PRCs offenders and comparable pre-Realignment offenders released from California prisons.

Their findings suggest that the release of individuals who committed low-level felonies from state to local governments actually improved recidivism outcomes but it depended on the approach that local governments

took in dealing with individuals released by the state to their care. Counties that invested in reentry and rehabilitation in the aftermath of Realignment had better performance in terms of recidivism than counties that focused



resources on enforcement. More specifically, the felony re-arrest rate was nearly 4 percent greater for people released to enforcement-focused counties than for those released to re-entry focused counties. They found similar results when examining other measures of recidivism including total arrests, total convictions, and felony convictions.

Moving to research on Prop 47, the authors of this report analyzed its impact on violent and property crime rates in the year following the

policy's implementation. Their findings show that Prop 47 had no effect on homicide, rape, aggravated assault, robbery, or burglary. However, larceny and motor vehicle thefts appear to have increased moderately following Prop 47, but additional testing reveals these findings did not hold up; specifically, additional analysis shows these findings may be spurious and are sensitive to alternate specifications in the model. They conclude that "California can downsize its prisons and jails without compromising public safety" (Bartos and Kubrin 2018 pg. 1).

THE COVID-19 PANDEMIC AND FURTHER PRISON DOWNSIZING

California's decarceration reforms occurred over varying time spans and impacted California's prison and jail populations to varying degrees.

By year-end 2020, as Figure 9 illustrates, further releases brought California's combined in-custody correctional population (i.e., prison and jail in custody total) down to 155,210 from 195,390 (-40,170) just one year prior (a 20 percent reduction).

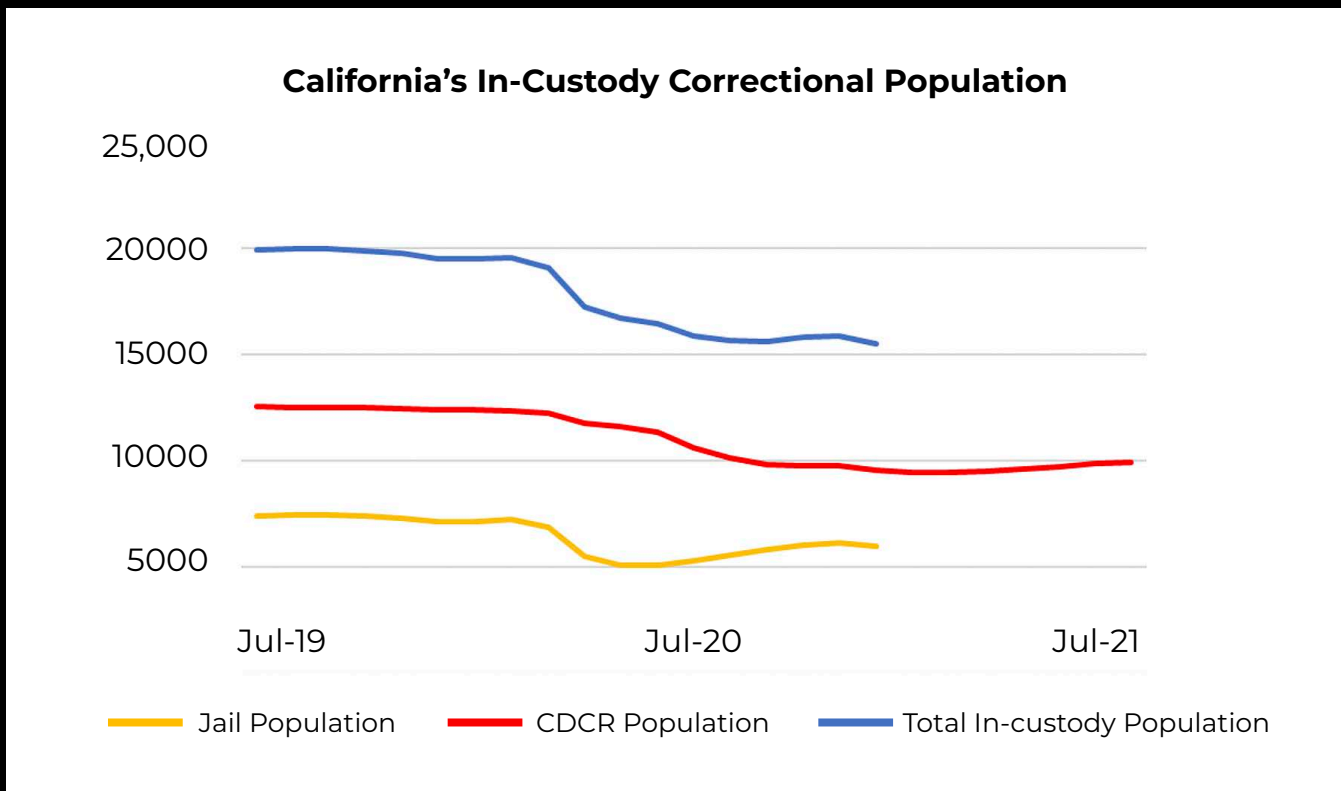
Although the release actions intended to curb the spread of COVID-19 reduced the state's total in-custody population in a single year by nearly as much as the previous decade of decarceration reforms, California's state prisons still largely remain crowded beyond their design capacities. Figure 10 on page 30 shows that in March 2020, 32 of the state's 34 prison facilities were over 100 percent of design capacity, and as of June 2021, 21 prison facilities remain overcrowded.

In terms of month-to-month proportionate changes in the state correctional population, however, California's efforts to reduce overcrowding as a means to limit the spread of COVID-19 reduced the correctional population more severely and abruptly than any of the state's modern decarceration reforms.



Figure 9

California's Incarcerated Population Continues to Decrease



SOURCE: CDCR Monthly Population Reports and [BSCC Jail Profile Survey Dashboard](#)



Figure 10

Despite the Population Reduction, Most Prisons Remain At or Over Capacity in California

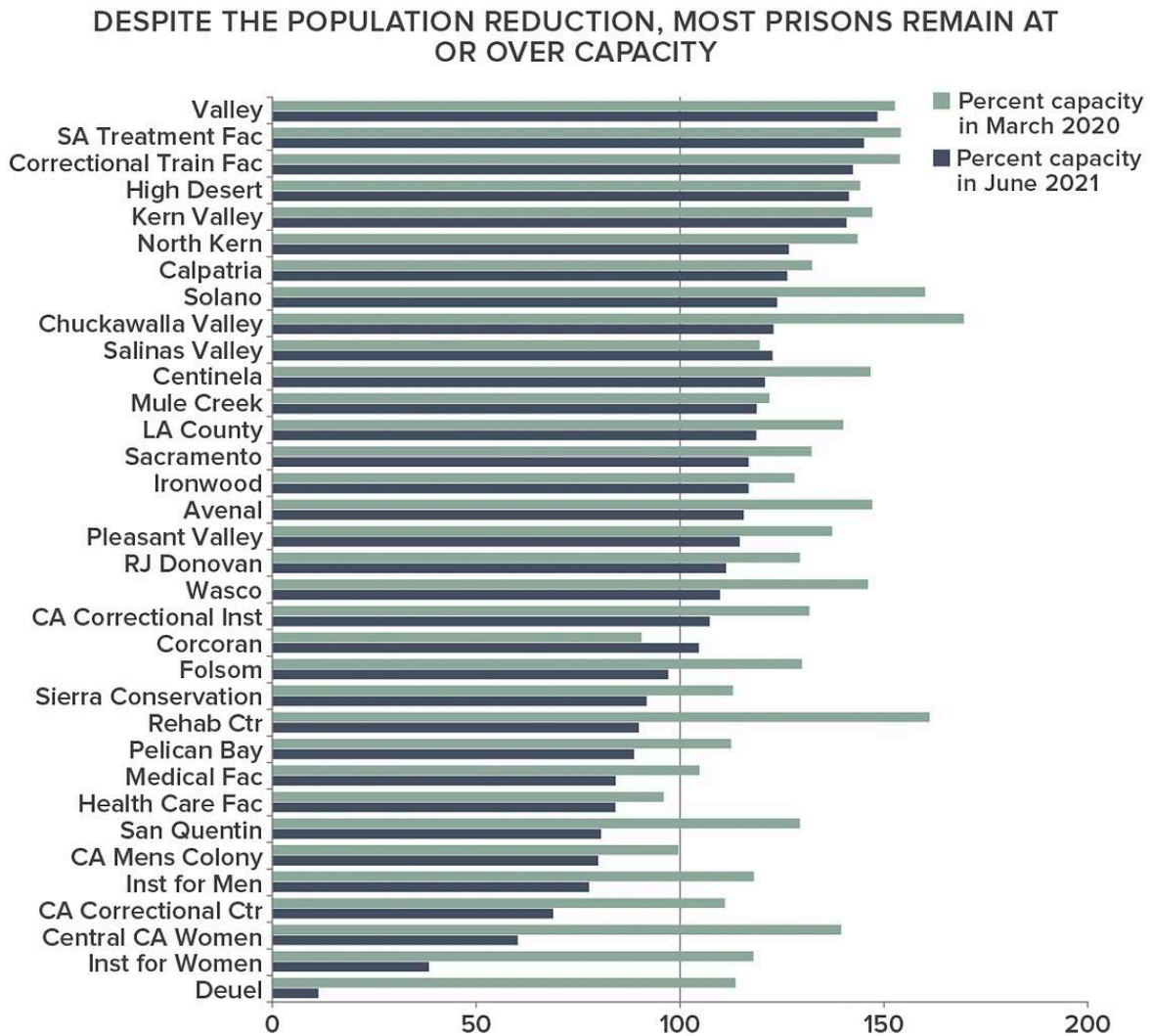


FIGURE SOURCE: [PPIC Blog](#), July 2021

DATA SOURCE: California Department of Corrections and Rehabilitation

COVID-19 RELEASE ACTIONS: CONSEQUENCES FOR CRIME AND PUBLIC SAFETY

Between December 2009 and December 2019, the number of individuals in California correctional facilities fell by 48,588 (just under 30 percent) from 171,275 to 122,687.

In a similarly dramatic decrease, California reduced its correctional population—around 40,000 or 21 percent of the in-custody population—in a single year between 2020 and 2021 due to the release actions intended to mitigate COVID-19 transmission. Although research suggests California’s incremental reforms did not significantly increase crime rates or threaten public safety, there may be reason to suspect California’s COVID-mitigation releases, in fact, will.

Perhaps most obviously, California’s decarceration reforms were carefully constructed, fervently debated, and implemented at around one-tenth of the pace of the 2020 COVID-mitigation release actions. Beyond the distinct dosages and durations, however, the reforms prior to the pandemic selectively focused on individuals convicted of the least risky, non-

violent, non-serious, and non-sexual offenses. Once these individuals were removed from California’s correctional population, the lowest risk individuals still remaining in-custody became higher risk. By iteratively removing individuals serving sentences for the least serious offenses from the state’s in-custody correctional population, the remaining correctional population has, by default, become more serious, violent, and riskier in aggregate.

It should come as no surprise that concerns regarding what impact the state’s COVID-19 release actions might have on crime rates were voiced immediately after the releases were announced. Research addressing these concerns began soon after, leveraging crime data from cities which report crimes known to the police through open data portals managed by police departments. Recent data from four major cities in California—Los Angeles, Oakland, San Diego, and San Francisco—show that violent and property crime declined overall during the pandemic due to sizable reductions in larceny, robbery, and aggravated assault, though homicide and motor vehicle theft increased notably. It is premature to interpret recent crime changes as a causal or permanent effect of California’s COVID decarceration efforts until further data become available and more systematic analysis is performed—something that awaits future investigation.



TRENDS:

CALIFORNIA AT A CROSSROADS

The state's pandemic release actions aligned with pre-pandemic correctional policy trends toward reducing the size and scope of California's corrections system. Taken together, the prison downsizing reforms and pandemic *re. Plata* ruling, California held the dubious title of having the largest prison population of any U.S. state while ranking 18th in terms of per capita imprisonment rate. In 2019, the year for which the most recent national data are available, California ranks 32nd in per capita imprisonment and no longer boasts

lease actions brought California's incarcerated population down to its lowest level in over 30 years. As a result of these trends, California has reversed course when it comes to incarceration. In 2009, just two years prior to the *Brown* the nation's largest in-custody population. Importantly, these reforms and decarceration have not harmed public safety. Overall, crime rates across the state remain low despite an increase in some types of crime during the pandemic. Yet, there remain many unknowns and there is much room for improvement.



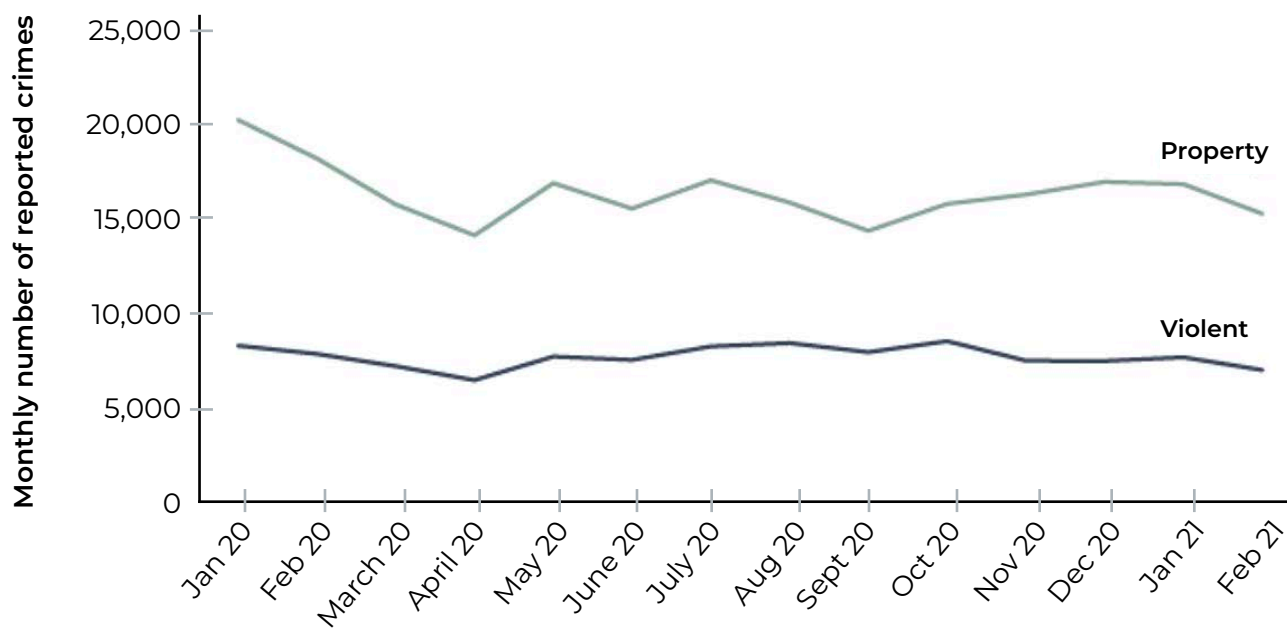
CRIME AND RECIDIVISM

It is critical to determine how decarceration during the pandemic impacted (and will continue to impact) California’s violent and property crime rates. At first glance, it appears it hasn’t. As noted earlier, according to researchers who examined reported crimes in four

major California cities—Los Angeles, Oakland, San Diego, and San Francisco—through March 2021, *overall* levels of violent and property crimes in these cities remain below pre-pandemic levels (Figure 11) but upticks in a handful of crimes warrant attention moving forward.

Figure 11

Overall, the Pandemic Saw Fewer Violent and Property Crimes Now Than Before the Pandemic



SOURCE: Monthly number of reported crimes calculated from data downloaded from the crime data websites for cities of Los Angeles, Oakland, San Diego, and San Francisco. [PPIC Blog](#)

NOTE: While we attempted to include the same type of crimes for each city (burglary, larceny, and motor vehicle theft), there may be some variation due to reporting differences across cities.



CORRECTIONAL SPENDING

California's decarceration efforts have brought the state's correctional population to a 30-year low. Still, the future of decarceration—locally and nationwide—may depend upon California's ability to reduce correctional spending proportionate to its population reductions. Yet, as Figure 12 conveys, and as we discussed prior, corrections spending

has not tracked with population levels over the past decade.

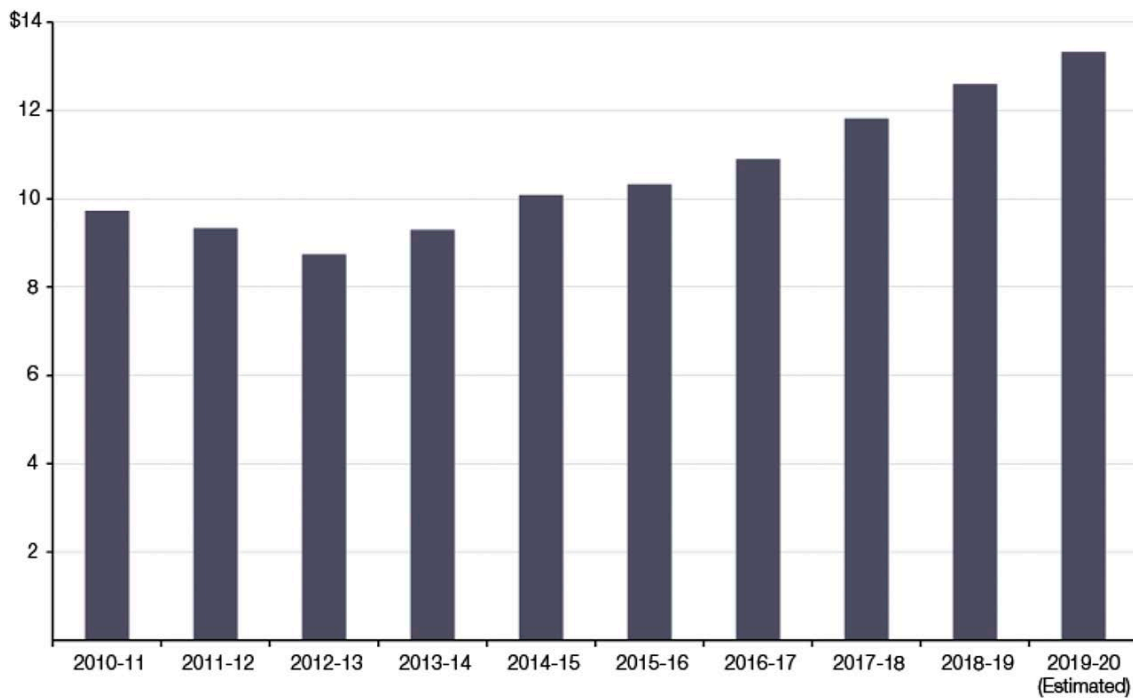
If a population reduction of this size does not yield meaningful reductions in correctional expenditures, then public support for decarceration may evaporate as soon as any crime rate increases are felt (real or perceived).

Figure 12

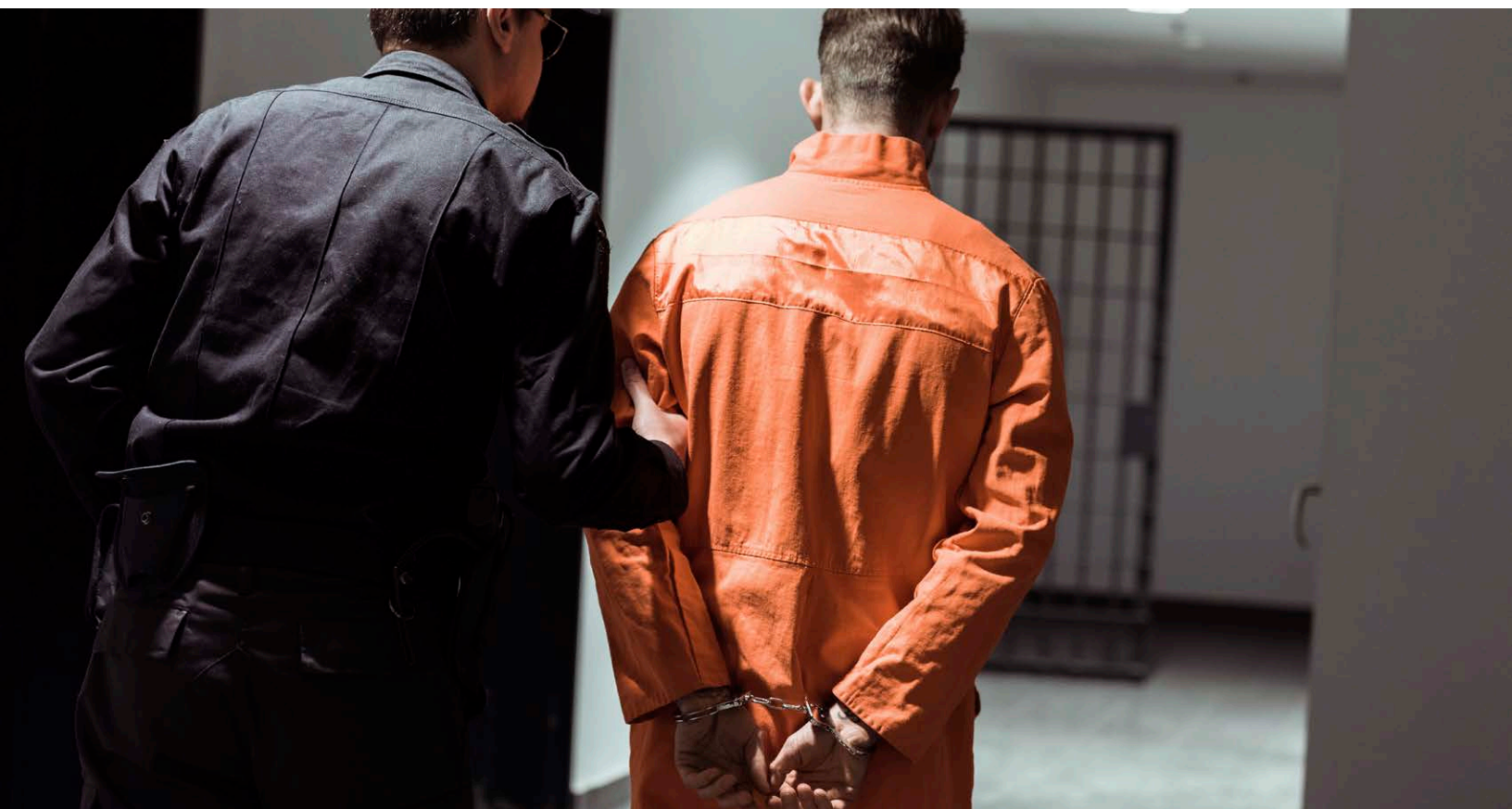
State Correctional Spending Increased Despite Significant Population Reductions

CDCR Expenditures Have Generally Increased Over Past Several Years

(In Billions)



SOURCE: CDCR – California Department of Corrections and Rehabilitation. [Legislative Analyst's Office](#).



CRIMINAL JUSTICE REFORM AND RACIAL DISPARITIES

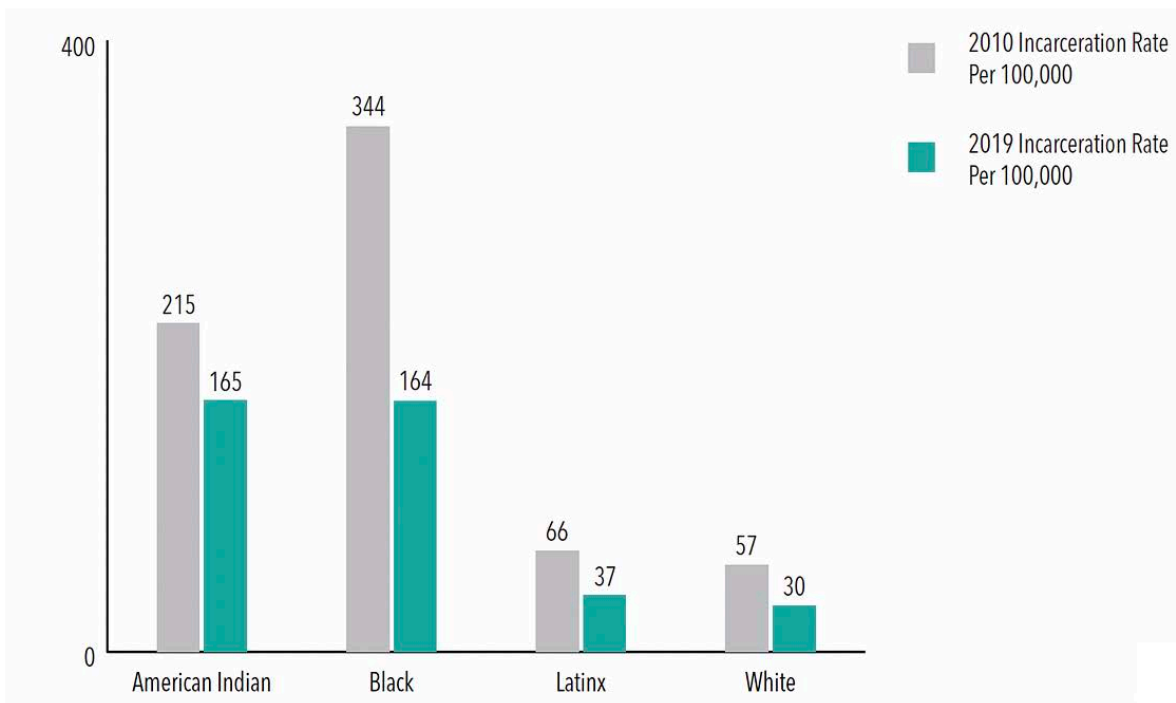
Racial inequalities in California's criminal justice system remain, including disparities in arrest and incarceration rates. Racial disparities are exclusionary, inequitable, and limit the state's resilience to collective threats. Most of California's recent criminal justice reforms were not designed with reducing racial disparities, promoting equity in the justice system, or engaging historically excluded communities in mind. Rather, they were motivated by crises such as adhering to the prison population reduction mandated in the *Brown v. Plata* ruling and minimizing the spread of COVID-19 within the state's correctional population.

While downsizing efforts successfully reduced California's incarceration rate from a national leader to below the national average and complied with the court's mandated population reductions, California still ranks 8th highest in the U.S. in terms of black/white disparity in incarceration rates, as both Figures 13 and 14 show below. And, according to a 2019 report, African Americans have higher arrest rates than whites in nearly all of California's 58 counties. Latinos are also over-represented in California's correctional population, although to a lesser degree than African-Americans, as shown in Figures 4 and 5 in our earlier section.



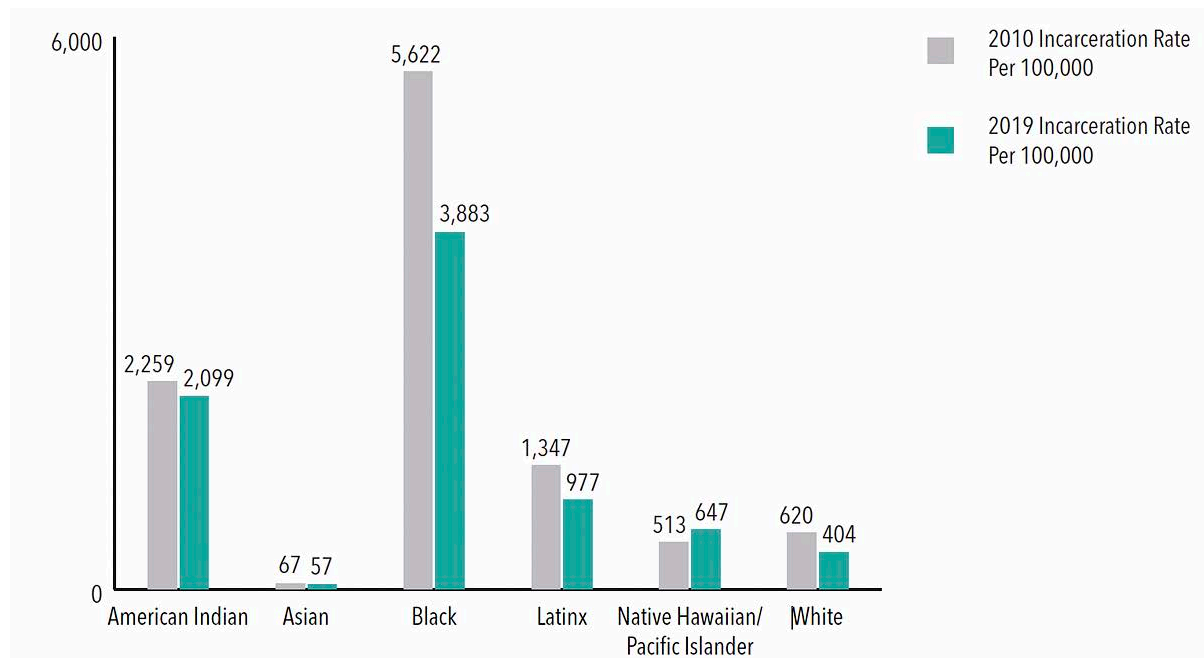
Figure 13

Among Women, Incarceration Rates are Down for All, but Remain Highest for American Indian and Black Women



SOURCE: California Budget & Policy Center Analysis of CDCR and U.S. Census Bureau Data, June 2021

NOTE: State-level incarceration rates per 100,000 California women in each group, 2010 vs. 2019; Reflects state population as of July 1 each year and incarceration as of June 30 each year. Excludes the relatively small number of incarcerated women whose race/ethnicity was not provided. The total number of incarcerated women who were Asian or Native Hawaiian/Pacific Islander could not be determined due to data limitations.

Figure 14**Among Men, Incarceration Rates are Down for All, but Remain Highest for American Indian and Black Men**

SOURCE: California Budget & Policy Center Analysis of CDCR and U.S. Census Bureau Data, June 2021

NOTE: State-level incarceration rates per 100,000 California men in each group, 2010 vs. 2019; Reflects state population as of July 1 each year and incarceration as of June 30 each year. Excludes the relatively small number of incarcerated men whose race/ethnicity was not provided.

In sum, as a result of the post-2011 prison population reductions, California took a major step toward curbing its prison system’s economically and socially unsustainable growth, but appears to have achieved little in terms of equity or inclusion. Consistent with this, COVID-19 reductions in correctional populations further bolstered the sustainability of California’s system by reducing costs but they, too, did little to reduce racial disparities.

MOVING FORWARD

Following reforms that resulted in significant decreases in the state’s incarcerated population, the big question is now: what’s next? Reformers continue to push for changes that will keep California’s incarceration rates relatively low one way or another. Yet, future



decarceration efforts will likely need to shift focus, even as a more definitive picture of the impact of California's coronavirus-motivated decarceration efforts remains unknown until social distancing efforts and pandemic adaptations subside. But at what cost to crime? It will be critical to closely monitor crime rates moving forward.

Alternatively, we may return to business as usual, where incarceration rates slowly return to pre-criminal justice reform, pre-pandemic levels. This is the aim of some critics of California's decarceration efforts who seek to reverse course, claiming that decarceration and crime go hand-in-hand. Most recently, Proposition 20 attempted to roll back various reforms by amending criminal sentencing and supervision laws that were passed between 2011 and

2016. Although Proposition 20 was ultimately rejected by voters in the November 2020 election, with nearly 62 percent voting against, critics continue to push back against further decarceration efforts.

Another critical policy path involves efforts aimed at addressing ongoing racial disparities in California's criminal justice system, especially in arrest and incarceration. While earlier reforms did reduce racial disparities somewhat, these changes do not rise to the level of current national calls for reform, which explicitly seek to combat anti-Black racism in the criminal justice system, and especially in policing. Should California go the way of continued decarceration efforts that fail to explicitly address racial disparities, opportunities to build on previous successes will be lost.





Indeed, addressing ongoing racial disparities in California’s criminal justice system seems to be where the state is headed. In the wake of the nation’s outcry against police brutality, California passed a series of new criminal justice reforms early in 2021. Major reforms recently enacted include several that directly target racial and ethnic disparities in outcomes, including many aimed at law enforcement. These include:

- **Banning chokeholds:** Assembly Bill 1196 bans chokeholds and carotid holds by law enforcement;
- **Restoring felon voting rights:** Proposition 17 gives approximately 50,000 felons on probation the right to vote;
- **Criminalizing false reports and harassment:** AB 1775 makes false 911 calls based

on someone’s race, gender, religion or other type of discrimination a hate crime;

- **Establishing a sheriff oversight board:** AB 1185 empowers the establishment of a sheriff oversight board and inspector general in each county with subpoena power to help oversee the sheriff; and, perhaps most centrally,
- **Establishing the California Racial Justice Act:** AB 2524 allows persons charged or convicted of a crime to challenge racial bias that may have occurred in their case in order to pursue a new trial or re-sentencing.

These reforms became effective January 1, 2021. However, it remains to be seen what impact they will have, and to what degree they will ameliorate existing racial disparities in California’s criminal justice system.

THE FUTURE OF CRIMINAL JUSTICE REFORM AND PUBLIC SAFETY IN CALIFORNIA

FOUR ALTERNATIVE SCENARIOS

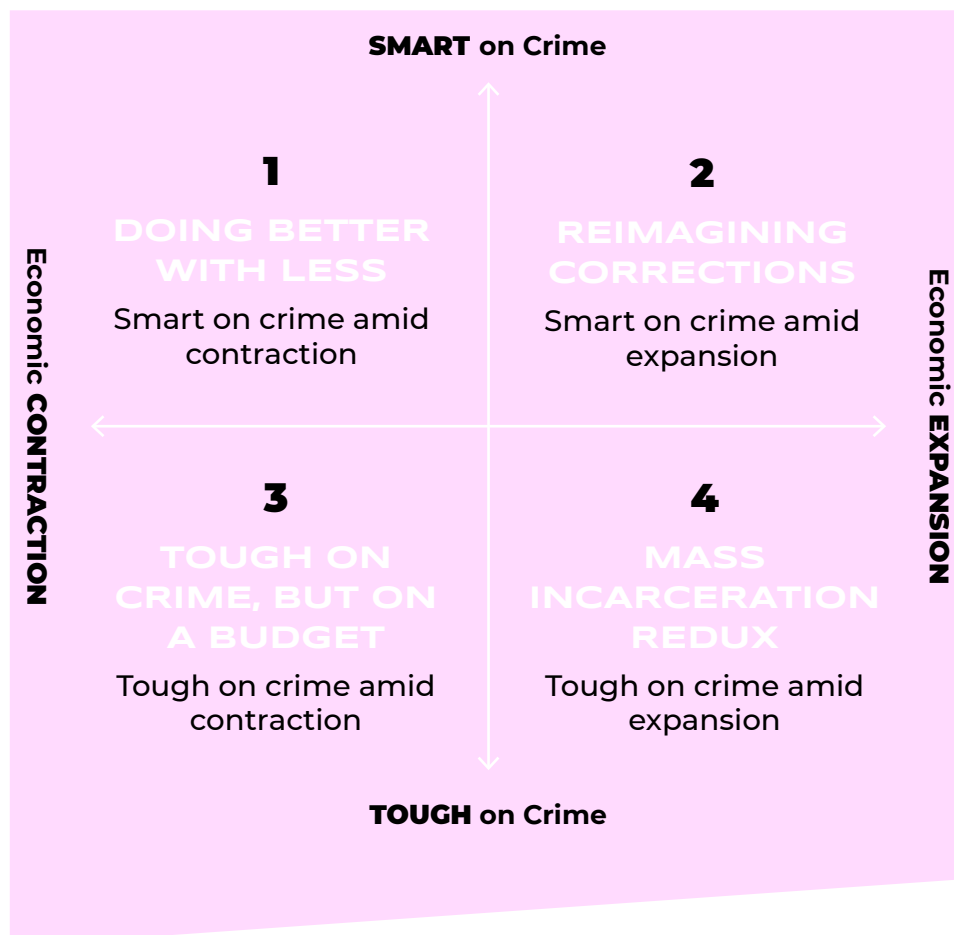
SCENARIOS FROM THE FUTURE

CRIMINAL JUSTICE REFORM AND PUBLIC SAFETY

Foresight practitioners use scenarios to help make future possibilities more vivid and tangible.

Scenarios immerse the reader in the details of a future world so that they can imagine what it would feel like to live there. Without scenarios, the signals, trends, and other research that underlie strategic foresight work can feel distant and abstract. Scenarios can be used to center a group conversation in a positive and concrete picture of a future. Stakeholders can then pursue a shared vision for how to reach a desired possibility, or they can mobilize to avoid an undesirable outcome.

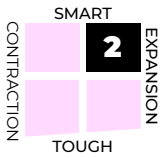
In charting possible future scenarios, we orient our discussion around two key dimensions. The first dimension, Economic and Organizational Pressures, considers fiscal constraints and the ability to introduce new public expenditures. One end of the spectrum represents economic contraction and scarcity, while the other end represents economic expansion and budget surplus, where additional spending is feasible and more easily achieved. The second dimension, Perceptions of Crime, reflects the extent to which the public (rightly or wrongly) fears crime and how elected officials politicize crime and criminal justice policy. One end of the spectrum is defined by the public's acute fear of crime resulting in an electoral incentive to appear "tough on crime." This law-and-order approach is largely punitive, incapacitative, and retributive. The other end of the spectrum is defined by the absence of a moral panic about crime and by the public's further desire for criminal justice reform resulting in an electoral incentive to appear "smart on crime." This reform-focused approach is largely rehabilitative, restorative, and equity-oriented.





REIMAGINING CORRECTIONS

Smart on crime amid expansion



A coalition forms around reducing the root causes of crime and reforming—or even abolishing—incarceration to minimize its criminogenic effects. In the more conservative scenario, California pursues reforms that incrementally build upon post-*Brown v. Plata* policies but that also seek to minimize racial and ethnic bias. New policies that identify the next set of low-risk offenders are supplemented with additional policies that aim to minimize recidivism. A central goal of these policies is to address the root causes of crime.

In the more radical scenario, California pursues a transformative reimagining of criminal justice administration that more closely aligns with calls for abolition. At the root of this is a wholesale restructuring of America’s social, political, and economic systems, where a redistribution of wealth helps to offset inequality in society. Consistent with this, the existing corrections budget will shift, in part, to social service programs that ameliorate the root causes of crime, including inequality.

→ HISTORICAL PRECEDENTS

1890s-1960s: The Rehabilitation movement incorporated a broad array of programs, including mental health, substance abuse, and education.

Mid 2000s: Bipartisan shift in public opinion away from the use of prison as the primary method of crime.

2011: California experienced a federal court intervention to downsize prisons and shifted some custody burden to county jails.

2013-Present: The Black Lives Matter movement protesting incidents of police brutality and racially motivated violence against Black people.

→ FUTURE DRIVERS

Politics: Electoral incentive for criminal justice reform overrides the incentive for appearing “tough on crime”.

Technology: Innovative programs for treating drug addiction, violence, and anti-social behavior.

budget surplus enable investments in prevention and rehabilitative programming.

Economy: Expansion and

Public Perception: Rehabilitative ideal re-emerges.

→ SIGNALS

California Racial Justice Act

WHAT: AB 2524 allows persons charged with a crime to challenge racial bias that may have occurred in their case.

SO WHAT: Legislators appear supportive of ameliorative reforms intended to reduce racial inequality in justice system.

calmatters.org

Black Lives Matter goes mainstream

WHAT: The BLM protests of 2020 demanded large-scale police reforms following the police killing of George Floyd.

SO WHAT: Public outcry of this size can shift the conversation around the role and scope of policing.

ppic.org

Re-Imagine L.A. County

WHAT: L.A.’s Measure J requires that 10% of city funds be invested in alternatives to policing and incarceration.

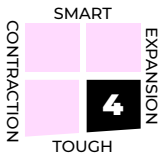
SO WHAT: The measure demonstrates reinvestment away from traditional approaches towards services that address the root causes of crime.

vox.com



MASS INCARCERATION REDUX

Tough on crime amid expansion



Rising fear of crime, driven by real increases in crime or by media depictions of crime, catalyzes a shift away from cost concerns and toward “tough on crime” policies. California’s post-*Brown v. Plata* reforms are quickly undone, and a decade of correctional downsizing is reversed. New correctional facilities are constructed, and California begins incarcerating more and more people for longer time periods and for an ever-widening range of criminal offenses.

There would likely need to be a compelling scapegoat identified or a new “war on something” to galvanize support among moderate and left-leaning voters. Although stoking fear of crime among conservative voters in California galvanized enough support to produce “tough on crime” policies such as Proposition 20 (2020), which sought to roll back recent reforms, its ultimate defeat underscores the necessity of also gaining moderate and left-of-center support in order to pass this type of legislation.

○→ HISTORICAL PRECEDENTS

1970-1990s: Truth-in-Sentencing required violent offenders to serve 85% of their sentences in exchange for federal grant.

Mandatory minimum sentencing, which a court must give to those convicted of certain crimes regardless of mitigating factors.

“Three Strikes and You’re Out”: Mandated sentence enhancements for those with prior serious felony convictions.

War on Drugs: Aimed to stop illegal drug use, distribution, and trade by dramatically increasing prison sentences for drug dealers and users.

➤ FUTURE DRIVERS

Politics: Bipartisan consensus in favor of getting tough on crime.

Technology: Innovations in surveillance and crime detection.

Economy: Expansion and surplus loosen public spending constraints.

Public Perception: Rising fear of crime spurs moral panic.

⚡ SIGNALS

Proposition 20 made the ballot

WHAT: Prop 20 sought to roll back several criminal sentencing and supervision reforms passed between 2011 and 2016.

SO WHAT: Organized efforts to roll back the state’s recent decarceration reforms are underway.

ballotpedia.org

Fear of crime on the rise

WHAT: While violent crime overall is declining in California, 2021 surveys showed that homicides are increasing.

SO WHAT: An increase in homicides, even from a historically low comparison point, is effective at stoking fears and moral panics.

ppic.org

Incarceration rates rebound from Covid-19

WHAT: After historic decreases in the correctional population during the pandemic, prison populations ticked upward in 2021.

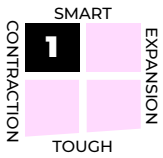
SO WHAT: As Covid-19 recedes further, prison populations may likewise increase.

cdcr.ca.gov



DOING BETTER WITH LESS

Smart on crime amid contraction



Amid economic uncertainty and a new wave of centrist political support, corrections budgets come under fire from all sides. A coalition forms around reducing the size, scope, and cost of California’s criminal justice system—furthering the aims of post-*Brown v. Plata* reform efforts—but political stakeholders must navigate how to achieve these goals without threatening public safety or increasing costs.

As a result, California enacts reforms aiming to (a) eliminate harsh sentencing structures established during the 1980s and 90s, (b) narrow the range of offenses that qualify for incarceration through reclassification and decriminalization, (c) reduce the range of technical violations that meet the criteria for reincarceration for those under parole and post-release community supervision, and (d) utilize advancements in risk assessment accuracy to minimize the number of people incarcerated that appear unlikely to reoffend upon release.

○→ HISTORICAL PRECEDENTS

The 2008 Financial Crisis induced state leaders to scour budgets for savings. At a cost of ~\$52,000 per year per individual, California paid an enormous bill to incarcerate.

“Right” on Crime was a conservative initiative focused on criminal justice reform related to curbing mass incarceration, lowering costs, and restoring victims.

Proposition 57 provided additional opportunities to earn good time credits, accelerating time to release.

Proposition 64 legalized marijuana for recreational use, removing a large portion of would-be offenders from the criminal justice system.

Proposition 47 reduced penalties associated with certain lower-level drug and property offenses.

➤ FUTURE DRIVERS

Politics: Centrist movement retains power.

Technology: State maximizes existing technologies.

Economy: Contraction or recession drives fiscal conservatism.

Public Perception: Continued bipartisan support for policy changes that reduce incarceration.

⚡ SIGNALS

California passes AB 1950

WHAT: Established maximum one year probation term for misdemeanor offenses.

SO WHAT: Reduces the size and scope of California’s probation population.

calmatters.org

California passes AB 3234

WHAT: Authorized judges to offer misdemeanor diversion for most offenses.

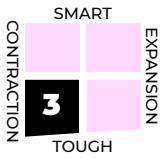
SO WHAT: Reduces the size and scope of California’s correctional population and aids reintegration through expungement of criminal records.

prnewswire.com



TOUGH ON CRIME, BUT ON A BUDGET

Tough on crime amid contraction



Rising fear of crime combines with budget constraints, forcing politicians and criminal justice stakeholders to do more to reduce crime, but at a lower cost. To achieve these goals, conventional cost-cutting tactics are employed, such as privatization and eliminating the need for correctional workers through technology. The use of prisons, which contain a range of services and programs essential for those incarcerated long-term, is scaled down dramatically.

The in-custody population remains stable, however, through a corresponding increase in the use of jail and alternatives to incarceration, such as home monitoring.

The state reserves its costly prison facilities, as well as jails, for serious offenders, opting to rely on alternatives to incarceration to oversee its burgeoning correctional population. Chief among these is the expanded use of, and innovation in, supervision technology. Coupled with an expanded surveillance network are new policies related to fines and fees associated with all stages of the criminal justice system, creating additional revenue streams to fund the innovation and expansion of technology.

○→ HISTORICAL PRECEDENTS

The Castle Doctrine and Stand Your Ground laws, which mandate no duty to retreat from the situation before resorting to deadly force.

California has given counties \$4 billion to build or expand local jails since 1983, increasing incarceration at the local level in the face of statewide opposition to prison expansion.

Law imposes fees contingent upon a criminal arrest, prosecution, or conviction related to administering probation and mandatory supervision, processing arrests and citations, and administering home detention programs, continuous electronic monitoring programs, work furlough programs, and work release programs.

→→ FUTURE DRIVERS

Politics: Bipartisan consensus in favor of getting tough on crime.

Technology: Private sector solutions to corrections.

Economy: Contraction or recession drives fiscal conservatism.

Public Perception: Rising fear of crime spurs moral panic.

⚡→ SIGNALS

Proposition 47

WHAT: Reduced the length of incarceration for certain nonviolent crimes and diverted people convicted of Prop 47 offenses to jail rather than prison.

SO WHAT: Reduces prison overcrowding and lowers the cost to incarcerate.

ballotpedia.org

Jail expansion

WHAT: Counties in California have been expanding their jail facilities following AB 109 and Proposition 47, increasing their share of the state's custody burden.

SO WHAT: Investment in county jails may result in shifting—rather than minimizing—correctional populations.

vera.org

Increased reliance on supervision tech

WHAT: California expanded its use of supervision technology following AB 109, with an emphasis on electronic monitoring.

SO WHAT: Reduces cost to the state while removing some otherwise incarcerated individuals from the correctional population.

[KBAK \(bakersfieldnow.com\)](http://KBAK(bakersfieldnow.com))



FUTURE CRIMINAL JUSTICE REFORM AND PUBLIC SAFETY POLICIES IN CALIFORNIA

Choices among governmental policies depend partly upon which future scenarios seem most attractive to us, but they also depend upon our perspectives on the proper role of government, on the resources available to government, and on the likelihood that government will succeed in its endeavors. Doing nothing is sometimes the best policy option, but doing nothing often uncritically accepts the current mix of policies and the future they entail without considering the alternatives. Over the past seventy-five years in California, that meant accepting discriminatory racial housing covenants, restrictive zoning laws, few restrictions on air or water pollution, “separate but equal” schooling, the dismantling of transit systems, and many more things that are now thought to have been wrong or misguided. We have

also seen aggressive policy measures in California that have had unintended consequences, from the impacts of Proposition 13 on local government budgets to the way the California Environmental Quality Act has affected housing supply and manufacturing.

Because we are thinking about the future and we do not want to be hemmed in by the status quo or a lack of imagination, we put forth an array of alternative policies related to criminal justice reform and public safety, and we tie them to the different scenarios we have identified as possible futures for California. Readers should consider which criminal justice reform scenario best captures the California they want to live in, and evaluate which policy recommendations they believe will get us there.

REIMAGINING CORRECTIONS

Smart on Crime Amid Economic Growth

With a strong economy and budget surplus alongside voters' appetite for change and the political will to reform the criminogenic aspects of California's justice system, the state returns to the rehabilitative ideal that dominated corrections throughout the early 20th century. Rather than punish individuals based on "just deserts," the state's criminal justice system seeks to ameliorate the root causes of crime. Along the way, the system directly confronts long-standing racial disparities in criminal justice outcomes that have plagued the state as well as the nation. On one end of the spectrum is a more conservative approach that reintroduces rehabilitation in corrections along with an expansion of services and support for those returning to society, in order to minimize reoffending. On the other end of the spectrum is a fundamental reimagining of corrections—and California's criminal justice system more broadly—that envisions a new system from scratch. California's approach will likely fall somewhere between these two extremes.

Throughout the Progressive Era and the early 20th century, both California and the nation as a whole prioritized the rehabilitation of criminals through in-custody programs aiming to minimize reoffending and reincarceration. Rehabilitative programs ranged from mental health and substance abuse treatment to educational and vocational training programs. During this time, indeterminate sentencing—which set sentence length based upon when individuals were deemed rehabilitated—dominated corrections. Rehabilitation and indeterminate sentencing fell out of favor as programs were increasingly seen as ineffective, those incarcerated were considered undeserving of rehabilitative services, and the public embraced punitive approaches amid rising crime rates in the 1970s.

In the wake of mass incarceration as well as overcrowding and cost-prohibitive conditions of confinement in California prisons (and the nation), there has been a growing appetite to reform the system, generating bipartisan support for change and new social movements such as Black Lives Matter. Initial reforms such as AB 109 and Prop 47 generated momentum that was catalyzed by high profile instances of police brutality leading to calls for radical change to California's criminal justice system. Illustrative of this is the movement to abolish prisons and the police, and to reimagine criminal justice writ large. These aims focus on eliminating racial bias in the system. Beyond these more extreme measures, calls for reform



have moved into the mainstream, with even conservatives embracing selective reforms. With few budget concerns and an overriding interest in rehabilitation and equity, California may adopt one, or some combination, of the two following approaches.

Pursue Anti-Racist Reforms in Criminal Justice System

The state may pursue a limited set of reforms that incrementally build upon California's post-*Brown v. Plata* policies but that also seek to minimize racial and ethnic bias in the system by targeting offenses for which nonwhites are over-policed and disproportionately incarcerated. New policies that identify the next set of low-risk offenders in the system will be supplemented with additional policies that aim to provide rehabilitative programming while in custody followed by re-entry services that allow individuals returning to society to more successfully reintegrate, thus minimizing recidivism. This approach may include identifying some individuals convicted of low-level violent crimes who pose the least risk to reoffend among the remaining incarcerated population. A central goal of all these policies is to address the root causes of crime, including poverty, joblessness, education, among others. This scenario aims to maximize the rehabilitative and restorative impact of corrections.

Reimagine the Purpose and Goal of Criminal Justice

The state may pursue a more radical reimagining of criminal justice administration that more closely aligns with calls for abolition. At the root of this is a wholesale restructuring of America's social, political and economic systems, where a redistribution of wealth helps to offset inequality in society. Consistent with this, the existing corrections budget will shift, in part, to social service programs that ameliorate the root causes of crime, including inequality. This scenario eschews

traditional rationales of punishment and seeks to replace them with an alternative framework for envisioning justice. What the resulting new system will look like, and what specific policies will emerge from this restructuring, remain unknown and highly contested. Most likely, the state will land somewhere in between these two extremes.

Crime may not respond immediately to these policies, however, as the root causes of crime are addressed, either through rehabilitation or through societal restructuring, reductions in crime are expected to accrue in the longer term. Recidivism, on the other hand, is expected to fall immediately given the reduced criminogenic impact of incarceration-based crime control coupled with programming and services designed to address the core needs of incarcerated individuals. On the conservative side of these policies, basic expansion of rehabilitative programming and the provision of new re-entry services represent significant but far from unprecedented costs. On the more radical side of these policies, questions about the size of the correctional budget no longer apply. Rather the focus centers on how inequality can be reduced through societal restructuring—a question that goes well beyond conventional fiscal concerns. Through both policy options, racial disparities in criminal justice outcomes diminish substantially, and in the more extreme case, are eradicated altogether.

MASS INCARCERATION REDUX

Tough on Crime Amid Economic Growth

In 1988, Willie Horton's sexual offenses following a weekend furlough became one of the focal points of George H.W. Bush's presidential campaign against Michael Dukakis. Dukakis was seen as enabling Horton's behavior through his actions as governor of Massachusetts, as a bill he vetoed would have eliminated the weekend furlough program for those incarcerated for violent offenses. Bush went on to defeat Dukakis by a wide margin in the 1988 general election. Dukakis's defeat made it apparent that appearing "soft on crime" was an untenable position, and as a result, both parties moved to support punitive criminal justice policies and correctional growth throughout the next two decades. It is not



difficult to imagine a similar shift occurring once again, but it would require a period of economic prosperity to alleviate state budget deficits as well as a moral panic on a similar scale to Willie Horton that incentivizes members of both parties to, yet again, get tough on crime.

Bill Clinton was elected in 1992 on a platform that was explicitly “tough on crime” and through his 1994 Crime Bill, which included pernicious policies such as so-called “Truth-in-Sentencing” grant programs and exclusions from public housing for those convicted of a felony drug offense. Through these policies, Clinton secured reelection and neither party was willing to diverge from promoting policies that crack down on crime until the 2008 financial crisis forced a reckoning with corrections costs.

Just as rising crime rates led to public support for the “War on Drugs” and its continued escalation, it is possible that the past decade of California’s decarceration reforms and historically low crime rates will make voters more sensitive and reactionary to any increases in crime. Whether driven by real or merely perceived threats to public safety, if fear of crime threatens the election prospects of the political left in California, the party would face a “if you can’t beat ‘em, join ‘em” situation just as they did post-1988.

If a moral panic similar to the Willie Horton saga were to occur at a time when state budgets are running surpluses rather than deficits, it would likely set the stage for a bipartisan shift in support of punitive criminal justice policies along with an expansion of both the state’s criminal justice apparatus and California’s correctional population—a return to the pre-reform era. This scenario aims to maximize the retributive, incapacitative, and deterrent effects of punishment.

In this scenario, there would likely need to be a compelling scapegoat identified or a new “war on something” to galvanize support among moderate and left leaning voters. Although stoking fear of crime among conservative voters in California galvanized enough support to produce “tough on crime” policies such as Proposition 20 (2020), which sought to roll back recent criminal justice reforms, on the ballot, its ultimate defeat underscores the necessity of also gaining moderate and left-of-center support in order to pass this type of legislation.

While the moral panic catalyst needed for this scenario to emerge could be any number of “othered” groups (e.g., undocumented immigrants, the unhoused, etc.),

once the “tough-on-crime at any cost” environment materializes, policies would likely include some form of “net-widening” where previously legal behaviors become newly criminalized through legislation.

Repeal Legalization of Marijuana

At the top of the “tough-on-crime” wish list, California would likely repeal Proposition 64, criminalizing marijuana possession once again.

Reverse Reforms

Another priority would be reversing reforms to post-release supervision, such as, for example, sending those who violate probation or parole back to state-level prisons rather than county-level jails. Reforms to sentencing laws from the post-*Brown v. Plata* era would be quickly reversed, leading to correctional population growth, perhaps beyond its previous peak. This growth would necessitate the construction of new prison facilities as well as maintenance and renovation of existing facilities.

As the public is subjected to increasingly aggressive policing tactics, widespread surveillance, and the return of lengthy retributive sentencing enhancements, any initial reductions in crime will likely be slowly erased as more and more people are subjected to the criminogenic prison environment as well as net widening and the policing of newly criminalized behaviors. Alternatively, recidivism rates will likely increase due to the lack of rehabilitative resources available in state prisons combined with a greater number of individuals ultimately being sent to prison, both as a result of net widening and frequent revocations from probation and parole as supervision intensifies. Driven by a massive increase in the incarcerated



population, need for new prison construction, and intensified supervision system, criminal justice costs would increase precipitously. Racial disparities are also expected to increase as the mechanisms which generated such disparities in the first place get reactivated.

TOUGH ON CRIME, BUT ON A BUDGET

Tough on Crime Amid Economic Constraints

Rising fear of crime—spurred on by a moral panic or spiking crime rates—and budget constraints collide, forcing politicians and criminal justice stakeholders to find new ways to get “tough on crime” but at a lower cost. In order to achieve this goal, conventional cost-cutting tactics are employed, ranging from scaling down prisons and subsidizing jails, which are less cost prohibitive for the state, to minimizing the need for correctional workers through increased use of surveillance technology, to embracing privatization of corrections, each a potential outcome in this scenario.

In order to get “tough on crime” while minding a tight budget, in this scenario California will be forced to maximize the crime reduction return on investment for each dollar of criminal justice spending, even as the scope of what is considered a crime broadens and net widening goes into full effect. To achieve this delicate balance, California may adopt one, or some combination, of the following approaches.

Subsidies for Jails

Relying less on utilizing expensive prisons, the state doubles down on subsidizing jails, as they represent a more cost-effective means of incarcerating individuals convicted of crimes. This “fewer prisons, more jails” approach combined with a crackdown on crime means that county jails soon become overcrowded, prompt-

ing the potential for 58 mini-*Brown v. Plata* lawsuits to surface in each California county. Fearing a repeat of the past, the state must allocate some of its precious correctional budget to expand local jails, and even construct new ones, or face the possibility of court intervention. Coupled with a growing reliance on jails is an increase in laws and policies related to fines and fees associated with all aspects of the criminal justice system, creating an additional revenue stream to make jail expansion and construction feasible. This scenario aims to maximize cost-effective incapacitation.

Alternatives to Incarceration

The state reserves its costly prison facilities—and even jails—for the most serious offenders, opting to rely (largely) on alternatives to incarceration to oversee and control its burgeoning correctional population. Chief among these alternatives is greater use of, and innovation in, supervision technology. For example, policies supporting increased use of facial recognition software, drone technology, and sensor technology (i.e., electronic monitoring bracelets) are enacted. At the same time, and consistent with an urban informatics approach, new, largely crowd-sourced systems are set in place that use modern digital (i.e., “big”) data and technologies to better detect those who violate the law. Coupled with this expanded surveillance network is an increase in laws and policies related to fines and fees associated with all aspects of the criminal justice system, creating an additional revenue stream to fund the innovations and expansions of technology. This scenario aims to maximize retribution as well as cost-effective incapacitation.

New Industries Emerge to House Correctional Population

Concerns with substantial correctional costs in the face of newly minted “tough on crime” legislation generates private sector solutions to corrections. In particular, business opportunities arise from both the scarce supply of prison and jail space



throughout the state as well as the demand for innovative surveillance technologies, which the state does not have the capacity to create. In the former, private companies build new facilities and retrofit existing infrastructure to house a growing correctional population. In the latter, private companies develop, test, and implement new surveillance technologies designed to alleviate the state's custody burden.

Using these policies, crime rates may initially drop due to an incapacitative effect but, very quickly, the return on investment will slow, and perhaps even reverse. After a brief reprieve, crime rates rise as the state cracks down and implements “tough on crime” policies that put more people behind bars—this time jails—and in private correctional facilities for longer periods of time. Recidivism rates rise, as minimal correctional programming is provided in jails and private facilities to those in need, not only because resources are limited but because a “tough on crime” approach is at odds with the rehabilitative ideal. Also contributing to rising recidivism rates is increased surveillance, reflecting the state's cost-saving turn to employing better technology and supervision to intensively monitor the correctional and post-release population. The in-custody population will remain stable, albeit at a lower cost, driven by a decrease in prison usage and a corresponding increase in the use of jail and private correctional facilities. The number of people under supervision will swell even though costs remain stable due to technologically-driven alternatives to incarceration such as home monitoring. Racial disparities in criminal justice outcomes rise as new behaviors, particularly those by the poor and people of color, become criminalized reflecting the age-old mantra, “The rich get richer and the poor get prison.”

DOING BETTER WITH LESS

Smart on Crime Amid Economic Constraints

If an economic contraction or recession puts pressure on public spending in California and politics move toward bipartisan support for reform, there will be immense pressure on the state's criminal justice system to maximize the amount of crime averted for each dollar of criminal justice spending. Put another way, a cash-strapped and reform-minded

California will be tasked with maximizing the efficiency of its criminal justice apparatus. Of the scenarios we discuss in this report, this is likely the easiest to imagine, possibly because the state has been more or less preoccupied with reforms aimed at curbing correctional populations and scaling back its criminal justice budget for about a decade or so. This scenario aims to maximize the deterrent impact of punishment, as California seeks to curb costs while minimizing crime.

Over the past 50 years, conservative politicians and their supporters have tended to favor “tough-on-crime” policies and have been willing to accept the costs associated with them (instead favoring cuts to other social programs). The notable exception to this preference emerged following the Financial Crisis and the recession that followed in the form of the “Right on Crime” movement, which sought to gain support for criminal justice reform and end mass incarceration. The movement amounted to traditional fiscal conservatism aimed at state corrections spending, and it enabled (or at least politically facilitated) the decade of criminal justice reform California embarked upon following the *Brown v. Plata* ruling.

Two policies were enacted in the past decade that illustrate the type of reforms California may explore if the current scenario is realized. In 2016, California voters approved Proposition 64 which made reasonable amounts of marijuana possession and cultivation for personal use legal for adults over 21 years of age. This policy change decriminalized a wide range of drug offenses pertaining to marijuana for personal use, which narrowed the range of behaviors considered criminal offenses in the state.

Also, in 2016, California voters approved Proposition 57, which allowed non-violent felons to be considered for parole and amended the “good time” credit system to allow for additional time to be taken off of individuals’ sentences for participating in and completing rehabilitation and education programs. Proposition 57 enabled the state to further reduce the number of people convicted of nonviolent offenses from the state’s correctional population and remove the cost to incarcerate them from the state’s bottom line.

In order to reduce criminal justice spending and correctional costs while maintaining public safety, California will be forced to maximize the crime reduction return on investment for each dollar of criminal justice spending. To achieve this aim, California may adopt three types of reforms.



Reverse Punitive Sentencing Policies

The state will need to reverse some (or all) of the punitive sentencing policies established during the “tough on crime” era of the 1980s and 1990s. Just as Proposition 36 (2012) narrowed the range of offenses which qualify as a “third strike” and curbed the growth of California’s “life without parole” correctional population, the state will need to make reasonable reforms to punitive laws which can alleviate the costs associated with incarcerating large numbers of individuals for long terms.

Expand Decriminalization of Offenses

California must shrink the criminal justice net by decriminalizing additional non-violent, non-serious, non-sexual offenses. Similar to how Prop 64 decriminalized marijuana possession and cultivation for personal use and Proposition 47’s introduction of the “shoplifting” offense as a lesser offense to petty theft, the state will need to reclassify and decriminalize additional low-level offenses in order to reduce the input to the criminal justice system rather than addressing the system’s load and output alone.

Increase Use of Alternatives to Large Prison Populations

The state must continue Assembly Bill 109’s shift away from large prison populations and toward an increased reliance on county jails, community supervision, and alternatives to incarceration for housing its correctional population. Prisons cost more per incarcerated individual per day than jails mainly because prisons, which

are designed to house people serving longer sentences, generally have more elaborate medical facilities on site, additional rehabilitative and education programs, and include higher security facilities and cell blocks than jails are expected to have. California therefore must limit its prison population to the subset who cannot be housed in alternative settings due to their needs and risk assessment. Advancements in risk assessment accuracy and elimination of their historical biases will facilitate these goals considerably by allowing low risk individuals in custody to be released to the community as soon as they can be without resulting in additional crime.

These reforms are generally not expected to impact crime rates aside from the reductions resulting from reclassified and decriminalized offenses, as they are focused primarily on the segment of the correctional population that has the lowest risk of future offending. Recidivism is also expected to be largely unaffected, aside from modest reductions resulting from the improved accuracy of risk assessments. Criminal justice costs, on the other hand, are expected to decrease. Whether these cost reductions amount to smaller correctional budgets at the end of the day depends upon the political will to pursue them. Racial and ethnic disparities in criminal justice outcomes will lessen somewhat due to decriminalization and improvements to risk assessments; however, disparities will largely persist given the reforms do not explicitly aim to reduce them.

