



CRIMINAL JUSTICE REFORM IN CALIFORNIA

Criminal Justice Reform in California

In the past 10 years, California has led the nation in implementing several notable criminal justice reform measures that have reduced incarceration rates, improved conditions in the system, and increased investment in community-based services. These reforms can help guide other states and federal efforts.

In California, advocacy groups have utilized different approaches to achieve change, including co-sponsoring new bills through the California State Legislature, proposing new statutes and amendments to California's Constitution through the ballot initiative process, and advocating for amendments through the state budget process. In this report, NICJR outlines some of the most impactful policies passed by California legislators and voters.

Taken together, these reforms have achieved significant reductions in California's prison population. As of January 1, 2021, the California prison population was under 96,000¹, more than 45,000 less people incarcerated than when these reforms began.

¹ <https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2021/01/Tpop1d2012.pdf>

California State Legislature

Senate Bill (SB) 678: Incentives for Probation Reforms

SB 678 – “The California Community Corrections Performance Incentives Act of 2009” – which became law in 2010, provides financial incentives to counties to reduce the number of people on probation who are sent to state prison on probation violations or new offenses. The new law also sought to reduce prison overcrowding and lower the astronomical costs associated with incarceration, as well as promote evidence-based supervision practices to achieve these goals.

Available funds come from a reduction in the percentage of people on probation who are revoked back to prison for a probation violation (due to a probation technical violation or a new charge). SB 678 established a system of performance-based funding that shares state General Fund savings with county probation departments that reduce their probation failure rate (PFR), originally defined in statute as the number of adult felony probationers who are revoked to state prison in a year compared to the percentage of the average PFR in previous years. The state savings are redirected to probation to implement evidence-based programs in the community.

With the passage of AB 109, discussed in more detail in the following section, state savings under SB 678 were significantly reduced due to probation violators primarily being sent to county jails. The State amended the funding formula to provide increased funds to counties based on three components²:

1. Measuring each county’s performance against statewide PFR;
2. How each county performs in comparison to its performance the previous year; and

3. Guaranteeing a minimum payment of \$200,000 to support ongoing implementation of evidence-based practices.

Assembly Bill (AB) 109: Criminal Justice Realignment

In a landmark ruling in *Coleman V. Schwarzenegger*³, a federal three-judge panel ordered the California Department of Corrections and Rehabilitation (CDCR) to cap the prison population of its 33 adult prisons to 137.5% of their 79,828 design capacity, or 109,763 prisoners, within two years. At the time the prison population was at nearly 140,000. Then Governor Jerry Brown proposed Criminal Justice Realignment as a strategy to reduce the prison population.

AB 109, the California Public Safety Realignment Act of 2011, effectively shifted responsibility for certain populations of offenders from the state to the counties. Beginning in October 2011, AB 109 created three primary changes:

- 1) Individuals in state prison convicted of non-violent, non-serious, and non-sex offenses, are no longer released on parole as usual, but are now released to county probation supervision on Post-Release Community Supervision (PRCS) and that supervision can be as short as six months and must end after one year if there are no violations or new arrests;
- 2) People convicted of new non-violent, non-serious, non-sex offenses (without serious priors) serve their sentences in county jails, not state prisons; and
- 3) Those who are found to violate the terms of their probation or parole, with some exceptions, are revoked back to county jail for up to six months, with day for day good time credits resulting in a maximum violation penalty of no more than 180 days in county jail.⁴

² <https://www.courts.ca.gov/documents/lr-2017-JC-SB-678-CCC-performance-incentives-act.pdf>

³ <https://casetext.com/case/coleman-v-schwarzenegger-239>

⁴ <https://probation.lacounty.gov/ab-109/>

Each county was required to create an Executive Committee of the Community Corrections Partnership (CCP) and an AB 109 implementation plan to be submitted to county boards of supervisors. The state then provided significant funding to each county to implement their realignment plans. In some counties,

a portion of those funds were passed on to community-based organizations to provide re-entry services. For instance, in Alameda County, the Board of Supervisors determined that 50 percent of the county's now \$50 million annual allocation would be distributed to community-based services.

Table 1. FY 19-20 AB 109 Allocations

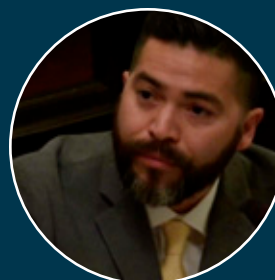
| County | AB 109 Total | Amount to CBO, Re-Entry, and Non-Public Agencies | Percent of Total |
|---------------|---------------|--|------------------|
| Alameda | \$52,375,279 | \$24,187,701 | 46.2% |
| Contra Costa | \$28,420,464 | \$5,548,366 | 19.5% |
| Los Angeles | \$448,871,000 | \$22,334,000 | 5.0% |
| San Francisco | \$44,621,802 | \$11,132,632 ⁵ | 24.9% |
| San Joaquin | \$28,186,415 | \$5,771,557 | 20.5% |

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Senate Bill (SB) 9: Repeal of LWOP

Passed by the California legislature in 2012, SB 9 provides a second chance for youth who were under the age of 18 at the time of committing an offense for which they were sentenced as an adult to life in prison without parole (LWOP). Under SB 9, those sentenced to LWOP for a crime committed prior to their 18th birthday can petition the court for a new sentencing hearing, after serving 15 years of their sentence. Courts can then re-sentence the petitioner to a new sentence allowing for parole. SB 9 applies retroactively.

SB 9 takes into account the science on neurological development of youth and its impact on criminal offending.



SB 9's Impact: Paul Bocanegra

In 1992, Paul was 17 years old. He had joined a gang for protection and was riding in a car when a passenger shot and killed another teen in a gang dispute. Paul was tried as an adult and sentenced to life without the possibility of parole, plus four years for a gang and gun enhancement, even though he was not carrying a gun at the time of the crime. "I had come from a broken and traumatized home, growing up in a toxic environment, and instead of treatment, I found myself condemned to die in a cell for my decision-making at 17 years old," Paul said.

⁵ This amount includes \$7,746,632 directed by the Adult Probation Department to Programs and Services provided by public agencies.

⁶ <http://www.bscc.ca.gov/wp-content/uploads/7Seventh-Annual-Report-on-the-Implementation-of-Community-Corrections-Partnership-Plans.pdf>

Under SB 9, Paul was resentenced and after serving 25 years in prison he was released on September 28, 2017. He is a Confirmed Catholic, a full-time drug and alcohol counselor (SUDCC-I), and Co-Founder of ReEvolution, a California-based non-profit organization that works with transitioning youth returning to the community after incarceration. He also serves as a Juvenile Justice Delinquency Prevention Commissioner for the County of San Mateo, criminal justice advocate, and consultant, and was most recently selected to be a member of Senator Josh Becker's (D-San Mateo) district-wide Latinx Community Advisory Committee.

Paul shared, "SB 9 impacted my life in a profound way. The passage of this measure told me that my state had not forgotten me and that my life was worth more than what I had been told all of my life by society and the court. It gave me hope that I could be the person I had always wanted to be. I am that person today. Being re-sentenced validated my goals that I dreamed of for so many years from a cell."

Senate Bill (SB) 260: Youthful Offender Parole Reform

SB 260, passed by the legislature in 2013, requires the Board of Parole Hearings (BPH) to conduct a youth offender parole hearing to consider release of people who committed specified crimes prior to their 18th birthday and who were sentenced to state prison.⁷ SB 260 directed the BPH to give "great weight" to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the individual in accordance with relevant case law.

Similar to SB 9, SB 260 referenced neuroscience that demonstrates that the brain does not fully develop until age 25 and that adolescents are more impulsive

and, therefore, less culpable. SB 260 allows for young people who were sentenced as adults to receive a parole hearing, after serving at least half of their sentence. In addition, individuals can petition the court after serving a significant portion of their sentence (15 years of a determinate sentence, 20 years of a sentence less than 25 years to life, and 25 years of a sentence of 25 years to life) for the BPH to consider the individual to be granted parole.



SB 260's Impact: Michael Mendoza

In 1996, Michael made what he called "the worst decision of his life" – agreeing to participate in a gang-related homicide. At the young age of 15, Michael received an adult sentence of 15 years to life in prison for his involvement in the crime.

At the time of the crime, Michael did not consider the implications his decision would have for the victim, their family, his own family, and his future. He also felt significantly influenced by his peers. This is not surprising given his young age and what we know about neurological development of adolescents. Brain science shows that young people are more impulsive, less able to consider the long-term effects of their actions, and more easily influenced by peer groups.

Michael spent 17 years incarcerated for his crime. In 2014, he earned his release after appearing before the Board of Parole Hearings due to SB 260. Immediately upon his release, Michael dedicated his career to criminal justice reform. He completed his Bachelor's degree and held several roles at leading justice reform agencies including serving as National Director

⁷ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB260

of #CUT50, a national bipartisan effort to reduce the number of people in prisons and jails while improving community safety. He currently serves as Director of National Advocacy at the Anti-Recidivism Coalition, an organization working to end mass incarceration in California that empowers formerly and currently incarcerated people to thrive by providing a support network, comprehensive reentry services, and opportunity for policy change.

Senate Bill (SB) 261: Youthful Offender Parole Reform

Building on SB 260, the California legislature passed SB 261 in 2015, expanding youth offender parole hearings to individuals who were under the age of 23 when they committed their controlling offense.⁸

Assembly Bill (AB) 1308: Youthful Offender Parole Reform

Further building on SB 260 and SB 261, the California legislature passed AB 1308, which took effect on January 1, 2018, expanding youth offender parole hearings to individuals who were under the age of 26 when they committed their controlling offense.⁹

Assembly Bill (AB) 1950: Reducing Probation Terms

AB 1950 amends the California penal code to limit adult probation to a maximum of one year for misdemeanor offenses and two years for felony offenses, except for offenses falling under section 667.5 of the state penal code, serious and violent

offenses, as well as any specific crimes with probation term lengths identified by statute.¹⁰

AB 1950 creates reasonable and evidence-based limits on probation terms, while lowering costs to taxpayers, allowing for the possible investment of savings in effective measures proven to reduce recidivism and increase public safety for all Californians.

Research shows that reducing the length of a probation supervision term is most beneficial in the early part of the period of supervision.¹¹ In addition, increased levels of supervision can lead to increased involvement with the criminal justice system due to the likelihood that minor violations will be detected, resulting in a violation or revocation. Reducing the length of probation terms would enable probation officers to more effectively manage their caseloads by focusing resources on those most at risk of reoffending.

Senate Bill (SB) 1437: Repeal of Felony Murder

SB 1437, signed into law by Governor Jerry Brown in September of 2018, amended the state's felony murder law by limiting who can be prosecuted for murder and felony murder. Prior to the statute change, individuals were automatically liable for first-degree murder if a death occurred during the commission of certain felonies, such as a robbery, even if an individual did not participate in the killing of the victim.

A 2018 survey of California prisons concluded that the felony murder rule, prior to SB 1437, disproportionately impacted youth of color and women. Even though Black people comprise just 7 percent of the State's population, approximately 40 percent of those convicted under the Felony Murder rule are Black.¹² Of the women serving life sentences for murder in California, 72 percent were not the ones who caused the victims' death.¹³ In some

⁸ <https://www.cdcr.ca.gov/bph/youth-offender-hearings-overview/>

⁹ <https://www.cdcr.ca.gov/bph/youth-offender-hearings-overview/>

¹⁰ <https://a54.asmdc.org/ab-1950-probation-reform>

¹¹ https://www.uscourts.gov/sites/default/files/fedprob_3rd_proofs_sept13_082213e.pdf

¹² <https://www.endfmnow.org/statistics>

¹³ <https://www.nytimes.com/2018/06/27/us/california-felony-murder.html>

instances, the person convicted of felony murder was not even in the same room where the homicide occurred, yet was still sentenced to life in prison.

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The main provisions of the new law include:

1. Felony murder can now be prosecuted only when the accused had the intent to kill;
2. The law is retroactive. People convicted of felony murder under the old law can petition to have their sentences reduced.



SB 1437’s Impact: Genea Richardson

In 1999, Genea was 17 years old when she agreed to go along with a robbery in order to fit in with another young person she just met. Growing up, Genea moved constantly, so she was quick to hang out with new people to make friends and feel like part of a group. Tragically, the young person she was with that day killed the person being robbed. Under the

felony murder law, Genea received a sentence of 26 years to life in prison even though she was not directly involved in the murder.

Genea served 18 years of her sentence before learning about SB 1437. Her lawyer petitioned the court to reduce Genea’s sentence under the new law. “The day of the court date, I was at work (in the prison) and asked to leave early because I was so stressed to call home and find out what happened. I called my mother and she was in tears and said, ‘Your coming home!’ I couldn’t believe it and still didn’t until about a month of being home. I got a second chance at life,” Genea said.

Genea returned home on June 29, 2020. She immediately began working with Healing Dialogue and Action, a Los Angeles based nonprofit organization that creates healing spaces and advocacy opportunities for family survivors of homicide, incarcerated and formerly incarcerated people, and communities affected by violent crime. Genea shared, “I know first-hand both the trauma that crime causes and how it can lead to crime from being with so many broken women in the prison system. I wanted to give back and help mend lives. We go into the prisons to help incarcerated people come to terms with and take responsibility for their actions, and find healing in self-forgiveness. We also bring survivors of crime inside prisons to create a dialogue that promotes understanding. The system is one that divides communities and families; we are healing communities and restoring humanity.”

Genea is also a member of the Los Angeles Regional Reentry Partnership (LAARP) Leadership Academy, which looks closely at policy and effectively creates change based on integrated health factors and a holistic approach to reform.

Statewide Ballot Measures

Proposition (Prop) 36: Three-Strikes Reform

California voters passed Prop 36, the Three-Strikes Reform Act of 2012, in November 2012. Prop 36 amended California's Three Strikes sentencing law to mandate that a person's third strike must be serious or violent. Prop 36 shortened the sentence of incarcerated individuals who were serving life terms for non-serious and non-violent crimes and who no longer posed a threat to public safety. Prop 36 was applied retroactively, so many individuals became immediately eligible for release.

For decades, the "Three Strikes and You're Out" law has imposed draconian sentences for even the most minor offenses – including life sentences for theft. The unjust Three Strikes law disproportionately impacted African Americans and other people of color and was a significant contributor to mass incarceration.¹⁴

It is important to note that the recidivism rate of individuals released under Prop 36 to date is well below state and national averages. Fewer than 2 percent of those released under Prop 36 have been charged with new crimes, according to state and county records,¹⁵ while the recidivism rate of others released from prison is exponentially greater, proving that Prop 36 had no negative impact on public safety.

Proposition (Prop) 47: Sentencing Reform

Prop 47 – the Safe Neighborhoods and Schools Act – reclassified six felony offenses as misdemeanors and made these changes retroactive. The ballot initiative also requires savings from reduced incarceration

levels in state prisons to be spent on specified rehabilitation and prevention programs.

Prop 47 implemented three broad changes to felony sentencing laws:

- 1) It reclassified certain theft and drug possession offenses from felonies to misdemeanors;
- 2) It authorized defendants currently serving sentences for felony offenses that would have qualified as misdemeanors under the proposition to petition courts for resentencing under the new misdemeanor provisions; and
- 3) It authorized defendants who have completed their sentences for felony convictions that would have qualified as misdemeanors under the proposition to apply to reclassify those convictions to misdemeanors.

The six offenses changed from felonies to misdemeanors are: Shoplifting; Forgery; Check Fraud/Insufficient Funds; Petty Theft; Receiving Stolen Property; and Petty Theft with a Prior.¹⁶ Prop 47 also reclassified drug possession offenses under Health and Safety Code sections 11350, 11357(a) [concentrated cannabis], and 11377 as strictly misdemeanors punishable by up to one year in county jail.

In California, misdemeanor convictions that result in a sentence of probation are not sent to the county probation departments for supervision. People under misdemeanor probation, known as "Court Probation", do not receive active supervision. Therefore, another outcome of the passage of Prop 47 was the reduction in the number of people supervised under felony probation.

California has historically over-penalized people sentenced with lower-level drug and property offenses, resulting in high incarceration levels and correctional costs.¹⁷ Prop 47 reduces the

¹⁴ <https://www.brennancenter.org/our-work/analysis-opinion/sentencing-laws-and-how-they-contribute-mass-incarceration>

¹⁵ https://www.naacpldf.org/wp-content/uploads/ThreeStrikesReport_v6-1.pdf

¹⁶ <https://www.courts.ca.gov/prop47.html>

¹⁷ https://www.ppic.org/wp-content/uploads/r_0618mbr.pdf

incarceration population and increases investments in programs that reduce crime and recidivism rates, and improve public safety.¹⁸ This measure also avoids the additional punishments of a felony conviction, such as restricted access to jobs, housing, and other opportunities.¹⁹

Proposition (Prop) 57: Eliminate Direct File and Increase Good Time Credits

Prop 57, the Public Safety and Rehabilitation Act of 2016, aimed to reduce the state prison population in California through the enactment of four key provisions:²⁰

1. Eliminated Direct File. County District Attorneys no longer have the discretion to charge youth as adults; those decisions are now made by the court. When DAs were given the authority to Direct File in 2000, the number of children being tried as adults and sent to prison skyrocketed.
2. Allowed parole consideration for persons convicted of nonviolent felonies, upon completion of the prison term for their primary offense, prior to serving their sentence on sentence enhancement;
3. Authorized the CDCR to award sentence credits for rehabilitation, good behavior, or educational achievements; and
4. Required the CDCR to adopt regulations to implement new parole and sentence credit provisions and certify that they enhance public safety.

Prop 57 made changes to the California state constitution to increase the number of individuals eligible for parole consideration and authorized the CDCR to award sentencing credits to incarcerated individuals. As a result, BPH decides whether to release these individuals before they have served any

additional time related to sentencing enhancements, such as the extra years a judge can impose on someone's sentence for allegedly being a member of a gang.

Prop 57 also changed state law to require that before youths could be transferred to adult court, they must have a hearing in juvenile court to determine whether they should be transferred. As a result, the only way a youth could be tried in adult court is if the juvenile court judge in the hearing decides to transfer the youth to adult court.²¹

Prop 57 reduces California's costly over reliance on overcrowded jails and prisons with justice strategies that are focused on rehabilitation.²² Additionally, Prop 57 makes the developmental milestones of young people and their capacity to change central to the transfer decision, and recognizes the value of family and community in the rehabilitative process for youth.²³

Proposition (Prop) 17: Giving Parolees the Right to Vote

Passed in 2020, Prop 17 changes the California state constitution to allow people on parole to register and vote in elections.²⁴ Because current state law allows registered voters to run for elective offices, this measure would result in people on state parole being able to do so as well, if they meet existing qualifications such as not having been convicted of perjury or bribery.

Prior to Prop 17, as many as 50,000 Californians living in the community were barred from voting because of a past conviction.²⁴ Black and Latino Californians have been disproportionately affected by voter prohibitions due to racial and ethnic discrimination in the criminal legal system. Prop 17 eradicates the racial injustice of felony disenfranchisement by restoring voting rights for those people on parole.²⁶

¹⁸ <https://oag.ca.gov/system/files/initiatives/pdfs/13-0060%20%2813-0060%20%28Neighborhood%20and%20School%20Funding%29%29.pdf>
¹⁹ <https://www.pewtrusts.org/en/research-and-analysis/data-visualizations/2015/hia-map/state/california/california-proposition-47-the-safe-neighborhoods-and-schools-act>
²⁰ <https://lao.ca.gov/BallotAnalysis/Proposition?number=57&year=2016>
²¹ <https://www.courts.ca.gov/documents/BTB24-5H-1.pdf>
²² <https://youthlaw.org/case/public-safety-rehabilitation-act-2016/>
²³ http://www.cjcj.org/uploads/cjcj/documents/youth_prosecuted_as_adults_in_california.pdf
²⁴ <https://lao.ca.gov/ballot/2020/Prop17-110320.pdf>
²⁵ <https://www.brennancenter.org/our-work/research-reports/voting-rights-restoration-efforts-california>
²⁶ <https://www.urban.org/urban-wire/californias-prop-17-just-restored-voting-rights-people-parole-lessons-other-states-can-help-implementation>

Governor's Budget Act

Governor Newsom's Public Safety Budget: Reduce Parole Terms

Through the budget process, California Governor Gavin Newsom amended the FY 20-21 public safety portion of the state's budget to put a cap on the length of parole. In an effort to align community supervision terms with evidence that most recidivism occurs earlier in the supervision period, the Governor's budget reduces supervision for most individuals on parole to 24 months and establishes earned discharge for non-sex offenders at 12 months. In addition to resulting in improved outcomes, these reforms are expected to produce an estimated savings of \$23.2 million for the general fund in 2020-21, increasing to \$76 million ongoing for the general fund in 2023-24.²⁷

²⁷ <http://www.ebudget.ca.gov/2020-21/pdf/Enacted/BudgetSummary/FullBudgetSummary.pdf>

The National Institute for Criminal Justice Reform (NICJR) works to reduce incarceration and violence, improve the outcomes of system-involved youth and adults, and increase the capacity and expertise of the organizations that serve these individuals. NICJR provides technical assistance, consulting, research, organizational development, and advocacy in the fields of juvenile and criminal justice, youth development, and violence prevention. NICJR works with an array of organizations, including government agencies, nonprofit organizations, and philanthropic foundations.

