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SPECIAL REPORT: CALIFORNIA CRIMINAL JUSTICE REFORM September 2016

California's criminal justice system has seen many reforms throughout its history. Reforms have generally aimed to reduce recidivism and have polarized between different types of approaches. California has seen both a tough on crime mentality and more recently the need for alternative and more flexible sentencing to address a prison system at overcapacity. The California Department of Corrections (CDCR) defines recidivism as an "individual convicted of a felony and incarcerated in a CDCR adult prison who was released to parole, discharged after being paroled, or directly discharged from CDCR during a defined time period and subsequently returned to prison during a specified follow-up period."¹ In 2009, California's recidivism rate was among the highest in the nation with 61% of inmates returning to prison or jail within three years.² According to the Office of the Attorney General, reducing the state's recidivism rate by 10% would save California \$233 million per year.

Recent History of California's Criminal Justice Reforms

Prior to 1977, felons received indeterminate sentences in which there was a minimum sentence but no maximum sentence³. For example, an inmate would receive a sentence of "five-years-to-life." After serving five years, the individual would remain in jail until the parole board determined the individual was no longer a risk to society, incentivizing "good behavior". In 1976, the state introduced determinate sentencing, limiting the discretion of judges and parole boards on sentences and lengths of stay in correction facilities.

In 1994, voters approved Proposition 184, the "Three Strikes" law. This law required longer prison sentences for repeat offenders. Under this law, individuals who had two or more previous serious or violent felony convictions and were convicted of any new felony were sentenced to life imprisonment with the earliest possible parole after 25 years. In 2012, voters modified the law with Proposition 36 so that third strikers only received life sentences when their most recent felony conviction was for a serious or violent crime¹.

This all resulted in immense overcrowding within the California prison system. From 1980 to 2000, there was a 554% increase of prisoners with the prison population over 160,000. The overcrowding led to a deteriorating quality of life within the prison system. Suicide rates within the prisons were twice the national average and one prisoner was dying every eight days in California due to poor living conditions⁴. In 2006, plaintiffs in two class action lawsuits, *Plata v. Brown* (involving inmate medical care) and *Coleman v. Brown* (involving inmate mental health

care), filed motions for the courts to convene a three-judge panel as allowed by the Prison Litigation Act of 1995⁵. The panel determined overcrowding was the primary cause of the substandard medical care and ordered the reduction of California's inmate population down to 137.5% of the prison's design capacity by May 24, 2013. The state later appealed the decision of the three-judge panel and the U.S. Supreme Court agreed to hear the case. On May 23, 2011, the Supreme Court upheld the panel's ruling and ordered the state to reduce its prison population by more than 30,000 inmates. Justice Anthony M. Kennedy wrote for the majority saying that the prison system failed to deliver minimal care to prisoners with serious medical and mental health problems and produced "needless suffering and death."⁶ CDCR planned to comply with the ruling using statutory changes, out-of-state transfers, the AB 900 Prison Construction Plan, and Realignment.

In 2011, Governor Brown signed AB 109, referred to as Realignment, to address issues of overcrowding and recidivism⁷. The intent of Realignment was to encourage counties to develop and implement evidence based practices and alternatives to incarceration. Parolees who committed violations would now serve in county jail, rather than state prison. Additionally, non-serious, non-violent, or non-sexual (non-non-non) offenders would be supervised by county probation rather than state parole upon their release. Proponents argued that counties are better suited and have a greater stake in the outcomes than the state when it comes to handling low-level felons⁸. The Realignment Bill required all 58 counties to develop a CCP, or a Community Corrections Partnership, to develop a plan of where funds would be allocated throughout the county. CCPs were often made up of members from probation, corrections, and the courts to restore local control and accountability in the criminal justice process. Realignment resulted in a major decline in the state's prison and parole populations. A 2013 California Department of Corrections (CDCR) report showed that post-Realignment offenders (56.2%) were arrested at a lower rate than pre-Realignment offenders (58.9%) and that post-Realignment offenders returned to prison at a significantly lower rate than pre-Realignment offenders⁹. However, AB 109 did not entirely work as hoped. Many counties used funds to build or expand jail facilities, rather than focusing on alternatives like drug, alcohol and mental health treatment, education, and job training¹⁰.

On November 4, 2014, Californians voted in favor of Proposition 47. Prop 47 reduced certain drug possession felonies to misdemeanors. While no one was automatically released from state prison because of the proposition, it allowed prisoners to petition the court for resentencing and it allowed those who have already served their sentences to petition to have their convictions reduced to a misdemeanor¹¹. Offenders with previous convictions that were violent or sexual in nature were not eligible to petition a court for resentencing. The Public Policy Institute of California (PPIC) estimated that the overall jail population in California declined by 9% in the year following Proposition 47's passage¹². PPIC found that a decrease in new bookings for Prop 47 offenses, a decline in the number of convictions for Prop 47 offenses, an increase in the number of pretrial releases for Prop 47 defendants, and finally a decline in the average length of stay for sentenced offenders contributed to the decline in jail population.

On March 3, 2016 the LAO published a report titled "Overview of Population and Budget Trends

for CDCR.¹³ The report shared that between 2010 and 2015 the prison population declined by 37,000 inmates. The majority of this decline was a result of the 2011 Realignment, though the state did not reach the court-mandated population target until after the passage of Prop 47. The report also shared that the LAO projects the prison population to increase by about 3,000 people by 2020 due to an increase in offenders sentenced to state prisons by the courts. A 2015 report published by the PPIC shared that realignment did not increase violent crime, but auto thefts have risen. The report also shared that research did not show a dramatic change in recidivism rates¹⁴.

Looking Forward

Although California's violent crime rate is at its lowest since 1967¹⁵, criminal justice reform continues to be an important topic in political debate. Criminal justice reform trends seem to show an interest in moving away from tough-on-crime policies. In February, Governor Brown announced "The Public Safety and Rehabilitation Act of 2016," to be voted on by Californians in November. The measure would let felons convicted of nonviolent offenses seek parole after serving only their base sentences. The bill would also undo Proposition 21, which allows prosecutors rather than judges to decide when teenagers are tried as adults¹⁶.

In its report titled "California's Criminal Justice System: A Primer,"¹⁷ the LAO identified several issues that policymakers will face in the future. These areas included successful implementation of 2011 realignment by counties, the implication of realignment for state prisons, returning control of prison health care from the federal courts to the state, and implementing cost-effective criminal justice practices¹. The LAO also recommends approving a proposed expansion of programming for higher-risk offenders¹⁸. In particular, the LAO recommends providing the requested funding to support the expansion of the Offender Mentorship Certification Program, the expansion and modification of the Transitions Program, and custody overtime needed to operate community college programs.

PPIC also identified areas for criminal justice reform in its report titled, "California's Future: Corrections"¹⁹. First, PPIC highlighted the need to address high recidivism rates. PPIC recommended evidence-based programs that foster community reentry. Second, PPIC said California should address county jail needs. Proposition 47 brought relief to statewide jails, but counties now have greater responsibilities. It will be important to monitor changes in jail populations and post-release outcomes to understand the long-term effects of realignment and Proposition 47. Third, PPIC recommended analyzing crime rates given the substantial reduction in incarceration. Finally, PPIC recommended carrying out a thorough evaluation by either requiring or incentivizing counties to collect corrections data. This data would make it easier to evaluate recidivism reduction strategies.

Another issue looking ahead is that spending on state corrections continues to increase. Many anticipated that realignment would lead to a reduction in spending on corrections as county responsibility for corrections was thought to be more cost-effective. However, California's 2015-16 budget spending was \$10.07 billion, more than the \$9.65 billion spent in 2010-11²⁰.

Since realignment, counties have had the opportunity to pursue a variety of strategies targeting recidivism and criminal justice reform. Time and research will tell which strategies are successful and need to be expanded and replicated across the state.

¹http://www.cdcr.ca.gov/Adult_Research_Branch/Research_Documents/ARB_FY_0809_Recidivism_Report_02.10.14.pdf

² <https://oag.ca.gov/recidivism>

³ <http://www.cdcr.ca.gov/Reports/docs/External-Reports/criminal-justice-primer-011713.pdf>

⁴ <http://articles.latimes.com/2010/nov/29/nation/la-na-california-prisons-20101129>

⁵ http://www.lao.ca.gov/reports/2011/crim/overcrowding_080511.aspx

⁶ http://www.nytimes.com/2011/05/24/us/24scotus.html?_r=0

⁷ <http://www.cdcr.ca.gov/realignment/>

⁸ http://www.ppic.org/content/pubs/report/R_812MLR.pdf

⁹ <http://www.insidecdcr.ca.gov/2013/12/study-shows-post-prison-arrests-are-down-convictions-static-under-realignment/>

¹⁰ <http://www.reentrycourtsolutions.com/tag/ab109/>

¹¹ <http://www.cdcr.ca.gov/news/prop47.html>

¹² http://www.ppic.org/content/pubs/report/R_316MB3R.pdf

¹³ <http://www.lao.ca.gov/handouts/crimjust/2016/Population-and-Budget-Trends-030316.pdf>

¹⁴ http://www.ppic.org/main/publication_quick.asp?i=1164

¹⁵ http://www.ppic.org/main/publication_show.asp?i=1036

¹⁶ <http://www.sacbee.com/news/politics-government/capitol-alert/article56841623.html>

¹⁷ <http://www.lao.ca.gov/reports/2013/crim/criminal-justice-primer/criminal-justice-primer-011713.pdf>

¹⁸ <http://www.lao.ca.gov/handouts/crimjust/2016/Programs-Services-for-Long-Term-Offenders-031616.pdf>

¹⁹ http://www.ppic.org/content/pubs/report/R_116MLR.pdf

²⁰ http://www.ppic.org/main/publication_quick.asp?i=1164