

May 11, 2021

First Supplement to Memorandum 2021-06

Extreme Sentences and High-Profile Enhancements
Panelist Materials

Memorandum 2021-06 gave an overview of extreme sentences and high-profile enhancements, the topic of the next meeting on May 13–14, 2021. This supplement presents and summarizes written submissions from panelists scheduled to appear before the Committee on May 13, 2021.

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Discussion Panel 1
Life Without Parole (LWOP)

Jarrett Harper, Ambassador, Represent Justice

Jarrett Harper’s submission discusses his LWOP sentence for killing the man (at age 16) who sexually abused him and his younger brother beginning when Harper was six years old. Harper’s sentencing judge told him he was “irredeemable” and that he would “die in prison.” Without hope of release, he

transformed his life in prison and thereafter helped many other men change their lives through his “Men of Honor” program. In 2018, he was granted clemency by the Governor and released after serving 20 years. Harper has seen firsthand that people sentenced for the most violent crimes, including murder, are capable of rehabilitation and change and that many are victims themselves.

California Coalition of Women Prisoners

CCWP asserts that the “overwhelming majority” of women serving LWOP in California are survivors of abuse. Such women are often sentenced to LWOP based upon theories of accomplice liability or conspiracy, and special circumstances of “financial gain” and “lying in wait” are frequently found true in abuse cases. For LWOP reforms, CCWP suggests: repealing LWOP, limiting the scope of accomplice liability and conspiracy to commit murder laws, and restoring judicial discretion to strike special circumstances so that LWOP is never a mandatory minimum. For reforms to other enhancements, CCWP suggests: banning enhancements that are longer than base sentences, retroactively repealing gun/gang enhancements and “Three Strikes,” and expedited review of cases awaiting Proposition 36 relief.

Dr. Christopher Seeds, Professor, University of California, Irvine

Dr. Seeds’ submission surveys the history of LWOP nationally and in California. He notes that both the prevalence and meaning of LWOP sentences have changed over time. In California, LWOP has been authorized by statute since the early twentieth century. However, the punishment was rarely imposed, and when it was, it carried with it a reasonable possibility of release. Indeed, in 1978, a provision in the regulations of the Board of Prison Terms provided for review of LWOP sentences 12 years after reception and every third year thereafter. In 1982, this regulation was amended to provide review every 30 years. In 1994, the regulation was repealed completely. Dr. Seeds also discusses the utility of LWOP as a crime deterrent and the social and economic costs of the punishment.

Californians United for a Responsible Budget (CURB)

CURB’s submission uses the testimony of incarcerated individuals to provide information about the impact of lengthy sentences on families and communities.

The submission summarizes 110 letters received from incarcerated people in 11 California prisons. Among other recommendations, CURB suggests abolishing LWOP both prospectively and retroactively, and repealing the Three Strikes Law.

Discussion Panel 2 Three Strikes, Gun Enhancements & Hate Crimes

California District Attorneys Association (CDAA)

CDAA's submission discusses the Three Strikes law and the "10-20-Life" gun enhancement (Penal Code Section 12022.53). CDAA believes these laws and others are responsible for cutting California's homicide rates by more than 50% since the early 1990s, as well as cutting the rates of robbery and aggravated assault. CDAA's letter notes a Los Angeles Times article stating that since January, shootings in the City of Los Angeles are up by almost 67% from the same period last year, and homicides are up more than 26%. CDAA also cites preliminary data from the LA Sheriff's Department suggesting that homicides have more than doubled in the first three months of this year, and aggravated assaults with guns have jumped 82%. The CDAA opposes AB 1509, which would reduce the "10-20-Life" gun enhancement to one, two, and three years respectively, because it believes the current laws have been effective.

Jeffrey Aaron, Mendocino County Public Defender

Jeffrey Aaron's submission briefly outlines his experience practicing criminal law in both the California and federal systems. His decades of experience have led him to describe California's statutory and case laws regarding gun enhancements and Three Strikes as "unpredictable, unclear and unfair." He notes the Legislature's findings in Penal Code Section 17.5 that increased incarceration is "not sustainable, and will not result in increased public safety," and recommends revisions such as eliminating "stacking" of enhancements and creating a "wash-out" period for strike offenses.

Angela Chan, Policy Director and Senior Staff Attorney, Asian Americans Advancing Justice

Angela Chan's submission is a policy recommendations guide for addressing hate violence, produced in collaboration with several Asian American-serving organizations. The guide rejects increased reliance on law enforcement and incarceration as a solution to the problem of rising hate violence against Asian

Americans. Instead, it presents community-based interventions that are culturally and linguistically accessible to crime victims and their families. The recommendations include: (1) establish a rapid response network to track and respond to incidents; (2) provide bystander training to educate and empower allies; (3) fund and support restorative justice programs; (4) ensure victim funds are accessible; (5) fund culturally competent and mental health services for victims; and (6) fund community-based ambassador programs.

Discussion Panel 3

Long Sentences, Aging Out of Crime, Comparative Analysis

Dr. Joshua Kleinfeld, Professor of Law, Northwestern Pritzker School of Law

Joshua Kleinfeld's submission discusses European criminal punishment practices. He notes that since the early 1970s, European rates of imprisonment and other punishment practices have been much milder than those in the U.S., though prior to this period the U.S.'s criminal penalties were more moderate. Capital punishment is currently outlawed in every European country except Russia (where there is a moratorium) and Belarus. LWOP was effectively declared unconstitutional by the European Court of Human Rights in 2014 based on the idea that everyone has a right to rehabilitation and a right to rejoin the community once rehabilitated. Based on this ruling, LWOP has been outlawed in 47 European countries.

Europe rarely imposes sentences of life with the possibility of parole, and only in response to extraordinarily severe crimes. For example, in Germany a person who commits aggravated murder can be sentenced to life with the possibility of parole (after 15 years), but 15 years is the maximum sentence for every other crime including repeat offenses (parole eligibility begins after 7–10 years). European countries impose life and multi-decade sentences of incarceration on only a few thousand offenders, while we impose similarly severe sentences on hundreds of thousands of offenders. Professor Kleinfeld asserts that we can learn from Europe to be discerning about who to punish, and direct severe criminal punishment only to the worst-of-the-worst.

Amy Fettig, Executive Director, The Sentencing Project

Amy Fetting submitted the Executive Summary of the Sentencing Project’s 2021 report entitled, “No End in Sight: American’s Enduring Reliance on Life Imprisonment.” The report finds that while there were fewer than 200,000 people in American prisons before the era of mass incarceration took hold in the 1970s, now more than 200,000 are serving *sentences of life*. The number of people serving LWOP is higher than ever before and has increased overall by 66% since 2003.

The increase in life imprisonment has been largely driven by policies enacted in response to public fears about crime rooted in sensationalized media stories, rather than actual increases in violent crime. “Lifers” (people serving sentences of LWOP, life with parole, or 50 years or more) now comprise one out of every seven people in prison. People of color comprise 67% of lifers, likely due to harsher sentencing outcomes on the basis of race, and 30% are 55 years or older. While it is rare for those released after serving long prison terms to reoffend, most criminal justice reforms instead focus on people who commit low-level and nonviolent crimes. The report’s recommendations include: (1) abolish LWOP; (2) limit all sentences to 20 years except in rare circumstances; (3) accelerate and expand release opportunities to include more opportunities for parole and “second look” policies; and (4) reorient victim and community involvement toward true healing.

Kathy Allison, Secretary, CDCR

Secretary Allison’s submission is the “CDCR Recidivism Report for Offenders Released” from the California Department of Corrections and Rehabilitation in Fiscal Year 2014–15. The report tracks recidivism for people released in 2014–15 by measuring arrests, convictions, and returns to prison in the three years following their release. Notably, those released from prison after serving an indeterminate life term had the lowest recidivism rates. People who were released after serving a sentence for a violent offense had a three-year conviction rate that was 22% lower than those who were released after serving a sentence for a nonviolent offense. The highest drivers of recidivism for the entire cohort were not new felony offenses, but misdemeanor drug and alcohol offenses. The report notes that changes to CDCR policies since 2014-15 have expanded access

to rehabilitative programming and that CDCR is taking additional steps to implement more robust substance abuse programming.

Respectfully submitted,

Rick Owen & Lara Hoffman
Staff Counsel

Exhibit A

Jarrett Harper, Ambassador, Represent
Justice

Testimony of Jarrett Harper before the Committee on Revision of the Penal Code March 13, 2021

Ladies and Gentlemen of the Committee on Revision of the Penal Code, I would like to express my gratitude for the effort and work it takes each one of its members to examine laws and recommend needed reforms. My name is Jarrett Harper; I am a passionate advocate for criminal justice reform, working for positive change in the foster care system, ending life sentences for children, and creating better rehabilitative resources for citizens returning to society. Your time is valuable, and I am encouraged by invitation to share my personal experience with multiple systems, mainly the California sentencing laws, and express the serious need to reform Life Without the Possibility of Parole sentences.

On June 18th, 2019, I was released from prison after serving 20 years in Lancaster State Prison, just right outside Los Angeles. At the age of 16, an adult codefendant and I took a man's life, were found guilty of murder, and I received a sentence of life in prison without the possibility of parole +10 years. At the age of 17, I faced a murder trial without the support of anyone but the court-assigned public defender.

Caught in the foster care system since infancy, my choices never felt like my own so much as they felt like functions of survival. From the ages of 6-13, I was sexually abused by my neighbor I had grown to trust. In an effort to protect not only myself but also my younger brother, I took the life of my abuser.

I've learned when we encounter troubling circumstances; we are faced with two options - fall victim or rise above them. In my case, the latter was made possible by the former. In the years of serving my punishment, I developed the ability to influence other incarcerated citizens to create positive change that stems from painful circumstances. Despite having no chance of being released from prison, I found forgiveness within myself and made it my mission to transform my life by supporting and helping other men change their lives. In 2012, the United States Supreme Court decision on Miller v. Alabama ruled that the mandatory sentence of death for children was unconstitutional. This, in addition to California legislation Senate Bill 9, gave me my first glimpse of real hope.

On August 17, 2018, after 20 years in prison, with the support of advocates, including Bryan Stevenson, Elizabeth Calving of Human Rights Watch, Scott Budnick, and countless others, my life sentence was commuted by Governor Jerry Brown and later released by Governor Gavin Newsom. My life story illustrates the fundamental faults in the criminal justice system and the foster care system, exposing the urgent need for change.

As I sit before you today sharing my first 37 years of life with all of you, it is my mission to continue to work for change within each system that disproportionately traumatized me and to help rehabilitate and transform those who are still impacted by harsh sentences so they can be considered safe and worthy to walk with us in society once again. A judicial determination that an individual must die in prison, by execution or without the possibility of parole, is necessarily based on the information available to the court at the time. But the court may not have all the information, and the individual's subsequent life history spanning decades of incarceration may demonstrate a wealth of data showing the individual has been rehabilitated so wholly that they are no longer the same person who committed the murder for which they were sentenced to die in prison. Death is irreversible, and when the legal system extracts the end of an individual, justice requires consideration of the entire picture, not just the opening scene. Unaware, confused, and terrified, I sat in a courtroom. A stranger, a woman who was appointed to represent me as my public defender, opened her closing arguments with "my client, is dumb period!" to then be told by Los Angeles Superior court judge William J. Hollingsworth "I was irredeemable, and that I would never walk amongst society again. That I was to die in prison." The thoughts and the disconnect from my humanity, my dignity as an individual - I felt no hope, no value, and wholly erased from the community and the world. I was a child that was forced to experience life as an adult in a max security prison. Science shows that the brain isn't fully developed until 25 years old; therefore, children and young adults cannot correctly assess risk and consequences. At an age susceptible to peer pressure, I was faced with daily traumas and was stripped of positive growth and change. California has empowered a system that strips away circumstances, backgrounds, and futures, all in exchange for a false promise of safety.

I was groomed by prison, and while society assumes prison hardened me, it did not. I was befriended and protected by older men serving LWOP,

who I reminded them of their children. My teachers were other men serving life sentences who encouraged me to spend time in the library, join programs that promoted healing and spiritual wellness. I was offered many positions for employment, earning 8 cents an hour. I developed skills to save my money to purchase items needed to remain healthy, like toothpicks and toothpaste, and not buying candy due to the institution's lack of dental and health care. I read numerous books - to the obituaries of the newspaper. The little things I grew to value led me to my most intentional position, creating "Men for Honor," a program I taught and encouraged fellow men to transform their hearts and minds. For many men, whether sentenced to LWOP as children or young adults that have been suitable and since released, there is a remarkably low recidivism rate. Many of them are giving back to our society, living free of violence, and accomplishing goals while being leaders in their communities and the fight to end LWOP, despite having spent their formative years and decades of their adulthood behind bars.

I am advocating for accountability, healing, change, and ultimately just mercy. My hope in sharing my personal experience is to bring awareness and encouragement that people serving life without the possibility of parole are valuable, redeemable, and are human beings capable of change. I am advocating for precisely why each of you is here today - a closer look at policy change in our state and preventing individuals from being seen as human beings capable of remorse and transformation through the California rehabilitation process. I have personally met hundreds of men at different stages of their rehabilitation in my self-improvement classes state, "If I had another chance, my life would be a living amends" I now know what it feels like to give back after being shown mercy. My life experience with Life Without the Possibility of Parole left me feeling hopeless and as though my community and the rest of the world saw no value in me. Life without the possibility of parole attempted to strip me of my humanity. This sentence prevents a path of growth and change for most. It also stops proper accountability and healing for survivors, as a black man that survived multiple attacks. As a means of feeling safe, I would need to know that my abusers are being treated so that another innocent person isn't harmed, ensuring that the person who committed the offense is better and safe. That's what's makes me feel safe.

I hope that this board will consider an individual past trauma and ability to change and grow from the worst acts of our lives. I believe that I am proof that we are capable and more than my worst act. After experiencing a life of trauma and pain, the suffering is unlike any other. Because of my experiences, I'm able to see through the lens of reflection. The reflection lens is one that I hope will provide you all with the clarity needed in your decision. Thank you for your time and consideration.

Sincerely,
Jarrett N. Harper

Exhibit B

California Coalition for Women Prisoners
(CCWP)

Life Without Possibility of Parole

Concerns:

- Life without parole (LWOP) sentencing fundamentally contradicts the concept of rehabilitation, denying that every person has the capacity to heal, grow, and transform.
- People of color are disproportionately sentenced to life without parole and of the approximately 200 people serving LWOP in California’s women’s prisons, the overwhelming majority are survivors of abuse, including intimate partner battering, childhood abuse, sexual violence, and sex trafficking.
- Like other enhancements, special circumstances law allows for unchecked prosecutorial discretion that has resulted in disturbing racial disparities in LWOP sentences.
- Because special circumstances law enables prosecutorial discretion and other discriminatory factors, women and trans/gender non-conforming (GNC) people who are sentenced to LWOP are disproportionately sentenced via accomplice liability and conspiracy/mastermind theories of law.
 - Accomplice liability — we are concerned with all the ways the penal code allows prosecutors to charge people as accomplices (PC § 31, PC § 182-184, PC § 189, PC § 190.2(a)(17)) and what this allows in terms of transference of liability, including its particular impacts on women and survivors of domestic and sexual violence.
 - Conspiracy laws — we are concerned with the disproportionate targeting of women through conspiracy laws, including how prosecutors construct women as masterminds, etc. based on racialized gender stereotypes. This includes cases where there is no evidence of actual involvement in the harm/crime, but often one “witness” who is facing their own charges and incentivized by prosecutors to take the stand and claim the woman was the mastermind in exchange for no time or less time. Prosecutors often use “financial gain” (PC § 190.2(a)(1)) or “lying in wait” (PC § 190.2(a)(15)) special circumstances to target women using conspiracy theories.
 - Duress defense — we are concerned that survivors of domestic and sexual violence are not allowed to use duress as a defense against first degree murder charges, including special circumstances murder, because the penal code only allows a duress defense in “non-violent” cases.

Recommendations:

- Repeal life without parole sentencing.
- Increase the legal standards and evidentiary requirements for charging and convicting accomplices (aiders & abettors, etc.) via special circumstance murder.
- Limit the scope of conspiracy to commit murder laws (PC § 182-184), including drastically reducing sentencing options, and increase the standard of evidence required to charge and convict someone with conspiracy to commit murder.
- Expand SB 1437 reform (PC § 1170.95) to include people convicted as accomplices under special circumstances felony murder.

- Restore judicial discretion to strike special circumstances (repeal PC § 1385.1). Life without parole should never be a mandatory minimum sentence.
- Revise the duress defense (PC § 26) to include both imminent and future danger and codify duress as a defense to all “violent” offenses, including first degree murder.

Sentence enhancements

Concerns:

- Women and trans/gender non-conforming (GNC) people, especially Black people and other people of color, are targeted by prosecutors with gun enhancements.
- Gun enhancements, like all enhancements, are impervious to the context in which the crime occurs, which means that survivors of domestic and sexual violence are given extremely long sentences even when prosecuted for acting in self-defense.
- Disproportionate numbers of our members in prisons designated for women are serving exceptionally long (25-to-life) gun enhancements regardless of context, including being coerced to be at the scene, etc.

Recommendations:

- Retroactively repeal gun and gang enhancements.
- Make all enhancements with judicial discretion retroactive immediately.
- Abolish all enhancements in the form of life sentences (i.e. a 7-to-life base term with a 25-to-life gun enhancement).
- Ban enhancements that are longer than base sentences.

Three Strikes Law

Concerns:

- Imposes some of the harshest sentences regardless of nature, circumstances, and context of the crime. Data shows blatant targeting of individuals and communities of color and poor people.
- While Three Strikes was amended in 2012 to require that the third strike had to be serious or violent, this amendment was not applied retroactively to the thousands of people convicted under the original law.
- Three Strikes law creates a “Second Strike” system, in which people can receive double the maximum sentence if convicted of a second felony.
- Three Strikes law punishes women and transgender/gender non-conforming (GNC) people who may have records due to prior incidents in which they were criminalized for surviving sexual and domestic violence.

Recommendations:

- Expedite the review of all incarcerated people still waiting for their cases to be resolved under Proposition 36.
- Mandate resentencing for all people sentenced under California’s Three Strikes law.
- Repeal the Three Strikes law completely.

Exhibit C

Dr. Christopher Seeds, Professor,
University of California, Irvine

Comments on Life Without Parole Sentencing
for
The California Committee on Revision of the Penal Code

May 11, 2021

Christopher Seeds
Assistant Professor
Department of Criminology, Law & Society
University of California, Irvine

I thank the Committee for inviting me to comment on life without parole sentencing (LWOP). The Committee has asked me, specifically, to address: (i) the history of life without parole sentencing in California; (ii) the utility of life without parole sentencing; (iii) what is wrong with life without parole; and (iv) revisions to the penal code concerning life without parole. In anticipation of my testimony before the Committee, I offer here a summary, with supporting citations, of select information on life without parole sentencing that speaks to the topics the Committee has asked me to address.

LWOP Sentences in the United States

- The latest Sentencing Project survey on LWOP and other forms of life sentencing reports, based on 2020 data, finds that nearly 56,000 men and women are serving LWOP sentences in the United States. Of those, more than 5,100 people in California are serving LWOP– the third most of any US jurisdiction (behind Florida and Pennsylvania). The five jurisdictions with the most LWOP sentences (Florida, Pennsylvania, California, Louisiana, and Michigan) account for approximately half (52%) of LWOP sentences in the United States.
 - Ashley Nellis, *No End in Sight: America's Enduring Reliance on Life Imprisonment* (The Sentencing Project 2021).
- The definitive study of life sentencing worldwide by Van Zyl Smit and Appleton (2019) reports that only a handful of nations authorize life without parole sentences or the equivalent (i.e., sentences formally intended to apply for the remainder of a prisoner's life). The number of LWOP sentences in the United States (more than 50,000) far exceeds that of any other nation (in 2019, Kenya was second with just under 3,700). No nation, other than the United States, authorizes LWOP for juveniles.
 - Dirk van Zyl Smit and Catherine Appleton, *Life Imprisonment: A Global Human Rights Analysis* (Harvard University Press 2019).
- The number of LWOP sentences in the United States has increased substantially over the past forty-five years. From the early 1990s to the present, the number of LWOP sentences nationally has increased by more than 45,000 (Nellis 2021). The increase cannot be connected in substantial part to crime rates. The statistic the Committee Staff memo provides for California is telling: between 2003 and 2015 violent crime in California dropped by 26.4% while the LWOP sentenced population grew by 281.6% (p. 5-6).
- Life sentences are imposed disproportionately on people of color. At a national level, approximately 55% of the people sentenced to LWOP are Black (Nellis 2021). As the Committee Staff memo point out, 80% of the people serving LWOP in California are people of color, nearly 70% are Black or Latino (p. 5).

History of LWOP

- Much of my research focuses on the history of life without parole sentencing in the United States, in particular on changes in life sentencing that took place in the late twentieth century. Drawing from that research, certain points about the history of life without parole (or LWOP) at the national level bear on the history of LWOP in California.
 - Life without parole sentencing is not an entirely new punishment. One finds the penalty of life imprisonment without possibility of parole authorized in statutes earlier in the twentieth century. In California, LWOP does not begin with the 1978 death penalty law. Historically, California was among the first states to impose “life without parole” for a non-homicide offense, including it for treason in the 1870s and aggravated kidnapping in the 1920s. Life without parole appeared occasionally in other California statutes, such as death by assault by a life prisoner, before it was authorized as an alternative sentence for first degree murder with a special circumstance in 1978. However, LWOP was rarely imposed under these statutes. Since 1978, the scope of LWOP has grown along with the scope of section 190.2, and LWOP has also been added as punishment for habitual offending, for terrorism, and for limited sex offenses.
 - The rise of life without parole in the last quarter of the twentieth century is not simply a matter of growth. The meaning of the sentence has changed since the early-to-mid twentieth century. For most of the twentieth century, life without parole sentences carried with them a reasonable possibility of release. For example, in Pennsylvania between the early 1940s and early 1970s a majority of life without parole sentences were commuted after prisoners had served, on average, between fifteen and twenty years. Louisiana had a long-standing and well-known rule under which prison administrators would recommend for commutation prisoners who had served ten years and six months of their sentence with good conduct. Edwin Powers, *Parole Eligibility of Prisoners Serving a Life Sentence* (Massachusetts Correctional Association 1972); Marie Gottschalk, *Caught: The Prison State and the Lockdown of American Politics* (Princeton University Press 2015); Christopher Seeds, “Life Sentences and Perpetual Confinement,” *Annual Review of Criminology* 4 (2021).
 - LWOP sentences in California have undergone a similar transformation. When LWOP was introduced for first degree murder in 1978, a provision in the regulations of the Board of Prison Terms provided for review of LWOP sentences 12 years after reception and every third year thereafter (15 CCR Division 2 Chapter 7, Article 2, section 2817). This was not technically a parole hearing, but the “relevant rights” were provided. There were guidelines for what documents would be relied on and what the interview would discuss. The commissioner who conducted the review would offer a recommendation of either no further action or further consideration.
 - The regulation was revised in 1982, such that everyone sentenced to life without parole whose offense occurred after 9/11/1982 would be reviewed 30 years after reception and every fifth year thereafter. The regulation was repealed, effective January 1994, officially ending “LWOP reviews.”
 - There is more one would want to know about how the review and recommendation process was conducted. But the regulation itself accords with the more general point, made above, about the changing meaning of LWOP. In California, as in other states, the LWOP sentence was originally one that conceived of some form of review for release.

Utility of LWOP?

■ General deterrence

- Experts recognize that certainty of apprehension is largely responsible for deterrent effects, not severity of sentence.
 - See, e.g., Daniel Nagin, “Deterrence in the Twenty-First Century,” *Crime and Justice* 42(1): 199-263 (2013).
- The general deterrent effect of an LWOP sentence relative to a life with parole sentence or other long-term sentence is negligible.
 - Kleinstuber, Ross and Coldsmith, “Is Life without Parole an Effective Way to Reduce Violent Crime?,” *Criminology & Public Policy* 19(2): 617-651 (2020). In their words: “to the extent that incarceration can produce lower crime rates, the effect of increasing sentencing severity maxes out at some point prior to LWOP. Thus, LWOP does not seem to produce any additional crime reduction beyond that which is produced by parole-eligible life sentences (and possibly by other long-term sentences).”

■ Specific deterrence

- LWOP is unnecessary as a specific deterrent.
 - Involvement in crime diminishes as people age. Elderly people sentenced to LWOP who have served decades in prison age out of crime.
 - Marc Mauer & Ashley Nellis, *The Meaning of Life: The Case for Abolishing Life Sentences* (2018); American Civil Liberties Union, *At America’s Expense: The Mass Incarceration of the Elderly* (June 2012).
 - Incarcerated populations display biological health profiles that appear to exceed their chronological age by 10 to 15 years. The National Institute of Corrections has recommended that, for incarcerated people, age 50 and above should be considered elderly.
 - J.B. Morton, Nat’l Inst. of Corr., *Administrative Overview of the Older Inmate* 3 (1992). See generally Kathryn M. Nowotny et al., *Growing Old Behind Bars: Health Profiles of the Older Male Inmate Population in the United States*, 28 *J. Aging & Healthcare* 935, 937 (2018).
 - Evidence consistently shows that upon release older formerly incarcerated people and paroled lifers are highly unlikely to re-offend.
 - See Kleinstuber, Ross and Coldsmith (2020), above, citing studies.
 - As the Committee’s staff memo notes, 88% of those serving LWOP in California have been assessed as having the lowest risk score (Staff Memo p. 7).

■ Costs

- LWOP is racially disproportionate in its imposition and its effects (see statistics above).
- Human suffering is amplified throughout the LWOP sentence because it lacks review.
 - There are unique pains of spending life from young adulthood onward in prison. Ben Crewe et al., *Life Imprisonment from Young Adulthood* (Palgrave 2020).
 - There are additional physical and psychological pains experienced by the aging and elderly. Kazemian & Travis, *Forgotten Prisoners: Imperative for Inclusion of Long Termers and Lifers in Research and Policy*, *Crim. Pub. Policy* 14 (2015).
- Human impacts of LWOP extend beyond the prison, to families and communities.
- Financial costs: costs of holding people for multiple decades + costs of additional medical care needed for aging prisoners who are chronically ill or nearing end of life.

Recommendations for Penal Code Revisions

- Recognize LWOP as an *aberration* from a long-term historical view.
 - Not a humane sentence
 - Not a sentence that is institutionalized elsewhere in the world
 - Not a sentence that, historically in the United States, necessarily meant death in prison
 - However, the former meaning of life without parole (which relied on executive review for release) is untenable in the current US political climate.
- Prospectively: Limit and eliminate LWOP for all offenses. Instead, follow recommendations, such as that provided by The Sentencing Project, which would require review after a set period of years and routinely thereafter.
- For people already serving LWOP sentences:
 - Allow reconsideration of the sentence and authorize review for release (see bills now under consideration in the state legislature: SB 300, SB 481, AB 1224)
 - Expand existing review procedures such as elderly parole and second look provisions under 1170(d) to include people sentenced to LWOP.

Exhibit D

Californians United for a Responsible
Budget (CURB)



May 11, 2021

Michael Romano, Chairperson
Committee on Revision of the Penal Code
c/o UC Davis School of Law
400 Mrak Hall Drive
Davis, CA 95616
Sent via email to rowen@clrc.ca.gov

The purpose of this memorandum is to provide the Committee with the perspectives and experiences of currently incarcerated Californians sentenced to some of the most lengthy, severe punishments in the California Penal Code.

In preparing this memo to the Committee, our coalition is aware that you have heard from many experts, including some of our coalition members, bearing countless statistics and reports that speak to the overwhelming and irrefutable evidence of systemic racism that occurs in California's criminal legal system, from arrest to conviction. CURB recognizes that incarcerated individuals are also experts and their testimonies provide crucial information about the impact of lengthy and severe punishments on California's families and communities. Organizations from our 80+ member coalition have helped to collect these critical testimonies.

For a body like yours, tasked with rethinking California's approach to criminal justice, it is our hope that the voices of those impacted will give you special insight into the detrimental impact of certain sentencing schemes and will assist your system of penal code analysis, introspection, and impact the narrative of your recommendations that come forward.

We received 110 letters from incarcerated people representing 11 California prisons. This memo includes highlights from these letters. A copy of the complete collection of letters can be found in Appendix A. We hope the Committee takes the time to consider the issues and perspectives expressed in each letter.

We would like to thank the Committee for offering us the opportunity to uplift the voices of people directly impacted by the California Penal Code and bring their experiences and expertise into these crucial discussions. We would also like to extend a special thanks to our coalition members Initiate Justice, California Coalition for Women Prisoners (CCWP), the Drop LWOP

Coalition, Repeal Three Strikes Coalition, Ella Baker Center for Human Rights, and Families United to End LWOP (FUEL), whose inside organizing efforts made this memo possible.

***Overarching Process Recommendations:**

- Ensure that all changes to the penal code are written without exclusionary language to people who are convicted under LWOP, the Death Penalty, Three Strikes Law or to those who are convicted of murdering a peace officer.
 - Ensure that all changes to the California Penal Code are implemented retroactively in the interest of justice and with the intent to right the wrongs of CA's past concerning the criminal legal system.
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Life Without the Possibility of Parole

Recommendations:

- Abolish Life Without Parole sentencing and implement this change retroactively, immediately commuting the sentences of every person currently incarcerated who is serving LWOP
- Restore judicial discretion to strike special circumstances (repeal PC § 1385.1). Life Without Parole should never be a mandatory minimum sentence.
 - Several sections of the Penal Code can and should be revised to eliminate excessive use of special circumstances and other enhancements. Specifically, this Commission should recommend revision of 190.2(a)(17)(J); 190.2(a)(17)(K); 190.2(a)(21); 190.0(a)(22); 190.2(b); 190.2(c); 190.2(d).
- Ensure that 1170(d)1 resentencing laws and policies be applied to people with LWOP sentences.

Key Findings:

- Life without parole (LWOP) sentences waste human potential and violate fundamental human principles of growth and possibility of transformation.
- LWOP sentencing fundamentally contradicts the concept of rehabilitation.
- LWOP disproportionately targets Black, Latinx, Indigenous and other of the most racially marginalized communities.
- LWOP disproportionately impacts youth, women and survivors of abuse.
- Special circumstances law allows for unchecked prosecutorial discretion that has resulted in disturbing disparities in LWOP sentences.

- People sentenced to LWOP should be guaranteed equal access to programming, educational opportunities, employment, and good time credits as any other person in CDCR custody.

Testimony from Incarcerated Community Members:

- **Life Without Parole (LWOP) sentences waste human potential and violate fundamental human principles of growth and possibility of transformation.**
 1. “Many people serving indeterminate sentences like ourselves spend decades in prison with no incentives. Our transformation from abhorrent behaviors to ones that are more productive is the result of us wanting to be better human beings. It is a reflection of our growth, our development, and the morals and values that we now live by. They do this with no liberty incentives, knowing no matter the amount of good deeds and accomplishments they gain it will not grant them release from prison. They do this because of the quality of men that they have become.”
-Bertrand Thompson, sentenced to LWOP; incarcerated 23 years
 2. “LWOP’s are one of the most marginalized groups of incarcerated people on the planet. This is a fact. Coming into the system we are often overlooked when it comes to self-help and rehabilitative programs, vocation and trade skills. I assume that since the department and society have accepted the fact that we will never return to society there is no sense trying to rehabilitate us. As if we are broken objects that cannot be fixed.”
-Brett May, sentenced to LWOP at age 19; incarcerated 20 years
 3. “CDC put an R at the end for rehabilitation. I have done much and continue, even with this death walking sentence, keeping in mind heart, and hope. We need change. We need life without parole to end. It is unfair and inhumane. I do believe in rehabilitation, and second chances should be for everyone.”
-Trinia Aguirre, sentenced to LWOP at age 19; incarcerated 25 years
 4. “Being sentenced to LWOP only reinforced my lack of self-worth. LWOP, the other death penalty, left me feeling hopeless. I don’t believe I should just be thrown into prison to die slowly. I am redeemable.”
-Joe Hernandez, sentenced to LWOP at age 21; incarcerated 28 years
 5. “The far reaching ‘ripple effect’ of harm can be catastrophic, and I know all too well the damage such harm can and does cause. I am fully responsible and accountable for the harm I have caused.
The moral anguish and bitter regret I feel does not, and may never diminish, however, I know that there is more to me than the poor decisions I have made, and that I am not the man I used to be.

Throughout the years I was condemned to my former Life Without Parole term, I never gave up hope. I believed then, as I do now, that no person is or should be listed as unredeemable. No behavior or way of thinking is set in stone. Change is possible, and it begins with a choice.”

-Adam Lee Granger, sentenced to LWOP; incarcerated 41 years

6. “A few words cannot fully reveal to free persons the abstruse reality of waking up every day in prison knowing in your heart that you will never step beyond the electric fence surrounding your world. There is nothing you can do legally, politically, educationally, or otherwise that will change the future you are facing. Hope rarely survives that daily onslaught.”

-Jeffrey Milo Burks, sentenced to LWOP; incarcerated 31 years

7. “I believe imprisonment and punishment should not last until my death of old age. I don’t believe that would serve any purpose whatsoever, but further burden the taxpayers of this state. It is not rocket science.”

-Dean Kennedy, sentenced to LWOP; incarcerated 30 years

- **LWOP sentencing fundamentally contradicts the concept of rehabilitation.**

1. “Over the years I have completed every step on the rehabilitation roadmap. At the conclusion of each class I get a reminder that I will receive no credit because I am an LWOP.”

-Eileen Huber, sentenced to LWOP at age 19; incarcerated 30 years

2. “LWOP’s are constantly overlooked for any sentence law changes, time off, milestones, job incentives, eligibility for 1170(d)(1) as well as participation in vocational and PIA jobs. I want to have that opportunity for change.”

-Larissa Schuster, sentenced to LWOP; incarcerated 18 years

3. “I have been sentenced to death by imprisonment. This is cruel because CDCR stands for rehabilitation and I have worked for many years to rehabilitate. I am redeemable and beseech to be seen as worthy of a second chance at freedom.”

-Corina Marin, sentenced to LWOP; incarcerated 33 years

4. “When I came to prison I actually did not have any hope of ever getting out. Today I love any self help groups, I’m six classes away from getting my AA. I have rebuilt family connections, I am married. I pretty much got saved from myself. I’m ready to come home, but none of the current laws help get me to the board. I just wish that I could have that chance to face the parole board and show my growth. My family needs me there. My wife, son, sister, grandchild, and my mother. Please consider allowing LWOP’s to also face the board and prove

they're ready for the real world. People can change...all they need is a little bit of hope! Please help us to see that hope."

-Danny Gutierrez, sentenced to LWOP at age 22; incarcerated 26 years

5. "If it was not for my LWOP sentence, I would be a level 1 inmate. If it were not for my LWOP sentence, I would have many more options of jobs and housing. If it were not for my LWOP sentence, I would have been sent to the Parole Board seven years ago under the juvenile laws. If it were not for my LWOP sentence, I would have been allowed to live at the prison in southern California and been able to spend more time with my mom before she passed away and had regular visits with my family. If it were not for my LWOP sentence, I would have been able to have family visits."

-Linnette Blocker, sentenced to LWOP, incarcerated for 27 years

6. "As other countries have showed us, restorative justice through rehabilitation has proven to have a positive impact on society. Removing LWOP would be a step in the right direction"

-Juan Huezco, sentenced to LWOP; incarcerated 12 years

- **LWOP impacts our most marginalized communities including youth, Black, Latinx, women, poor people, and survivors of abuse.**

1. "I have grown old here behind bars. I come from poverty and that poverty greatly contributed to my conviction and LWOP sentence. It also places me legally in "procedural default" with no viable way to petition any court to consider any newly discovered evidence in my old case. I have lost everything in my life due to this extreme sentence--including my family who found it all overwhelming and found it easier to consider me already dead than to suffer along with me knowing they are powerless to help me. What kind of society do we envision? One with compassion and hope, or one that glorifies and perpetuates cycles of cruelty?"

-Chuck Murdoch, sentenced to LWOP

2. "Not only was I a youth when I committed my crime, but I also came from an abusive, troubled home with generations of gang members and drug addicts. I became what my family and community molded me to be. I take full responsibility for my actions, but I understand my actions were rooted in modeled behaviors, beliefs, and values adopted from my family and culture. I would like to see second chances and more opportunities at redemption to be given to those who have changed. Lengths of sentences should reflect the American idea that we are a merciful nation of second chances. I would like to recommend an approach that addresses the reasons why people join gangs, why they rob and steal, and why they react violently with therapy and treatment that provides people with healthy ways to cope and deal with life."

-Daniel Rose, sentenced to LWOP + 25 years to life

3. "With over 5,200 people in California serving LWOP sentences, it is equivalent to a death sentence—the only difference is that we don't have the legal protection of lawyers to litigate in the same way that is afforded to those people serving death sentences on death row. The vast majority of people serving LWOP sentences are people of color and are minorities who come from poverty, it's clear that it is a sentence that is unjust, biased, and more times than not, discriminatory to say the least."
-Ricky Godfrey, sentenced to LWOP; incarcerated 29 years
 4. "The law and sentencing in California is unfair and unjust towards minority people. If you are Black, Hispanic, or Asian Pacific Islander like me you will get harsh punishment. Lots of people are convicted and sentenced to life in prison for defending themselves and their families, like women and violence survivors."
-Cesar Hernandez, sentenced to 50 years to life; incarcerated 15 years
 5. "I believe we need more preventive programs for our youth, so that we may be able to, if not stop, slow the cycle of gang culture; and I would like to see more rehabilitative programs that deal with the root causes of criminal behavior for youth and incarcerated people."
-Kenny Lee, sentenced to LWOP at age 19; incarcerated 41 years
 6. "My controlling offense was committed when I was 19. I was charged with special circumstances, after entering a plea agreement, and accepting an LWOP sentence. It has been difficult for my family to have any hope for me after I was thrown into a "bottomless pit" at such a young age."
-Eugene Jones, sentenced to LWOP at age 19; incarcerated 26 years
 7. "I was sentenced to LWOP for aiding and abetting. I have been incarcerated since September 17, 1998. I was 19 years old and now I am 42 years of age now. I really hope lawmakers change this cruel punishment sentence and allow individuals who are first time offenders who did not kill nor intended for a person to die during a crime, the opportunity to parole, so that we can be provided a chance to become productive members of society"
-Erik Mata, sentenced to LWOP at age 19; incarcerated 23 years
- **People are disproportionately sentenced to LWOP via the felony murder rule/ accomplice liability. It is easier for a prosecutor to win a felony murder special circumstances conviction of an accomplice resulting in an LWOP sentence than it is to prove first degree murder which would result in a life with parole possibility sentence.**

1. "It seems LWOP sentences are dependent on the judge and or the county of the crime."
-Larissa Schuster, sentenced to LWOP; incarcerated 18 years
 2. "I am a 66 year old woman who is struggling under extreme sentencing, specifically LWOP. I was not the perpetrator and yet I was sentenced to die in prison. Extreme mandatory sentencing does not take into account the non-perpetrators actual knowledge and involvement. It also does not address the true question of whether someone is an actual danger to society."
-Malinda Jones, sentenced to LWOP; incarcerated 15 years
 3. "LWOP sentences are given by the prosecutor in extremity because they have the power to do so, based on technicalities. The D.A. offices hand out LWOP sentences arbitrarily and capriciously. I recommend that LWOP sentences thoroughly by case factors to determine if that sentence is warranted, not based on technicality."
-Michael De La Cruz, sentenced to LWOP at age 23; incarcerated 8 years
 4. "Being incarcerated at the age of eighteen years old and being sentenced to LWOP for my first offense including as a juvenile is extreme sentencing. Having to adapt to this environment, not understanding what it means to be sentenced to life without parole affected me in every possible way"
-Jose Abundio, sentenced to LWOP at age 18
 5. "I was 26 years old at the time of my crime, and just turned 45 years old. I was sentenced to LWOP for being an aider and abettor. I'm not saying I shouldn't be held accountable, but to be sentenced to LWOP for a crime you didn't commit is cruel, especially when you had no intention. How is that fair?"
-Brian Phillips, sentenced to LWOP at age 26; incarcerated 19 years
-

Sentence enhancements

Recommendations:

- Retroactively repeal sentencing enhancements for prior convictions, for the use or presence of guns and for an individual's assumed gang affiliation or involvement.
- Make all enhancements with judicial discretion retroactive immediately.
- Ensure that all recently repealed enhancements are implemented retroactively.
- Abolish all enhancements in the form of life sentences (i.e. a 7-to-life base term with a 25-to-life gun enhancement).

Key Findings:

- Sentence enhancements are another tool of mass criminalization that prosecutors have wide discretion to apply inconsistently.
- In practice, prosecutors target Black, Brown and Indigenous people with sentence enhancements.
- Sentence enhancements are significant drivers of California's incarceration crisis, designed to warehouse, disappear, & eliminate targeted populations from society.
- Enhancements have not proven to reduce societal harm or make society safer. They have only proven to increase the capacity of California's Corrections Department, wasting billions of dollars on prison infrastructure.

Testimony from Incarcerated Community Members:

1. "I have a sentence of 127 years, 70 of the years are because of gun enhancements. There is no possible way I can do that much time. Every day I see people who have more time for enhancements than for the actual crime they were convicted of. Gun enhancements do not necessarily fight crime—they are a way to get people like myself, I'm a black man, more time away from our families."
-Jasper Stallings, sentenced to 127 years, 70 of which is gun enhancement time
2. "Enhancements don't work. Finding any reason to tack more time to people's sentences doesn't help anyone. It overcrowds the prisons, it costs taxpayers a lot of money, it separates families. It's so unnecessary."
-Matthew Wells, sentenced to 31 years, 23 years of which is gun enhancement time
3. "I never read a penal code section before I came to prison, I had no idea what sentence enhancements were or that they even existed. They don't teach any of that in school, so how is it any type of potential deterrence if people don't know it exists? If you don't know these enhancements exist, then it's not effective - it doesn't work. Long sentences do nothing."
-David Cruz, sentenced to 19 years, 15 of which is gun enhancement time
4. "Knowing you got more time than a person could ever live in a life-time, there's no light at the end of that tunnel. My family gave up the thought of me ever getting out and thus I gave up the last hope. I would like to see us be given a fair sentence in this life sometime. California has more people in prisons than any country in the world. Well let's tell lawmakers to spend money on kids than on prisons. The kids in the barrios, neighborhoods, or projects are just like yours but they need a little help. Invest in the kids and fix the ridiculous sentencing especially enhancements. I don't believe I should just be thrown into prison to die slowly. I am redeemable."
-Mark Castillo, sentenced to 153 years to life, 114 years of enhancements
5. "What is the purpose of giving someone 200 years? Even the judge laughingly claimed I would have to die and come back to life five times to do my sentence. These laws leave

no room for redemption, and most of the time it is not even for justice--it's political and simply beefing up a prosecutor's resume. 75 years of my sentence are 50 to life for a gun never proven existed, and 25 to life for a bullet that was never proven, produced. This is extreme and unfair, and what happens to you when you are uneducated and poor and lack resources to defend yourself."

-Andrew Hernandez, sentenced to 200 years, 75 of which is gun enhancement time

Three Strikes Law

Recommendations:

- Repeal the California Three Strikes law completely and implement that change retroactively with immediate and automatic resentencing for people sentenced under the law.
- Expedite the review of all incarcerated people still waiting for their cases to be resolved under Proposition 36.
- Consult directly and thoroughly with the California Repeal Three Strikes Law Coalition, directly impacted experts dedicated to changing these unjust laws.

Key Findings:

- The Three Strikes Law, which was passed into law by Californians in 1994, is the linchpin of California's shift to a tough on crime era during the 1990's and largely responsible for prison overcrowding in California.
 - The Three Strikes Law gives prosecutors disproportionate leverage in plea bargaining, resulting in over 90% of cases being resolved with no trial, unfairly disregarding people's right to due process.
 - The Three Strikes Law has been overwhelmingly used to incarcerate Black, Brown and Indigenous people, tearing apart these families and communities across the state.
 - It costs taxpayers in excess of \$2,000,000 for every individual sentenced to a base 25 to life term.
 - The Three Strikes Law is not an effective deterrent for societal harm and has done nothing to impact the decline in violence/harm in its 25 years of existence.
-

Appendix A

Collected written testimony from incarcerated community members can be found in these digital folders.

[Set 1](#)

Sammy Provencio, Danny Gutierrez, Linnette Blocker, Andrew Lee Granger, Bertrand Thompson

[Set 2](#)

Eileen Huber, Kenny Lee, Juan Huezo, Christopher Tate

[Set 3](#)

Mark Castillo, Dean Kennedy, Corina Marin, Virginia Backlund, Trinia Aguirre, Derrick Carson

[Set 4](#)

Kelsey Thomas, Patrick Cummings, Jose Barraban, Timm Williams, Lawrence May, Quoc Nguyen

[Set 5](#)

John Malarkey, Arath Blanco, Juston McCulloch, Franchone Epps, Nerio Celaya

[Set 6](#)

Elbert Vaught, Larissa Schuster, Eugene Jones III, Virgil Clarke, Melissa Garcia, Joanna Gomez

[Set 7](#)

Malinda Jones, Richard Boyde, Darryl Polk, Lester Polk, Roman Galafate, Leny Galafate, Jeff Ayers

[Set 8](#)

Jeffrey Milo Burks, Barrett Simon, Bee Vue, Stacey Dyer, Wallace Vaughn, J. Jones

[Set 9](#)

Daniel Rose, Jorge Esquivias, Ricky Godfrey, Shiloh Quine, David Carino, Cesar Hernandez

[Set 10](#)

Tommy Nichols, Cruz Avila, Javier Cano, Kenneth Redman Nathaniel Criss, A.A. Bush, Alexander Arzup

[Set 11](#)

Daniel Ascencio, Joe Hernandez, A.R.Ross, Lee Simpson, Gabino Basurto, Javier Martinez, Robert George

[Set 12](#)

James Ernest Williams, Robert Zamora, Emanuel Nash, John Bryant, Mark J Morales, Steve Clark, Suze Adams, Andrew Hernandez

[Set 13](#)

Arthur Bermudez, Alfredo Hernandez, Raul Lopez, Alex Zapien, Anthony Scott, Carlos Ruiz Paz

[Set 14](#)

Travion Mccraw, Robert Ibarra, Yakara Fler, Coutrell Plair, Sandro Santos, Christopher Holt, Emmanuel Pimentel

[Set 15](#)

Jose Abundio, Brian Phillips, Brett May, Jaime Medina, Lamont Ward, Quentin Frazier, Savoeun Soeur, Christopher Stone

[Set 16](#)

Anthony Bridget, Curtis Canady, Jaime Mares, Heriberto Valenzuela, Israel Gomez

[Set 17](#)

Jasper Stallings, David Cruz, Matthew Wells, Lawrence Polk, Silas Kanady

[Set 18](#)

Charles Murdoch, Donald Parker Jr., Michael De La Cruz, Tien Ho

Exhibit E

California District Attorneys Association



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May 5, 2021

Committee on the Revision of the Penal Code
c/o UC Davis School of Law
400 Mrak Hall Drive
Davis, CA 95616

Attention: Lara Hoffman, Staff Attorney
Sent via email: larah@law.stanford.edu

Dear Committee Members:

Prosecutors use the Three Strikes Law and the 10-20-Life Firearm Enhancement (Penal Code § 12022.53) with discretion depending on the circumstances of the individual case. There is a system of checks and balances in place with the trial judge, who can determine if the charge or enhancement is appropriate.

Propositions 36 was passed by the voters in the 2012 to modify the original 1994 Three Strikes Law. In addition, there is also more than 20 years of case law guiding the application of both of these provisions.

The California District Attorneys Association (CDAA) believes that both the Three Strikes Law and the 10-20-Life Firearm enhancement are applied in cases where the seriousness of the crime merits it to keep communities safe. Additionally, these laws reduce serious and violent crime through the judicial system.

You will recall that Three Strikes, 10-20-Life, and other sanctions approved by the Legislature and voters were in response to epidemic violent crime in California. In the early 1990s, according to the California Department of Justice, homicides in the state routinely hovered near 4,000 annually. After the passage of Three Strikes in 1994, and 10-20-Life in 1997, homicides began a notable decline and have never approached even 3,000 again. Even more significantly, beginning in 2008, we began a 10-year run of homicide totals falling below 2,000 annually.

In effect, CDAA would argue that the passage of Three Strikes, 10-20-Life, and other legislation that has held criminals accountable for gun violence has cut California's homicide rates by more than 50 percent since the early 1990s. These same trends are also evident with respect to other violent crimes such as robbery and aggravated assault.

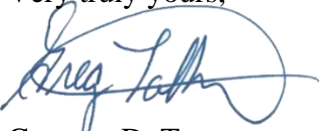
It is this empirical crime data that informs CDAA's opposition to such proposals as this year's AB 1509, a full-scale retreat from policies we believe have been proven over two decades to make Californians safer.

An article this week in the Los Angeles *Times* noted that, according to the Los Angeles Police Department, since January, shootings in Los Angeles are up by almost 67% from the same period last year, and homicides are up more than 26%. Preliminary data from the Los Angeles County Sheriff's Department indicates that homicides have more than doubled in the first three months of this year, and aggravated assaults with guns, including shootings, have jumped 82 percent. With such trends, it is not the appropriate time to reduce sanctions for those who use firearms to commit crimes, as AB 1509 proposes.

In the final analysis, CDAA takes issue with the oft repeated argument that laws designed to hold individuals accountable for firearm use have not been successful. To the contrary, the data from the California Department of Justice – the most reliable crime statistics available – clearly indicates otherwise.

We appreciate the opportunity to express our views for your consideration.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Greg Totten", with a large, sweeping flourish that loops back under the name.

Gregory D. Totten
Chief Executive Officer

Exhibit F

Jeffrey Aaron, Mendocino County Public
Defender



Jeffrey A. Aaron
Public Defender

Jan Cole-Wilson
Assistant Public Defender

Eric O. Rennert
Chief Deputy Public Defender

Justin Cozad
Chief Investigator

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May 7, 2021

Committee on the Revision of the Penal Code
c/o UC Davis School
400 Mrak Hall Drive
Davis, CA 95616

Re: Committee Meeting on 5/13/21
Gun Enhancements and the Three Strikes Law

Dear Chairperson Romano and Members of the Committee:

Thank you for the opportunity to address the Committee.

By way of introduction, I have been a criminal defense attorney for 33 years, and have worked in private practice, as a Chief Deputy Public Defender in San Bernardino County, as a Directing Attorney in the Federal Public Defender's Office in the Central District of California, and now as the Public Defender of Mendocino County. I am also a Certified Criminal Law Specialist by the State Bar of California Board of Legal Specialization.

I deal with gun enhancements and the Three Strikes Law on a daily basis, and has done so for decades. While I can add little to the policy arguments that others have addressed so ably before this Committee, I would preface my remarks with our Legislature's findings that increased incarceration is "not sustainable, and will not result in improved public safety," and that we must devote our criminal justice resources, in part, to "evidence-based practices." (Penal Code [PC] section 17.5, subds. 3, 4.) Neither our gun enhancements nor the Three Strikes Law meets these criteria.

My recommendations focus on the daily practice in our trial courts, and hopefully will result in greater predictability, clarity, and fairness in the Penal Code. Our complex statutory and case law regarding current gun enhancements and the Three Strikes Law is unpredictable, unclear, and unfair – it is a broken system.

GUN ENHANCEMENT RECOMMENDATIONS

- (1) Reduce the number and terms of gun enhancements. Enhancements in general, and gun enhancements in particular, frequently result in sentences in which “the tail wags the dog,” or in which a relatively short sentence is distorted by a lengthy enhancement.
- (2) Eliminate PC section 12022.53 in its entirety. The original gun use enhancement in PC 12022.5 could be modified to allow more individualized sentencing. Rather than a stark choice of 3, 4, or 10 years, the revised statute could provide for a range that gives the trial judge the chance to fit the sentence to the offender and the conduct. I recommend a range of 1 to 5 years as the original enhancement provided for 3, 4, or 5 years. (PC 12022.5 [1993 version] [amended to a maximum of 10 years in the 1994 version].)
- (3) Require the firearm to be operable and loaded firearm. Penal Code section 12022.53 (b) punishes individuals who use a loaded and operable firearms the same as those who use unloaded and inoperable ones. That does not reflect the varying culpability of the two individuals and provides illogical and unjust results.
- (4) Eliminate all gun enhancements by revising the terms of the base offenses. The intent of using a triad was to allow the trial judge to punish more mitigated or aggravated instances of the same crime differently. If the triad does not give sufficient discretion, perhaps the base offense should be revised to contain a range of years, any of which could be selected to reflect aggravating or mitigating factors. If, for example, second-degree robbery had a range of 1 to 6 years, an individual who used a gun might receive 5 or 6 years, whereas one who simply grabbed a cell phone from another might receive 1 or 2 years.
- (5) Eliminate “stacking” with enhancements. The practice of stacking enhancements results in tremendously disproportionate sentences. It permits prosecutors in their sole charging discretion to punish the same wrongful acts with a range of charges and punishments that creates a troubling lack of conformity and predictability throughout the state. As an alternative to outright elimination, the Committee return to a cap on enhancements that has a relationship to the base term, such as, for example, limiting enhancements to half of the mitigated, mid, or aggravated terms.

CONCLUSION

I was impressed by the comments of District Attorney Rosen. As he explained “we need the Committee to take a systemic and rigorous look at our present sentencing scheme to bring actual data and rationality to our system.” ((Submission of Jeff Rosen, District Attorney of Santa Clara County [submitted for 9/17-18/2020 meeting] at p. 1.) He, too, suggested a return to limitations on enhancements, such as “double the base term,” because “enhancements routinely create punishments that are far greater than the underlying crime itself.” (Id. at p. 2.)

THREE STRIKES LAW RECOMMENDATIONS

- (1) Reduce the number of strike offenses. Ms. Romo discussed the so-called *Estes* robbery cases in depth and I would adopt her comments. (Submission of Lisa Roth, Los Angeles

County Public Defender [submitted for 9/17-18/2020 meeting] at p. 5.) I would respectfully suggest de-designating as strikes (1) all residential burglaries pursuant to PC 459 in which the only entry was into an attached structure, such as a garage; (2) all criminal threats pursuant to PC 422 that do not result in bodily harm; and (3) certain felony gang offenses pursuant to PC 186.22 and 1192.7.¹ I remember many clients who committed shoplifting offenses and then tussled with security guards while trying to escape, who committed minor thefts from open garages, such as a juvenile stealing a bike, or who made emotional and reckless comments in domestic arguments, and received strike convictions.

- (2) Provide a “wash-out” period for strikes. An individual may commit a strike offense in his late teens or early 20s, and then pay the price for it 20 or 30 years later, despite years of exemplary behavior. The Court has discretion under *Romero* to strike allegations, but local practices vary widely: many trial judges fear provoking the prosecution into filing affidavits of prejudice pursuant to Civil Code of Procedure section 170.6 or into running prosecutors against them in the next election. Why not promote rehabilitation by providing for a 10 year “wash-out” period for strikes? Certainly, the Committee could recommend that no juvenile strikes, or a sharply limited list of such strikes, be used against adult defendants.
- (3) Replace the Three Strikes Law with alternative recidivist punishments that relate meaningfully to the base offense. Again, perhaps a sentencing range of 1 to 5 years could apply to persons with serious or violent felony priors. This would allow the trial judge to tailor the punishment to the crime and the offender.
- (4) Eliminate “stacking” of enhancements and priors. The Committee should consider barring the use of enhancements in strike offenses and should eliminate the 5 year felony enhancement. It is excessive to sentence a defendant to twice the term of his base offense because, for example, he has a prior under Penal Code section 667.5 and then to add 5 years for the same prior under Penal Code section 667 (a) (1).

CONCLUSION

The Three Strikes Law impedes the administration of justice by making plea negotiations harder as many prosecutorial offices forbid Deputy District Attorneys to dismiss strikes. It results in unfair and unpredictable charging practices by local prosecutors.

In addition, juvenile offenders can rarely obtain a fresh start with the Three Strikes Law. Young defendants with juvenile records are punished more harshly when charged in adult court. Prosecutors file more serious charges against those with juvenile priors, file more new strikes, and

¹ I mean non-violent and non-serious offenses that result in felonies in the gang statute. The gang statutes in Penal Code sections 186.22 (a) and (b) are strike offenses per Penal Code section 1192.7 (c) (28). This is so even if the gang concerned has a “pattern of criminal activity” as minor as two or more relatively minor offenses. (See Penal Code section 186.22 (e) (20) (vandalism), (e) (25) (unlawful taking and driving of a motor vehicle), or 186.22 (e) (29) (unlawful use of a credit or ATM card).)

seek longer sentences. Finally, those persons are far less like to have prosecutors willing to offer non-strike dispositions.

Thus, at every stage of the criminal process, in addition to the recidivist statutes and the prior allegations, those individuals receive harsher and more disparate treatment. Repealing the Third Strikes Law, barring the use of juvenile strikes, and other measures, as discussed above, would help eliminate this problem.

Thank you again for so generously giving me the opportunity to address the Committee.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Jeffrey A. Aaron", with a long horizontal flourish extending to the right.

Jeffrey A. Aaron
Public Defender of Mendocino County

Exhibit G

Angela Chan, Policy Director and Senior
Staff Attorney, Asian Americans
Advancing Justice

Policy Recommendations for Addressing Hate Violence

ASIAN AMERICANS ADVANCING JUSTICE -
ASIAN LAW CAUCUS

INTRODUCTION

The history of hate violence against Asian Americans is a long and ugly one. Unfortunately, attacks against Asian Americans have been on the rise due to a climate of fear, xenophobia, and racism during the COVID-19 pandemic, which has been perpetuated by the highest echelons of government. **The recent mass shooting in Georgia also has laid bare the urgency of addressing both gender and race-based violence, as women of color are twice as likely to be the target of violence.** This policy recommendations guide is a collaborative effort by Asian American-serving organizations to provide forward-thinking and practical policy solutions to address violence against Asian American communities for policymakers, survivors, and allies.

This guide focuses on community-centered solutions to interpersonal hate violence, rather than funneling yet more resources to law enforcement agencies and incarceration that already consume government budgets. As organizations with a long history of protecting and advancing the rights of Asian American community members, we believe the solution to interpersonal violence is not more systemic state violence in the form of aggressive and discriminatory law enforcement, that inevitably harms communities of color. Our recommendations center on providing community-based interventions to hate violence, and culturally and linguistically accessible, community-based services for survivors and their families.

It is also important to emphasize that challenging and responding to interpersonal hate violence is not enough. We must also address the root causes of race and gender-based systemic violence. This includes unequal access to housing, education, employment, health care, transportation, and immigration status experienced by marginalized communities, which in turn creates the conditions that make these community members -- particularly the elderly, youth, and women -- more vulnerable to interpersonal violence. We need to improve conditions for low wage workers, especially women of color, including providing access to COVID vaccines, economic relief, child care, and health care. **And importantly, we need to dismantle laws that criminalize poor communities of color, and we need to funnel the resources into addressing systemic race and gender-based violence.**

Policy Recommendations for Addressing Hate Violence

ASIAN AMERICANS ADVANCING JUSTICE -
ASIAN LAW CAUCUS

WHAT IS HATE VIOLENCE?

Hate violence can occur through physical violence; it also can take place in the form of verbal harassment, threats, intimidation, vandalism, bullying, and civil rights violations.

COMMUNITY-CENTERED SOLUTIONS TO ADDRESSING HATE VIOLENCE

1) Establish Rapid Response Network to Track and Respond to Incidents:

Community members who experience hate violence are often afraid to report to police for a variety of understandable reasons, including lack of trust, language and cultural barriers, and fear of entanglement between police and immigration enforcement. To receive reports of and track hate violence, a rapid response network that is operated by community-based organizations and not working with local law enforcement should be funded.

- Community members should be given the option to report incidents anonymously and in their primary language via phone, in person, and online.
- Rapid response networks also should be funded to conduct analysis of data collected from reports of hate violence. This includes funding for data collection software, training, and data analysts.
- Rapid response networks should be funded to coordinate with policymakers to bring awareness to and denounce incidents of hate violence through issuing community alerts; organizing press events; organizing language-accessible and culturally competent community meetings to develop community-centered responses; working with victims to develop safety plans, provide case management, and obtain victim compensation; and providing policy and budget recommendations to policymakers based on patterns identified in reports of hate violence.

2) Provide Bystander Training to Educate and Empower Allies: Reports of violence against Asian Americans show that these incidents often take place in public places, such as on the street, on public transit, in stores, online, and near places of worship. Bystander training for interested community members provides tools and tactics to support victims, document incidents, and when possible, safely intervene to de-escalate. For more information on bystander trainings, see hollaback! [here](#).

Policy Recommendations for Addressing Hate Violence

ASIAN AMERICANS ADVANCING JUSTICE -
ASIAN LAW CAUCUS

COMMUNITY-CENTERED SOLUTIONS TO ADDRESSING HATE VIOLENCE

3) Fund and Support Restorative Justice Programs: Central to the vast majority of hate crimes laws are extensive punitive measures for the individual who caused the harm. Such laws have proven to be ineffective on multiple fronts. First, hate crimes are underreported and rarely prosecuted, especially with regard to Limited English Proficient immigrant community members. Second, the carceral system does little to provide the individual who caused the harm with the tools to not recidivate; to repair the harm caused to the victim and the victim's community; to engage the community; and to transform the individual who caused the harm's underlying bigoted attitudes and behaviors. Thus, we recommend a restorative justice approach to hate violence when the individual who was harmed is amenable to this process. It is important to note that restorative justice is only possible when the individual who caused the harm accepts responsibility, and all parties voluntarily agree to engage in the process. The restorative justice process must be facilitated by a person who is well trained in restorative justice practices and equipped with the cultural competency to identify the needs and challenges faced by all parties involved.

4) Ensure Victim Funds are Accessible: In many states and counties, survivors of hate violence cannot access victim compensation funds unless they collaborate with police and prosecutor offices in a criminal case. However, as stated above, there are many barriers to victims reporting hate violence to police. In addition, some incidents of hate violence, such as hate speech in many cases, do not qualify as crimes. Victims should be given access to victim compensation funds without a condition that they have to work with police and prosecutors.

5) Fund Culturally Competent and Mental Health Services for Victims: Due to the underfunding of services for minority communities and training for mental health providers to serve minority communities, it can be very difficult for Asian American victims of hate violence to access culturally competent and language accessible mental health services. Policymakers should be encouraged to fully fund these vital services and training for mental health providers. This includes funding mental health providers to be first responders to individuals in mental health crisis, rather than local law enforcement.

Policy Recommendations for Addressing Hate Violence

ASIAN AMERICANS ADVANCING JUSTICE -
ASIAN LAW CAUCUS

COMMUNITY-CENTERED SOLUTIONS TO ADDRESSING HATE VIOLENCE

6) Fund Community-Based Ambassador Programs: Cities like San Francisco and Oakland have launched community ambassador programs to employ a multi-cultural and multi-linguistic team of trained community members to provide assistance to vulnerable community members, including individuals who are elderly.

Thank you for reviewing this guide. Do you have ideas and suggestions for this guide? Please email them to Angela Chan at angelac@advancingjustice-alc.org.

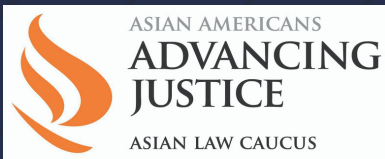


Exhibit H

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MEMORANDUM

TO: California Committee on Revision of the Penal Code

FROM: Joshua Kleinfeld

DATE: May 10, 2021

SUBJECT: European Criminal Punishment Practices

The California Committee on Revision of the Penal Code has invited my oral testimony on May 13, 2021, on one of the topics of my research and teaching: European practices of criminal punishment. The Committee has also invited me to submit this brief written memo in connection to my oral testimony. I summarize a few key factual takeaways and policy suggestions below.

Note that I use the term “Europe” below as a shorthand for the countries of continental Europe, such as Germany, France, and Italy, taken as a group, and “America” as a shorthand for the 50 U.S. states and the federal government, taken as a group. Inevitably, this effort to characterize the legal practices of multiple jurisdictions in groups requires eliding nuances and exceptions connected to particular localities. One of the difficulties of comparative law is deciding whether to be a “lumper” or a “splitter.” In this brief memo, I will be a lumper, but I hasten to add that more detailed factual investigation would be necessary to fully explicate particular polities’ law.

KEY FACTS

- **European rates of imprisonment and other punishment practices are much milder than American rates of imprisonment and other punishment practices, but this was not true until the 1970s.**

From the Founding through the early 1970s, American criminal punishment was mild relative to continental Europe and relative to America today.¹ In the 18th and 19th centuries, the United States was the center of a variety of criminal justice reform projects in the direction of greater mildness, undergirded by the idea that a democratic society should punish without cruelty. From the 1920s through the early 1970s, the American incarceration rate was low and stable, falling in 1972 to almost the lowest point of the century: 95 per 100,000.² By comparison, the 2007 incarceration rate in Germany was also 95 per 100,000; in France, 100; in Italy, 77; and in Spain, 147.³ Likewise, capital punishment in the United States was under a national moratorium and nearly abolished in the 1970s.⁴ By comparison, Spain abolished it in 1978 and France in 1981. It is crucial to note that American penal mildness was often denied to racial minorities, but that was true of many European countries as well, as those countries also had long histories of racism.

The “great divergence” between American and European criminal punishment started in the 1970s, grew in the 1980s, and became a chasm in the 1990s. The American incarceration rate peaked in 2007, at 756 per 100,000.⁵ Combining incarceration, probation, and parole, 3.2% of the American adult population (1 out of every 31 adults) was under some form of correctional control at that time.⁶

Since that early-2000s peak, American punishment has been getting milder and criminal justice reform efforts are evident throughout much of the country. Seen in historical perspective, reform movements like that currently taking place in California are a return to America’s historical norms.

- **European rates of violent crime are far lower than American rates of violent crime.**

America has a much higher rate of violent crime than Europe, and, in particular, experienced a massive crime wave from the 1960s through the 1990s—what one historian of criminal law has characterized as a “hurricane of crime.”⁷ Europe experienced an increase in crime during these decades as well, but it was comparatively small.

Homicide rates are a useful window into the magnitude of the crime wave because homicide statistics tend to be more reliable than other criminal justice statistics. Homicide rates measure the chance of being the victim of a murder or nonvehicular manslaughter in the course of one’s life (not

¹ See generally Joshua Kleinfeld, *Two Cultures of Punishment*, 69 STANFORD LAW REVIEW 933, 935-37 (2016).

² MARGARET WERNER CAHALAN, BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, HISTORICAL CORRECTIONS STATISTICS IN THE UNITED STATES, 1850-1984, at 35 tbl.3-7 (1986), <http://www.bjs.gov/content/pub/pdf/hcsus5084.pdf>.

³ MARCELO F. AEBI & NATALIA DELGRANDE, COUNCIL FOR PENOLOGICAL COOPERATION OF THE COUNCIL OF EUROPE, COUNCIL OF EUROPE ANNUAL PENAL STATISTICS: SPACE I - PRISON POPULATIONS, SURVEY 2013, at 64-65 tbl.1.5 (2015), <http://wp.unil.ch/space/files/2015/02/SPACE-I-2013-English.pdf>.

⁴ The case creating the moratorium was *Furman v. Georgia*, 408 U.S. 238, 239-40 (1972) (per curiam) (“The Court holds that the imposition and carrying out of the death penalty in these cases constitutes cruel and unusual punishment . . .”) and the case that lifted it was *Gregg v. Georgia*, 428 U.S. 153, 187 (1976) (“We hold that the death penalty is not a form of punishment that may never be imposed . . .”).

⁵ HEATHER C. WEST & WILLIAM J. SABOL, U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2007, at 6 (2009), <http://www.bjs.gov/content/pub/pdf/p07.pdf>.

⁶ LAUREN E. GLAZE & THOMAS P. BONCZAR, BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, PROBATION AND PAROLE IN THE UNITED STATES, 2007 STATISTICAL TABLES 1 tbl.1 (2009), <http://bjs.gov/content/pub/pdf/ppus07st.pdf>.

⁷ LAWRENCE M. FRIEDMAN, CRIME AND PUNISHMENT IN AMERICAN HISTORY at x, 449-65 (1993).

including warfare): if the homicide rate is 1.5 per 100,000 and stays constant over time, and if the average person lives to be 78, a newborn has a 1 in 854 lifetime chance of being the victim of an assault leading to death. The homicide rate in Western Europe from 1950 to 1990 has ranged from about 1 to 2 victims per 100,000.⁸ In 1960, homicide victimization among white Americans was 2.5 per 100,000 and among black Americans was 22 per 100,000; in 1970, it was 5 per 100,000 and 45 per 100,000; and in 1980, it was 7 per 100,000 and 40 per 100,000.⁹ Despite the profound racial inequality (black Americans are far more likely than white Americans to be homicide victims), the pattern of change is shared: homicide rates were 2 to 20 times greater than Europe's even at their lowest point and doubled or tripled from there. At America's homicide peaks, had the rates stayed constant over time and the average person lived to 78, the chance of death through violent assault would have been 1 in 183 for white Americans and 1 in 28 for black Americans, versus 1 in 854 for Europeans.¹⁰ Furthermore, high as those numbers are, they massively understate the risk of violence Americans faced at the time. Homicide is rare; robbery, assault, rape, and other forms of violence are far more common.

In short, America in the late twentieth century experienced a massive crime wave followed by a massive punishment wave. It is natural and may be accurate to think they are causally linked—that increased crime led to increased punishment. Note, however, that the causes of both the crime wave and the punishment wave are intensely disputed among scholars. The academic literature is replete with dozens of explanations, all with some evidentiary support, none anywhere close to proven.¹¹ No one really knows the answer to the causal questions.

- **Europe categorically rejects the death penalty and LWOP (life in prison without parole).**

Abolition of capital punishment is part of the treaties establishing the European Union, the treaties establishing the Council of Europe, and the statutes or constitutions of every European state except Russia (where it is under a moratorium) and Belarus.¹² Yet the history of European capital punishment shows that this rejection of capital punishment is more recent and contingent than it might appear. Germany abolished capital punishment in its constitution of 1949, and the abolition is commonly believed to represent a collective “never again” to the horrors of the Third Reich. But in fact, the prohibition was sponsored by a political alliance between left-wing German politicians who had opposed capital punishment long before the Third Reich and right-wing German politicians who sympathized with Nazi war criminals and were attempting to save them from execution by the Allies.¹³ None of the major political actors involved in crafting the constitutional prohibition were responding

⁸ *Id.*

⁹ RANDOLPH ROTH, *AMERICAN HOMICIDE* 5 fig.1.2, 441 fig.9.1. (2009).

¹⁰ *Id.*

¹¹ Joshua Kleinfeld, *Two Cultures of Punishment*, 69 *STANFORD LAW REVIEW* 933, 1018-21 (2016).

¹² *Id.* at 989-90.

¹³ See RICHARD J. EVANS, *RITUALS OF RETRIBUTION: CAPITAL PUNISHMENT IN GERMANY, 1600-1987*, at 774-86 (1996).

to the lessons of the Third Reich, and polls showed that 74% of the West German population supported capital punishment at the time it was abolished.¹⁴ Meanwhile, France had its last execution in 1977 and abolished the penalty legally in 1981, despite the fact that 62% of the French people expressed support for capital punishment the very month it was abolished.¹⁵ If Europeans now view capital punishment as a moral wrong of the first order, that view is recent.

As to LWOP (life in prison without parole), the European Court of Human Rights effectively declared it unconstitutional in 2014 in the case of *Vinter v. United Kingdom*.¹⁶ The European Court of Human Rights is the chief judicial organ of the Council of Europe and has the authority to interpret the European Convention on Human Rights—a treaty to which 47 European countries are signatories. Since 1998, the Court has engaged in something tantamount to judicial review, ordering member states to change their conduct and law to comply with the Court’s interpretation of the treaty, and the 47 member states have largely complied. In *Vinter*, the Court declared that LWOP violates Article Three of the Convention, which prohibits “inhuman or degrading treatment or punishment.”¹⁷ (Note the parallel to the U.S. Constitution’s prohibition on “cruel and unusual punishment.”) This made LWOP illegal throughout virtually all of Europe.

The basic idea of the *Vinter* opinion is that everyone has a right to rehabilitation and a right to rejoin the community if rehabilitated, and that these rights follow from human dignity. As the majority stated: “the principle that all prisoners, including those serving life sentences, be offered the possibility of rehabilitation and the prospect of release if that rehabilitation is achieved” is “constitutionally required in any community that establishe[s] human dignity as its centerpiece.”¹⁸ As Judge Power-Forde’s concurrence stated, human dignity implies a “‘right to hope.’... Those who commit the most abhorrent and egregious of acts and who inflict untold suffering upon others, nevertheless retain their fundamental humanity and carry within themselves the capacity to change. Long and deserved though their prison sentences may be, they retain the right to hope that, someday, they may have atoned for the wrongs which they have committed. They ought not to be deprived entirely of such hope. To deny them the experience of hope would be to deny a fundamental aspect of their humanity and to do that would be degrading.”¹⁹

- **Europe imposes sentences of life with the possibility of parole and “stage-of-life” prison sentences, but does so rarely and only in response to extreme criminal wrongdoing.**

¹⁴ *Id.*

¹⁵ Michel Forst, The Abolition of the Death Penalty in France, in THE DEATH PENALTY: ABOLITION IN EUROPE 105, 113 (1999); International Polls and Studies, DEATH PENALTY INFO. CTR., <http://www.deathpenaltyinfo.org/international-polls-and-studies#France> (last visited May 5, 2016).

¹⁶ 2013-III Eur. Ct. H.R. 317.

¹⁷ *Id.* at 339, 349-50, 353.

¹⁸ *Id.* at 346-47.

¹⁹ *Id.* at 358 (Power-Forde, J., concurring).

European countries impose sentences of life with the possibility of parole and what I term “stage-of-life sentences”—that is, sentences long enough to constitute a stage of a person’s life, such as sentences of fifteen years without or before parole—only very rarely, and only for extraordinarily severe crimes.

In Germany, for example, aggravated murder can be sentenced to life with the possibility of parole, but fifteen years is the maximum available sentence for every other crime, including repeat offenses.²⁰ Germany increases sentences for repeat offenders, but not by much: there is a statutory maximum for any given offense that judges cannot go beyond, no matter how many crimes an offender has committed before. Furthermore, offenders sentenced to life are eligible for parole in 15 years, and offenders sentenced to 10-15 years are eligible for parole after 7-10 years. Germany imposes these sentences only for the extremes of criminal wrongdoing. Thus, in 2013, out of a population of 81 million, there were 1,994 people serving sentences of life with the possibility of parole and another 691 serving 10-15 year sentences for other crimes—about 2,700 people total.²¹

This pattern of relatively short sentences even for significant crimes, sentences above ten years only in rare cases, and a commitment to parole holds throughout much of Europe. Thirteen European countries, including Spain, either do not allow for life sentences even with parole or have zero prisoners serving a life sentence.²² In France, with a population of 67 million, approximately 5,000 people are serving sentences of 10-20 years (with parole eligibility after half or two-thirds of the sentence), 2,000 are serving sentences of 20-30 years (same), and 500 are serving sentences of life with the possibility of parole (available in France only for crimes like leading a drug trafficking group, certain types of murder, torture, kidnapping, and crimes against humanity).²³ In Italy, with a population of 61 million, about 5,500 are serving sentences of 10-20 years, 2,000 are serving sentences of 20 years or more, and 1,500 are serving sentences of life with the possibility of parole.²⁴

These sentencing practices—in particular, the mild treatment of repeat offenses and the small number of people given long sentences—are so astonishingly lenient that Americans might naturally wonder whether Europe can adequately control dangerous repeat offenders. Imagine, for example, a serial rapist or kidnapper in Germany. Never having committed murder, his sentence can never be higher than 15 years. Are dangerous recidivists continually preying upon the European public?

I have not been able to find adequate data on this question at this time, but, anecdotally, the answer appears to be a clear “Yes.” European law enforcement officials complain about having no tools by which to keep the worst offenders locked up. Newspaper stories about repeat offenders, especially repeat sexual offenders, periodically appear, and have led to some political effort by voters to toughen

²⁰ STRAFGESETZBUCH [PENAL CODE], § 38, 211-12, translation at http://www.gesetze-im-internet.de/englisch_stgb/german_criminal_code.pdf.

²¹ MARCELO F. AEBI & NATALIA DELGRANDE, COUNCIL FOR PENOLOGICAL COOPERATION OF THE COUNCIL OF EUR., COUNCIL OF EUROPE ANNUAL PENAL STATISTICS: SPACE I—PRISON POPULATIONS; SURVEY 2013, at 110 tbl.7, 116 tbl.7.1, <http://wp.unil.ch/space/files/2015/02/SPACE-I-2013-English.pdf>.

²² *Id.*

²³ *Id.*; see also CODE PENALE arts. 211-1, 212-1, 221-3, 221-4, 222-2, 222-34, 224-2 (Fr.); CODE DE PROCEDURE PENALE art. 729 (Fr.).

²⁴ AEBI & DELGRANDE, at 110 tbl.7; see also ASTOLFO DI AMATO, CRIMINAL LAW IN ITALY 127 (2011) (describing the availability of parole in Italy).

up the law (with marginal success). My impression is that the only way European countries can sustain this level of mildness toward the most serious offenders is by having very few such offenders in the first place. The whole structure depends on Europe's exceedingly low rates of violent crime. Also important is Europe's culture of deference to experts, top-down control of "acceptable" social attitudes, and bureaucratic insulation of criminal justice officials from democratic pressures. When voters get upset about leniency and public safety, there isn't much they can do about it. Nonetheless, I predict that, if Europe ever sees a major crime spike, the pressure to clamp down on repeat violent offenders will become overwhelming.

- **European criminal punishment, relative to its own baselines, is often tough toward drug and property offenses and mild toward crimes of violence, including crimes of sexual violence.**

European countries do not treat incarceration as a routine form of punishment. It has been "denormalized"—an exceptional measure for exceptional offenses.

In Germany, for example, 94% of offenders are only fined or given a suspended sentence (prison sentences under two years are suspended two-thirds to three-fourths of the time).²⁵ Only 6% of convicted offenders actually serve time—with about half of those (3% of the total offender pool) serving less than one year, the other half (also 3% of the total offender pool) serving more than one year.²⁶

Who is in that 6% group that gets incarcerated? What offenses did they commit? The answer is: rape (6% of all prisoners), homicide or attempted homicide (7%), major assault and battery (13%), robbery (13%), drug offenses (14%), financial offenses (14%), theft (22%), and "other" (11%).²⁷ In other words, 26% committed crimes of violence and sexual violence—though only the very worst of such crimes, leaving out sexual offenses short of rape and acts of violence short of major assault or homicide—and 36% committed property and financial crimes. (I set aside robbery, which could add 13% to either or both categories, since it is a crime of both violence and property.)

As these numbers suggest, German criminal law displays, in the words of one leading German criminal law scholar, an astonishingly "lenient attitude toward crimes against the person," and, as a relative matter, an oddly severe attitude toward crimes against property.²⁸ Before policy changes in 1998, attempted battery was not punishable, though attempted vandalism was; simple battery was subject to a maximum of three years imprisonment, simple larceny to five; and even "a rapist could

²⁵ Thomas Weigend, *Sentencing and Punishment in Germany*, in SENTENCING AND SANCTIONS IN WESTERN COUNTRIES 191, 196 tbl.5.5. (Michael Tonry & Richard S. Frase eds., 2001).

²⁶ AEBI & DELGRANDE at 110 tbl.7, 116 tbl.7.1

²⁷ AEBI & DELGRANDE at 104 tbl.6, 105 tbl.6.1.

²⁸ Thomas Weigend, *Sentencing and Punishment in Germany*, in SENTENCING AND SANCTIONS IN WESTERN COUNTRIES 210. (Michael Tonry & Richard S. Frase eds., 2001).

get off with six months in prison if there were extenuating circumstances.”²⁹ After public protest in 1998, Germany toughened sentences for violent offenders to some degree, but substantial prison time for crimes against the person, including sexual offenses, still requires major violence or rape. Indeed, the minimum sentences even for rape remain quite short. The minimum for sexual compulsion by force but without penetration is generally one year (six months in “less serious cases”), and the minimum for sexual compulsion by force and with penetration is generally two years.³⁰ Both sentences are short enough that the offender is theoretically eligible for a suspended sentence. Only where the sexual compulsion involves a weapon or the risk of serious bodily injury to the victim does the minimum rise to three years—high enough that a suspended sentence is not possible.³¹

Despite this odd relative severity toward property offenders, it is important to bear in mind that 94% of German offenders serve no time, and of the 6% who do, half are behind bars for less than a year. Anecdotally, my impression is that incarcerated property offenders typically fall into that less-than-a-year group. That leaves a very small group of quite extreme criminal offenders in the group incarcerated for more than a year. As a leading scholar of comparative criminal law has written of Germany and its neighbors: “In place of the broad-gauged harshness of the American kind, these northern European societies have seen a narrowly crafted harshness aimed at a relatively restricted class: violent offenders, terrorists, certain sex offenders, [and] drug dealers.”³² I basically agree with that characterization, though I would add that, in order to get a sentence of a year or more in Germany, generally the violent offenders must be highly violent and the sexual offenders must be rapists.

Note the inclusion of “drug dealers” with violent offenders, terrorists, and major sex offenders. There is a common misconception that the “great divergence” between American and European criminal punishment is about the war on drugs: America is harsh toward drugs and Europe tolerant, the story goes, and that accounts for the difference. This is a myth. It takes a great deal even to land in prison in Europe, yet 14% of all prisoners in Germany, 14% of all prisoners in France, 25% of all prisoners in Spain, and 38% of all prisoners in Italy are incarcerated for drugs.³³ In U.S. state jurisdictions, about 16% of prisoners are there for drugs (overwhelmingly dealing or possession with intent to distribute),³⁴ which puts America in the same range as Germany and France and well below Spain and Italy. (50% of federal prisoners are imprisoned for drug offenses, but there are relatively few federal prisoners. The overwhelming majority of American prisoners are state prisoners.³⁵) In Germany, a country that routinely gives no time or short sentences even to violent offenders, drug dealers comprise 25% of those incarcerated for more than two years, and drug dealers who work in a

²⁹ *Id.*

³⁰ STRAFGESETZBUCH [PENAL CODE], § 177, translation at http://www.gesetze-im-internet.de/englisch_stgb/german_criminal_code.pdf.

³¹ *Id.*

³² JAMES Q. WHITMAN, HARSH JUSTICE: CRIMINAL PUNISHMENT AND THE WIDENING DIVIDE BETWEEN AMERICA AND EUROPE 71 (2003).

³³ AEBI & DELGRANDE at 105 tbl.6.1.

³⁴ E. ANN CARSON, U.S. DEPT OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2014, at 16 tbl.11, 17 tbl.12 (2014), <http://www.bjs.gov/content/pub/pdf/p14.pdf>; JOHN F. PFAFF, LOCKED IN: THE TRUE CAUSES OF MASS INCARCERATION—AND HOW TO ACHIEVE REAL REFORM 5–6, 31–36, 185 (2017); John Pfaff, *Escaping from the Standard Story: Why the Conventional Wisdom on Prison Growth Is Wrong and Where We Can Go from Here*, 26 FED. SENT'G REP. 265, 265–66, 269 (2014).

³⁵ *Id.*

gang context face a five-year minimum.³⁶ As a leading German criminal law scholar writes: “Because drug offenses carry heavy prison sentences under German law and courts do not hesitate to implement the mandate of the law, the rise in drug convictions goes a long way to explain why German prisons are (again) filled to capacity and beyond.”³⁷ In France as well, drug dealers stand alongside aggravated murderers and terrorists as some of the only criminals subject to multi-decade sentences.³⁸ True, drug sentences are shorter in Europe than in America, but that is because almost all sentences are shorter in Europe than in America; relative to its own baselines, Europe’s carceral approach to drug dealing is all the more remarkable. The great divergence is not about drugs.

POLICY RECOMMENDATION

- **The lesson of Europe is to be discerning about *who* to punish, directing severe criminal punishments only to the worst-of-the-worst and keeping others, even if they have committed crimes, within the circle of full citizenship.**

Many progressive criminal justice reformers assume that Europe’s example is one the United States can and should follow. But the example is more problematic than it might seem. Arguably, European practices of punishment cannot be sustained outside of low crime conditions. But those low crime conditions depend on a variety of factors beyond the reach of the criminal justice system. Having studied and lived in Europe, my impression is that its low crime rates depend on solidaristic, even collectivist cultures that provide social and economic support and maintain a sense of common citizenship, but in exchange impose tight social controls outside the formal apparatus of law. It is unlikely the United States could recreate such a culture even if it wanted to. Furthermore, Europe’s leniency toward violent offenders and inability to control repeat offenders would alarm and offend many Americans, and the undemocratic political arrangements and top-down political culture that make such alarm and offense largely toothless in Europe cannot and should not be recreated in the United States. Finally, there are differences in moral outlook between Europe and America that affect criminal justice and make the European model difficult and perhaps undesirable to recreate in the United States. For example, the American belief in personal responsibility is one of the most consistent and extreme measurable differences between American and European values: only 36% of Americans agree that “success in life is pretty much determined by forces outside our control,” versus 72% in Germany, 57% in France, and 50% in Spain.³⁹

³⁶ Thomas Weigend, *Sentencing and Punishment in Germany*, in SENTENCING AND SANCTIONS IN WESTERN COUNTRIES 213 nn.15-16 (Michael Tonry & Richard S. Frase eds., 2001).

³⁷ *Id.* at 195.

³⁸ AEBI & DELGRANDE, at 110 tbl.7, 116 tbl.7.1; CODE PENALE arts. 211-1, 212-1, 221-3, 221-4, 222-2, 222-34, 224-2 (Fr.); CODE DE PROCEDURE PENALE art. 729 (Fr.).

³⁹ PEW RESEARCH CTR., THE AMERICAN-WESTERN EUROPEAN VALUES GAP: AMERICAN EXCEPTIONALISM SUBSIDES 6-8 (2011), <http://www.pewglobal.org/files/2011/11/Pew-Global-Attitudes-Values-Report-FINAL-November-17-2011-10AM-EST1.pdf>.

On the other hand, history shows that there is nothing inevitable about American penal harshness. It is not a necessary consequence of democratic government or American culture. America was a country in which, from the Founding through most of the 20th century, democracy meant punishment without cruelty. The reform efforts we see over the last decade are not a departure from American traditions but a return to them.

In my view, the most important lesson European criminal justice can teach us is the importance of being more discerning about when and against whom to direct the most severe forms of criminal punishment. European countries impose life and multi-decade sentences of incarceration on only a few thousand offenders; we impose severe sentences on hundreds of thousands of offenders. European countries work hard to define exactly which offenses are bad enough to warrant multiple years in prison, and even then insist on maintaining the possibility that the offender might rejoin society if rehabilitated. America takes acts that could be grounded in bad character—but could also come from deprivation, or an outburst of passion, or impulsivity, or immaturity, or desperation—and treats all of the offenders as if they were the worst-of-the-worst. In so doing, we throw away tens or hundreds of thousands of lives that could be salvaged. It is not wrong to recognize that there are some dangerous and even evil people in the world who need to be controlled and who warrant severe punishment. But they are *rare*. Europe's example demonstrates that they are rare. The others can be punished in ways that maintain their sense of citizenship with us and ours with them.

What we need, then, is a punishment system that is European with respect to the vast majority of offenders and American with respect to the sliver remaining. Perhaps the central challenge facing this committee is figuring out how to help lawmakers and law-enforcers do a better job of sorting out the worst-of-the-worst from others who, even if they committed serious crimes, should be kept within the circle of full citizenship.

Exhibit I

Amy Fettig, Executive Director, The
Sentencing Project



NO END IN SIGHT

**AMERICA'S ENDURING
RELIANCE ON LIFE
IMPRISONMENT**



**THE
SENTENCING
PROJECT**

RESEARCH AND ADVOCACY FOR REFORM

FINDINGS AND RECOMMENDATIONS

Before America's era of mass incarceration took hold in the early 1970s, the number of individuals in prison was less than 200,000. Today, it's 1.4 million;¹ and more than 200,000 people are serving life sentences – one out of every seven in prison. More people are sentenced to life in prison in America than there were people in prison serving any sentence in 1970.

Nearly five times the number of people are now serving life sentences in the United States as were in 1984, a rate of growth that has outpaced even the sharp expansion of the overall prison population during this period.

The now commonplace use of life imprisonment contradicts research on effective public safety strategies, exacerbates already extreme racial injustices in the criminal justice system, and exemplifies the egregious consequences of mass incarceration.

In 2020, The Sentencing Project obtained official corrections data from all states and the Federal Bureau of Prisons to produce our 5th national census on life imprisonment.

KEY FINDINGS

- One in 7 people in U.S. prisons is serving a life sentence, either life without parole (LWOP), life with parole (LWP) or virtual life (50 years or more), totaling 203,865 people;
- The number of people serving life without parole – the most extreme type of life sentence – is higher than ever before, a 66% increase since our first census in 2003;
- 29 states had more people serving life in 2020 than just four years earlier;
- 30% of lifers are 55 years old or more, amounting to more than 61,417 people;
- 3,972 people serving life sentences have been convicted for a drug-related offense and 38% of these are in the federal prison system;
- More than two-thirds of those serving life sentences are people of color;
- One in 5 Black men in prison is serving a life sentence;
- Latinx individuals comprise 16% of those serving life sentences;
- One of every 15 women in prison is serving life;
- Women serving LWOP increased 43%, compared to a 29% increase among men, between 2008 and 2020;
- The population serving LWOP for crimes committed as youth is down 45% from its peak in 2016;
- 8,600 people nationwide are serving parole-eligible life or virtual life sentences for crimes committed as minors.

The unyielding expansion of life imprisonment in recent decades transpired because of changes in law, policy and practice that lengthened sentences and limited parole. The downward trend in violence in America that continues today was already underway when the country adopted its most punitive policies, including the rapid expansion of life sentences. The increase in life imprisonment and the growing extremity of our criminal legal system was largely driven by policies enacted in response to public fears about crime, often rooted in sensationalized media stories rather than the actual prevalence of violent crime in most communities.

Yet debate around the utility of long prison sentences often ends with the mention of violent crime, even though we know that life imprisonment does not make us safer. The vast majority of people “age out” of criminal conduct by adulthood. Lengthy prison terms hold people well after their risk of committing a new offense becomes minimal.

In this report, we reveal for the first time that 30% of the life-sentenced population is 55 or older. The imprisonment of an aging population has become a fiscal and humanitarian crisis the country must confront. The urgency of this crisis grows ever greater as the COVID-19 pandemic disproportionately jeopardizes the lives of older Americans in prison. Reoffending by persons released after serving long terms is rare, making the need for expediting releases for older lifers the only humane public health and public safety approach.

Racial and ethnic disparities plague the entire criminal justice system from arrest to conviction and is even more pronounced among those serving life sentences. One in 5 Black men in prison is serving a life sentence and two thirds of all people serving life are people of color. An abundance of scholarship finds evidence of racial and ethnic disparities resulting in harsher sentencing outcomes because of race. Elevated rates of Black and Latinx imprisonment are partly caused by higher levels of engagement in violent crime, but are worsened by the racially disparate impacts of heavy-handed policies initiated during the 1980s and 1990s.

Communities that are under-resourced and over-punished need greater investment in evidence-based solutions that interrupt crime at its root. Public investments for supporting youth, ensuring access to medical and mental health care, expanding living wage employment opportunities and ensuring affordable housing are a better use of public resources than lifelong imprisonment. Lengthening prison sentences produces diminishing returns on public safety and robs struggling communities with necessary resources to fend off violence in the first place.

Despite a growing awareness that ratcheting up prison sentences, not crime trends, fueled mass incarceration, many sentencing reform proposals fall short of addressing this head on. Indeed, changes directed at scaling back punishments for low-level and nonviolent

crimes are favored *because* they confront low-level and nonviolent crimes; this emphasis has had the unintended consequence of further legitimizing the utility of long-term imprisonment.

To reverse course on the nation’s 40-year prison buildup, we must scale back all punishments and evaluate individuals based on their current behavior and prospects for a crime-free life upon release. Since more than half of the people in prison are serving sentences for a crime of violence, we must not only reevaluate appropriate sanctions in response to violent crime, but also how to prevent violent crime in the first place.

Some states are beginning to address overly long prison terms through second-look legislation. In 2018, California passed a law to allow prosecutors to seek sentence modifications from judges if sentences are believed to be excessive. In 2020, the Council of the District of Columbia passed legislation that provides people who were under 25 at the time of their offense and sentenced to a long term, the chance to petition the court for resentencing and early release after 15 years. At the federal level, Senator Cory Booker of New Jersey introduced the Second Look Act in 2019 which would allow a federally incarcerated person to petition the court for a sentence modification after 10 years.

These are important first steps. More must be done.

RECOMMENDATIONS

Abolish Life Without Parole

Sentences of life without the possibility of parole (LWOP) are virtually unheard of in the rest of the world. They are considered antithetical to personal transformation, the primary goal of many other corrections systems. Even more, they violate fundamental principles of human dignity.² Instead of serving the interests of justice, LWOP unnecessarily burdens systems with the heavy cost of housing, feeding, and providing medical care for the more than 55,000 people. This disproportionately elderly population must live in institutions not well designed to care for them.

The elimination of LWOP will recalibrate all sentences underneath it. Public perceptions of incarceration minimize the negative impact of a 5- or 10-year sentence

on an individual when compared to the extremes of a life sentence. Creation of a more fair and just system depends on ending all extreme penalties.

Limit All Life Sentences to 20 Years Except in Rare Circumstances

As with the country's use of LWOP, virtually unheard of elsewhere in the world, imprisonment beyond 20 years is a predominantly American phenomenon. Life sentences have been part of the American criminal legal system for decades, but only in the age of mass incarceration have they become part of the mainstream. In order to sensibly confront extreme sentencing, reduce mass incarceration, and redistribute resources to communities that would benefit from robust crime prevention, we recommend a 20-year maximum for all life sentences. We arrive at this recommendation after witnessing the continued expansion of America's zeal for ever-harsher punishment while decades of practical experience, data, and social science support more restorative approaches.

If, after 20 years of imprisonment, it is clear that the individual continues to engage in conduct that would put the public at risk if they were released, a period of civil confinement could be considered by a court. Individuals potentially subjected to such confinement would be entitled to strict due process rights and legal representation. This is similar to the practice in Norway, often held as the gold standard in corrections. The goal here would still be rehabilitation and reintegration, not exclusion, and mandatory periodic review to assess readiness for release would continue.

Accelerate and Expand Release Opportunities

America suffers from a broken parole system, or in some jurisdictions, no parole system at all. In jurisdictions with parole, the review process is mired in political jockeying and often manipulates victim experiences to secure a parole denial. A just parole system would operate independently from the politics of the executive branch both in the ultimate decision to release an individual, as well as the composition of the parole board. The board should be composed of professionals with expertise in social work, psychology, the law, and corrections. Crime of conviction should not be the determining factor in the decision of the parole board. The focus of the parole

board hearing should be on the person's development while incarcerated, current public safety considerations, and identifying what supports are needed to ensure success after release.

States should also adopt "second look" policies that reconsider the appropriateness of continued incarceration given the passage of time and changed circumstances within the individual. Beginning this review at 10 or 15 years aligns the U.S. with the international community and the American Law Institute, a national nonpartisan body of legal experts. It should not take the corrections system more than 20 years to empower an individual with the skills necessary to live crime-free after release.

Reorient Victim and Community Involvement Toward True Healing

In its present orientation, the justice system — and prosecutors specifically — employ victim testimony from individuals at high risk of retraumatization in order to obtain tough sanctions for the defendant. Survivors are not provided with the tools and resources sufficient to cope with the emotional, physical, and financial effects of having experienced crime. A reorientation of the role of victims requires investing in restorative and community justice models that heal the harm caused by violence at their root, creating a system that is "survivor-centered, accountability-based, safety driven, and racially equitable."³ Experts in this space know that we are all safer when we uplift victims, hold everyone accountable for their actions, and do so with empathy and compassion; not assume victims or communities are well-served by long-term imprisonment.

Exhibit J

Kathy Allison, Secretary, CDCR



California Department of Corrections and Rehabilitation

RECIDIVISM REPORT FOR OFFENDERS RELEASED FROM THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION IN FISCAL YEAR 2014-15

Division of Correctional Policy Research and Internal Oversight

OFFICE OF RESEARCH | JANUARY 2020



You can obtain reports by contacting the Department of Corrections and Rehabilitation on the internet at:

<https://www.cdcr.ca.gov/research/>

The Mission of CDCR's Office of Research:

"To inform public policy by analyzing correctional trends, developing population projections, guiding research projects and publishing Department reports."

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Executive Summary

The California Department of Corrections and Rehabilitation (CDCR) tracks offenders released from state prison in the three years following their release. In particular, three outcomes are measured, all of which track recidivism (a person's relapse into criminal behavior): arrests, convictions and returns to prison. Starting with the 2016 report, CDCR transitioned its primary measure of recidivism from the three-year return-to-prison rate to the three-year conviction rate. This change is consistent with the statewide definition of recidivism and provides a broader and more meaningful measure of reoffending behavior. This year's report follows offenders released from state prison between July 1, 2014, and June 30, 2015 (Fiscal Year 2014-15), two years after the passage of the Public Safety Realignment Act in 2011 and two years prior to the implementation of Proposition 57. The 2019 recidivism rate is 46.5 percent, close to the 46.1 percent of the previous two years.

Much has changed in the Department since Fiscal Year 2014-15: policies and procedures have shifted towards an increasingly behavior-based model in which an offender's behavior drives classification and housing decisions as much as the points-based classification system. These offenders were also released when the Department was just beginning its expansion of rehabilitative programs, following the recession of 2007-2008. Many of the Department's most significant rehabilitation programs were implemented after this cohort was released, including the Innovative Grant Program (2014), the statewide expansion of Arts in Corrections (2017), changes to the classification system to allow increased program access (2017), face-to-face college expansion (2018), and other vocational, academic, and rehabilitative programs. This cohort was also released prior to the passage of Proposition 57 in 2016, under which self-help programs and courses led by community-based organizations more than doubled the number of institutional offerings. The credit-earning opportunities under Proposition 57, combined with an unprecedented number of lifers being found suitable for parole in the past eight years, have given hope and incentive to the offender population to make substantial changes in their lives as returning home becomes more of a possibility.

It is notable that offenders released from prison in Fiscal Year 2014-15 who had been sentenced to an indeterminate (life) term continue to have a very low recidivism rate, even though the number of lifers released to the community is over 4,000 since Fiscal Year 2010-11. Of the 688 offenders sentenced to a life term and released in Fiscal Year 2014-15, 2.3 percent (16 offenders) were convicted of a new crime, the majority of them misdemeanors. These rates speak to the overall success of the Board in fairly evaluating candidates for parole and adequately weighing public safety against an offender's rehabilitation.

Whereas in the previous year, more offenders recidivated by conviction of felony offenses, this year the highest drivers of recidivism are misdemeanor drug and alcohol offenses. Thus, while Realignment led to primarily only serious, violent, and sex offenders being committed to state prison, once released, these offenders recidivated for low-level offenses primarily related to drug and alcohol crimes.

The Department recognizes and suffers from the same devastating effects of the epidemic of addiction facing every other community in California and nationwide, and is taking an aggressive approach by implementing a statewide substance abuse treatment program for offenders expected to begin implementation in 2020. Under the Integrated Substance Use Disorder Treatment (ISUDT) program, offenders will have increased cognitive behavioral interventions in line with medical standards of care and Medication-Assisted Treatment, where appropriate. The Department is focusing on whole-person care and the recognition that addiction is a treatable disease that leads many to criminal behavior, overdoses, and death. Along with improving the mental and physical health of the offender population, this initiative aims to decrease criminal behavior post-release by expanding available resources, including growing CDCR's partnerships for post-release substance use disorder treatment in the community and increasing access to medical treatment, housing, employment assistance and other community resources.

While the goal is to decrease recidivism across the board, the Department is hopeful that, with increased specialized treatment and credit-earning rehabilitative opportunities, those released from prison do not get re-convicted or create new victims in the communities of California.

Recidivism Highlights

- Recidivism remained largely flat among offenders released from prison between July 1, 2014 and June 30, 2015. The three-year conviction rate was 46.5 percent, close to the 46.1 percent of the previous two years.
- The slight increase in the three-year conviction rate is largely attributed to the 4,111 property and drug offenders released as a result of Proposition 47, which allowed offenders serving prison sentences for certain felony drug and property offenses to petition the courts for resentencing under new sentencing provisions. Property and drug offenders are consistently associated with higher rates of recidivism, contributing to the recent increase.
- Of the 39,205 offenders released, 53.5 percent (20,970 offenders) had no convictions within three years of their release. Of the 18,235 offenders convicted, 47.6 percent (8,679 offenders) were convicted of felonies and 52.4 percent (9,556 offenders) were convicted of misdemeanors.
- Misdemeanor drug/alcohol crimes comprised the largest percentage of all post-release convictions (21.7 percent or 3,950 offenders).
- Of the 688 offenders sentenced to an indeterminate (life) term, 2.3 percent (16 offenders) were convicted of a new crime, the majority of them misdemeanors.
- When offenders who were identified as having a substance abuse treatment need and released to parole completed in-prison Substance Use Disorder Treatment (SUDT) and aftercare, their three-year conviction rate was 18.5 percent, compared to offenders with no in-prison SUDT or aftercare (50.1 percent).
- Offenders committed to prison for a violent offense had a three-year conviction rate of 29.1 percent, which is 22.0 percentage points lower than the rate for offenders without a serious or violent offense. The rate for violent offenders decreased 2.1 percentage points compared to the Fiscal Year 2013-14 release cohort's rate of 31.2 percent.
- The three-year conviction rate of females (34.4 percent) was 13 percentage points lower than the rate of male offenders (47.4 percent). The rate for female offenders has decreased 12.4 percentage points since the release of the Fiscal Year 2011-12 cohort.
- The three-year conviction rates of younger age groups were substantially higher than rates for older age groups. Offenders ages 18 and 19 had the highest three-year conviction rate at 70 percent, followed by offenders ages 20 to 24 with a three-year conviction rate of 59 percent. Offenders ages 60 and over had the lowest three-year conviction rate of all age groups at 20.5 percent.

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

RECIDIVISM REPORT FOR OFFENDERS RELEASED IN FISCAL YEAR 2014-15

1 Introduction

The California Department of Corrections and Rehabilitation (CDCR) examines recidivism outcomes (arrest, conviction, and return-to-prison rates) for offenders released from CDCR's adult institutions over the course of a given fiscal year.¹ This report presents recidivism rates for the 39,205 offenders released between July 1, 2014 and June 30, 2015 (Fiscal Year 2014-15) and tracked for three years following the date of their release. The three-year conviction rate is used as CDCR's primary measure of recidivism, while arrests and returns to prison are provided as supplemental measures of recidivism.

In addition to the three-year arrest, conviction, and return-to-prison rates, this report discusses the impacts of correctional policies influencing the cohort composition, recidivism rates, and type of recidivism for the Fiscal Year (FY) 2014-15 release cohort. The FY 2014-15 release cohort is the third post-Public Safety Realignment (Realignment) cohort and the first cohort with offenders released under Proposition 47, which was passed by California voters in November 2014 and reduced penalties for certain non-serious, non-violent property and drug crimes by mandating a misdemeanor sentence instead of a felony. Proposition 47 allowed offenders serving sentences in prison for certain felony offenses to petition the courts for resentencing under new sentencing provisions.

The type of post-release conviction (i.e. misdemeanor or felony) and the time until conviction for offenders released in FY 2014-15 are presented in Section 3. The three-year conviction rate by select offender demographics and characteristics (e.g. sentence type, serious or violent offenses, risk score) are provided in Section 4 and finally, more detailed information regarding recidivism rates and the type of arrest and return-to-prison are provided in Section 5.

In a departure from previous reports, the three-year conviction rates by offender demographics (e.g. age, race/ethnicity) and characteristics (e.g. length of stay) are presented in a separate appendix, "Appendix to the Recidivism Report for Offenders Released in Fiscal Year 2014-15." Information regarding conviction rates by county of release and a more detailed examination of age and recidivism are also provided in the appendix.

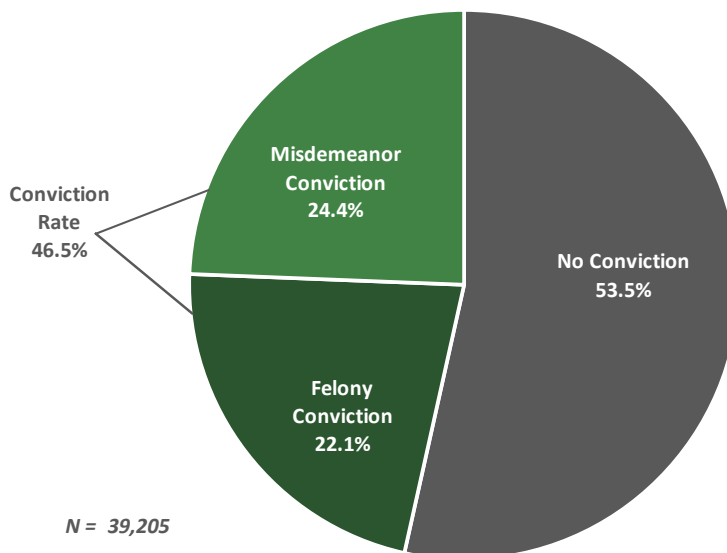
¹ CDCR's Recidivism Report series was previously titled the "Outcome Evaluation" report series. The 2018 Recidivism Report followed the 2017 Outcome Evaluation Report, both of which provide recidivism rates (arrest, conviction, and return-to-prison rates) for offenders released in a given fiscal year.

2 Three-Year Recidivism Rates

2.1 Three-Year Conviction Rate for the Fiscal Year 2014-15 Release Cohort

Between July 1, 2014 and June 30, 2015, 39,205 offenders were released from a CDCR adult institution and were tracked for three-years following the date of their release.² The three-year conviction rate for the FY 2014-15 release cohort was 46.5 percent. Of the 39,205 offenders who comprised the FY 2014-15 release cohort, 53.5 percent of the release cohort (20,970 offenders) had no convictions within three years of their release from prison, 22.1 percent (8,679 offenders) were convicted of a felony offense, and 24.4 percent (9,556 offenders) were convicted of a misdemeanor offense.

Figure 1. Three-Year Conviction Rate for Offenders Released in Fiscal Year 2014-15

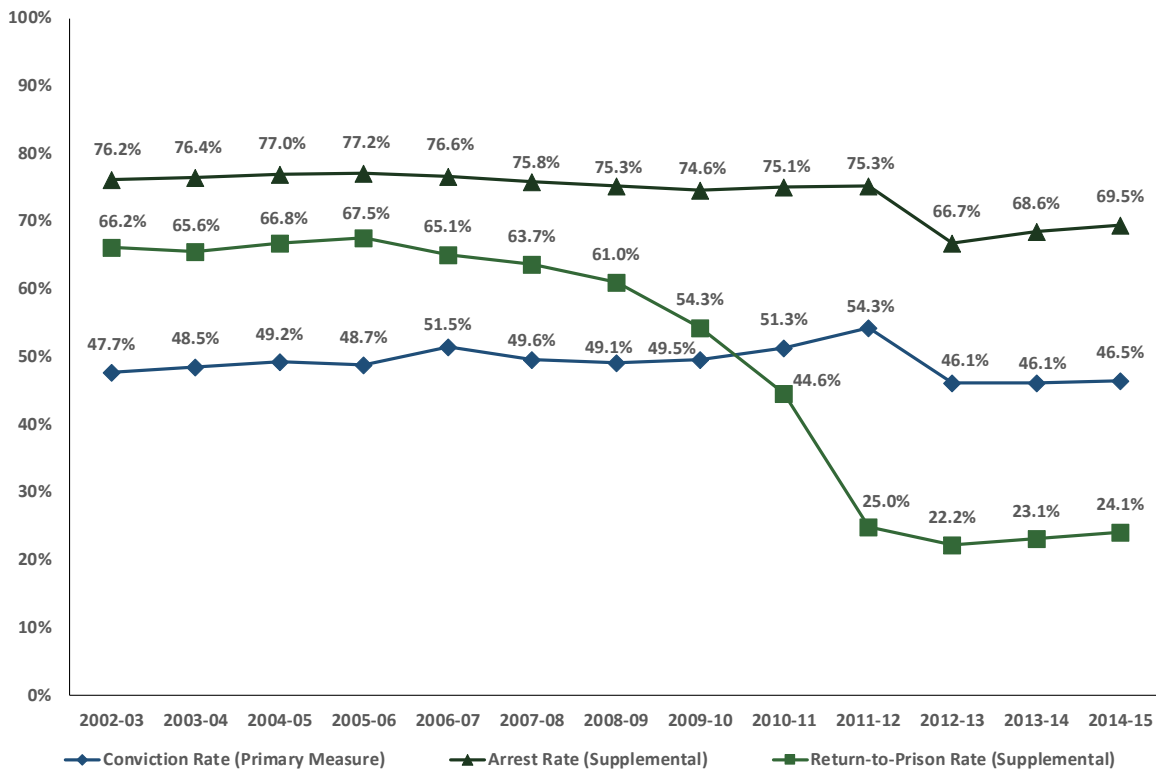


² During FY 2014-15, a total of 39,399 offenders were released from a CDCR adult institution. Of these offenders, 39,205 offenders had a Department of Justice (DOJ) automated rap sheet. Arrest and conviction data only include the 39,205 offenders with an automated rap sheet and return-to-prison data include all 39,399 offenders released from prison.

2.2 Three-Year Arrest, Conviction, and Return-to-Prison Rates for the Fiscal Year 2002-03 through Fiscal Year 2014-15 Release Cohorts

As shown in Figure 2, the three-year conviction rate remained largely flat between the FY 2013-14 and 2014-15 release cohorts. In general, the three-year conviction rate has been relatively stable with small fluctuations (increases and decreases) since CDCR began reporting with the 2002-03 release cohort. After reaching a high of 54.3 percent with the FY 2011-12 release cohort and subsequently declining to a low of 46.1 percent with the FY 2012-13 release cohort, the three-year conviction rate has been markedly stable. The three-year conviction rate was unchanged (46.1 percent) between the FY 2012-13 and 2013-14 release cohorts and increased by 0.4 of a percentage point between the FY 2013-14 and 2014-15 release cohorts, reaching the current rate of 46.5 percent. The slight increase in the three-year conviction rate is largely due to 4,111 drug and property offenders who were resentenced and released from CDCR under Proposition 47 provisions. Offenders committed with drug and property offenses have higher observed rates of recidivism than other groups of offenders.

Figure 2. Three-Year Arrest, Conviction, and Return-to-Prison Rate for Offenders Released from CDCR during Fiscal Year 2002-03 through Fiscal Year 2014-15



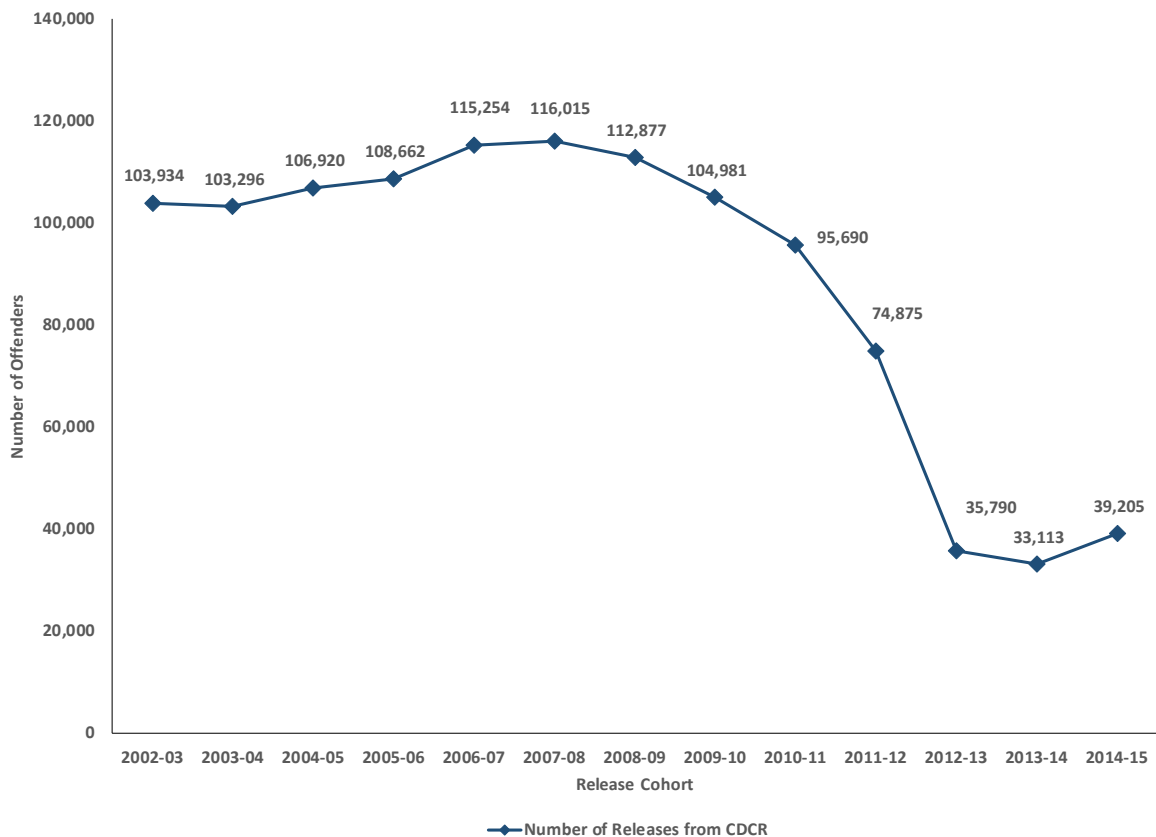
Arrests and returns to prison, which are supplemental measures of recidivism, also saw small increases between the FY 2013-14 and 2014-15 release cohorts. The three-year arrest rate increased by less than a percentage point (from 68.6 percent to 69.5 percent) and the three-year return-to-prison rate increased by one percentage point (from 23.1 percent to 24.1 percent). Similar to convictions, the arrest rate has stayed relatively stable since CDCR began reporting with the FY 2002-03 release cohort. The

three-year return-to-prison rate recently entered a period of stability, beginning with the FY 2011-12 release cohort, after experiencing substantial decreases following the implementation of Realignment in October 2011 (Section 2.4.1).

2.3 Description of the Fiscal Year 2002-03 through Fiscal Year 2014-15 Release Cohorts

Between July 1, 2014 and June 30, 2015, 39,205 offenders were released from a CDCR adult institution and tracked for three years following the date of their release.³ As shown in Figure 3, the number of offenders released from CDCR peaked with the FY 2007-08 release cohort (116,015 releases) and began to slowly decline with the FY 2008-09 release cohort (112,877 releases). The number of releases began a series of decreases following the implementation of Realignment in October 2011, with 35,790 offenders released in FY 2012-13 and the number of releases reaching a low of 33,113 releases in FY 2013-14. An increase of 6,092 releases between the FY 2013-14 (33,113 releases) and FY 2014-15 (39,205 releases) cohorts indicate the substantial post-Realignment decline in the number of releases has subsided. Additionally, Proposition 47, which passed during the release and follow-up period of the FY 2014-15 release cohort, resulted in the resentencing and release of 4,111 offenders. The number of releases is contingent on the population of CDCR’s adult institutions, as well as a number of correctional policies. CDCR expects the number of releases to fluctuate in future release cohorts, as policies impacting the offender population are modified and implemented.

Figure 3. Number of Offenders in the Fiscal Year 2002-03 through Fiscal Year 2014-15 Release Cohorts



³ The FY 2011-12, 2012-13, 2013-14 and 2014-15 release cohorts only include offenders with a DOJ automated rap sheet. Prior to transitioning the primary measure of recidivism from the three-year return-to-prison rate to the three-year conviction rate, the release cohort presented in Figure 3 included all offenders released from prison, regardless of a DOJ automated rap sheet.

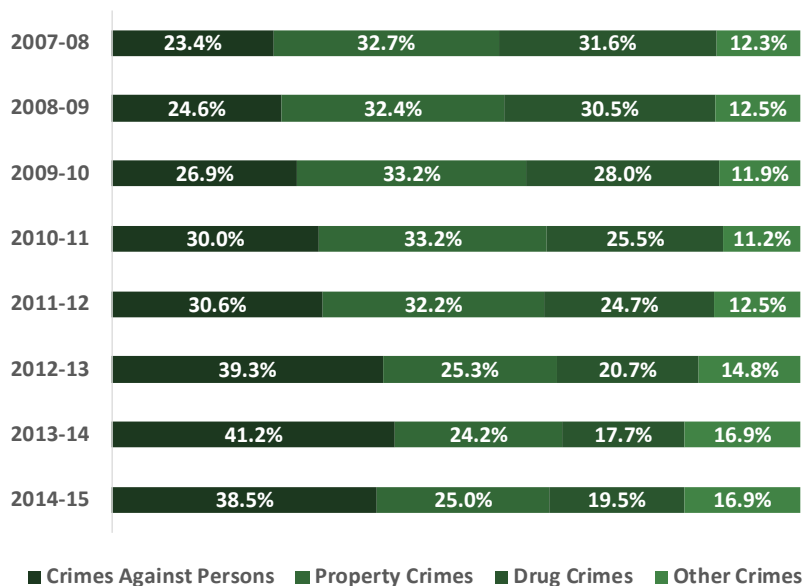
2.4 Recidivism Rates and Correctional Policies

2.4.1 Realignment

The FY 2014-15 release cohort represents the third group of CDCR offenders whose period of release (July 1, 2014 to June 30, 2015) and three-year follow-up period (ending no later than June 30, 2018) occurred after the implementation of Realignment. Stability in the three-year return-to-prison rate along with changes to the demographics and characteristics of CDCR’s release cohorts, indicate the effects observed in the early years of Realignment have subsided in recent years.

While arrests and convictions remained fairly stable during the early years of Realignment, the three-year return-to-prison rate saw a series of decreases largely due to a decline in returns for parole violations, which were no longer possible for most offenders. As a result, returns to prison for parole violations decreased substantially: over one-third (37.9 percent or 39,747 offenders) of all returns to prison for offenders released in FY 2009-10 were parole violations, while 16 of the 9,505 returns among offenders released in FY 2014-15 were parole violations. The largest decrease in the return-to-prison rate occurred between the FY 2010-11 and 2011-12 cohorts when the rate decreased from 44.6 percent to 25.0 percent. From this point, the return-to-prison rate was consistent, ranging from a low of 22.2 percent with the FY 2012-13 cohort and reaching a rate of 24.1 percent with the current FY 2014-15 cohort, indicating stability in the post-Realignment era.

Figure 4. Percentage of Releases by Commitment Offense Category for the Fiscal Year 2007-08 through Fiscal Year 2014-15 Release Cohorts



As shown in Figure 4, the composition of CDCR’s release cohorts changed with the implementation of Realignment with larger percentages of offenders committed to prison for crimes against persons and smaller percentages committed for property and drug crimes. Crimes against persons, which tend to be

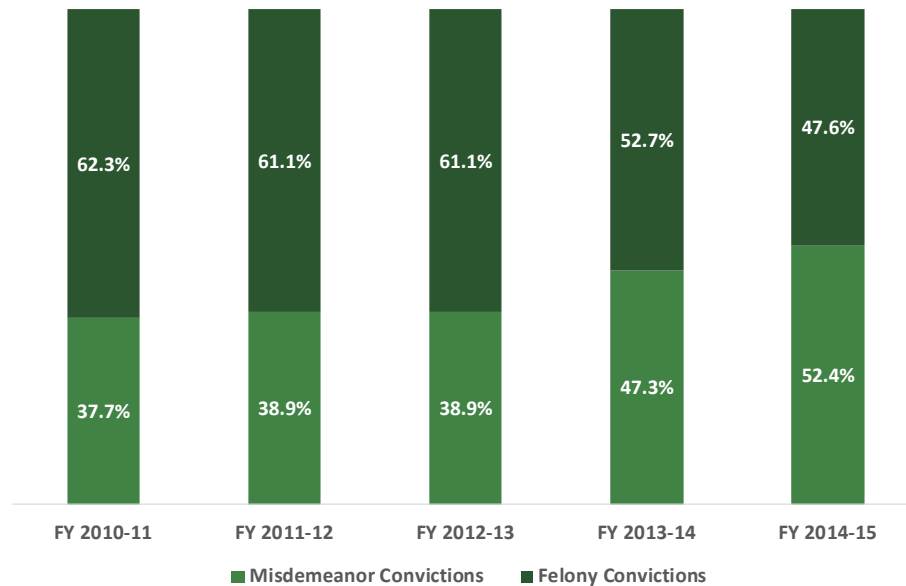
more serious and violent than property and drug crimes, are associated with lower recidivism rates (Sections 4.4 and 4.5). The increase in offenders released from prison who were committed for crimes against persons was one factor that influenced the three-year conviction rate downward (from 54.3 percent to 46.1 percent) between the FY 2011-12 and 2012-13 release cohorts. Similarly, some of the slight increase in the three-year conviction rate for the current FY 2014-15 release cohort may be attributed to the 4,111 Proposition 47 releases who are associated with higher rates of recidivism, thereby influencing the three-year conviction rate upward. More information regarding the three-year return-to-prison rate and the type of return may be found in Section 5 of this report.

2.4.2 Proposition 47

Proposition 47 was passed by California voters in November 2014 and reduced penalties for certain non-serious, non-violent property and drug crimes by mandating a misdemeanor sentence instead of a felony. It also allowed offenders serving sentences in prison for felony offenses to petition the courts for resentencing under new sentencing provisions. Proposition 47 was implemented in November 2014 during the FY 2014-15 release cohort's period of release (July 1, 2014 to June 30, 2015) and was active during most offenders' three-year follow-up period.

A total of 4,111 offenders, or slightly over 10 percent of the FY 2014-15 release cohort, were resentenced and released from CDCR under Proposition 47 provisions. As detailed in Section 4.2, the three-year conviction rate for the 4,111 offenders released under Proposition 47 was 59.8 percent (2,458 offenders), which is higher than the overall three-year conviction rate of 46.5 percent (18,235 offenders). Offenders committed to CDCR for property and drug crimes, such as those released under Proposition 47, historically have higher recidivism rates than offenders committed for serious/violent offenses such as crimes against persons, contributing to the high rate of conviction observed among Proposition 47 releases.

Figure 5. Percentage of Felony and Misdemeanor Convictions for Offenders Convicted in the Fiscal Year 2010-11 through Fiscal Year 2014-15 Release Cohorts



In addition to resentencing for some offenders, the sentencing provisions of Proposition 47 also had an effect on types of post-release convictions (i.e. felony or misdemeanor). Figure 5 shows the percentage of offenders convicted for felonies and misdemeanors in the last five cohorts (FY 2010-11 through FY 2014-15). The percentage of felony and misdemeanor convictions was relatively consistent for the first three years of releases (FY 2010-11 through 2012-13) with felony convictions comprising larger percentages of all post-release convictions than misdemeanors. Consistent with the implementation of Proposition 47, the percentage of felony convictions began to decrease while the percentage of misdemeanor convictions increased. These changes were driven by decreases in post-release convictions for felony drug/alcohol and property crimes and subsequent increases in misdemeanor drug/alcohol and property crimes.

The percentage of offenders convicted of felony crimes within three years of their release from prison decreased from 52.7 percent to 47.6 percent between the FY 2013-14 and 2014-15 release cohorts, while the percentage of offenders convicted of misdemeanor crimes increased from 47.3 percent to 52.4 percent. Convictions for felony drug/alcohol crimes decreased by 6.7 percentage points (from 13.8 percent to 7.1 percent of all post-release convictions) when comparing the FY 2013-14 and FY 2014-15 release cohorts (Table 2, Section 3.2). This decrease was preceded by a 7.6 percentage point decrease between the FY 2012-13 and 2013-14. Overall, post-release felony convictions for drug/alcohol crimes have decreased by 14.3 percentage points (from 21.4 percent to 7.1 percent) across the last two release cohorts. Conversely, misdemeanor drug/alcohol crimes increased by 5.2 percentage points (from 13.7 percent to 18.9 percent of all post-release convictions) between the FY 2012-13 and 2013-14 release cohorts and 2.8 percentage points (from 18.9 percent to 21.7 percent) between the FY 2013-14 and 2014-15 release cohorts.

Decreases in felony property crimes and increases in misdemeanor property crimes follow a similar pattern to drug/alcohol crimes, although less pronounced. Felony property crimes comprised 15.6 percent of all post-release convictions for the FY 2012-13 release cohort, 13.0 percent for the FY 2013-14 release cohort, and 12.6 percent of all post-release convictions for the FY 2014-15 release cohort. Misdemeanor property crimes increased 1.9 percentage points (from 7.8 percent to 9.7 percent) between the FY 2012-13 and 2013-14 release cohorts and 2.1 percentage points (from 9.7 percent to 11.8 percent) between the FY 2013-14 and 2014-15 release cohorts. Post-release convictions are discussed in greater detail in Section 3.

The effect of Proposition 47 on post-release convictions will likely continue, as many of the felonies for which offenders are convicted (drug/alcohol and property) are now classified as misdemeanors. Although a number of policies and other factors (e.g. crime rates, offender characteristics) influence recidivism rates, the effects of Proposition 47 on the three-year conviction rate may be temporary. Most offenders eligible for resentencing under Proposition 47 were released in FY 2014-15, resulting in the release of a high concentration of property and drug offenders and a subsequent increase in the three-year conviction rate. The percentage of offenders released in FY 2015-16 under Proposition 47 is expected to decrease, thereby having less influence on the three-year conviction rate.

2.4.3 Proposition 57 and Other CDCR Initiatives

The FY 2014-15 cohort was released prior to the expansion and implementation of a number of rehabilitative programs. During the three-year follow-up period, CDCR made changes to its classification system allowing for increased program access and expanded vocational, academic, and rehabilitative programs. Additionally, the Department was in the process of developing its Integrated Substance Use Disorder (ISUDT) program, which will include comprehensive enhancements to better treat substance use disorders among California's prison population.

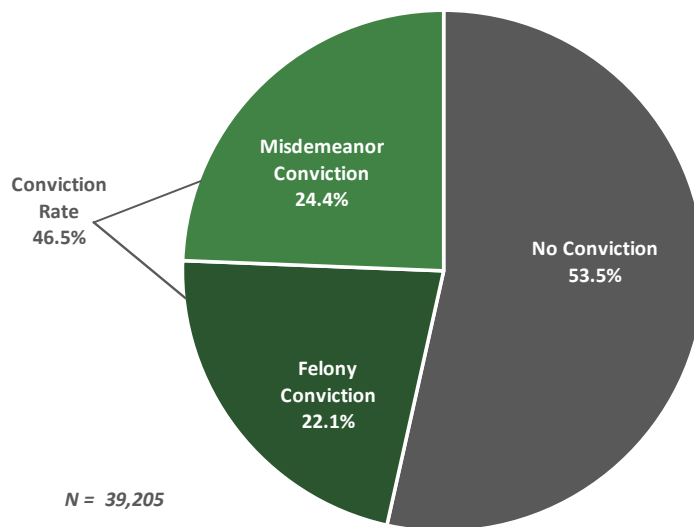
Proposition 57 was passed in November 2016 and allows eligible CDCR offenders to earn credits for good behavior and approved rehabilitative educational achievements. Increased credits may be earned through the Good Conduct and Milestone Completion Programs and two new types of credits were introduced: Rehabilitative Achievement and Educational Merit credits. Proposition 57 also established a parole consideration process for determinately sentenced and indeterminately sentenced non-violent offenders, who serve the full term for their primary criminal offense and demonstrate no current or unreasonable risk to the public. While the FY 2014-15 cohort was released before enhancements to rehabilitative programming and Proposition 57, CDCR will monitor any early impacts Proposition 57 may have on the composition of CDCR's release cohorts, as well as the three-year return-to-prison rate and type of post-release convictions.

3 Offender Outcomes and Type of Conviction

3.1 Three-Year Outcomes of All Offenders Released During Fiscal Year 2014-15

This section presents recidivism outcomes for the 39,205 offenders released during FY 2014-15. Supplemental measures of recidivism (arrests and returns to prison) for the FY 2014-15 release cohort are provided in Section 5.1 and type of arrest and type of return data are provided in Sections 5.2 and 5.3.

Figure 6. Three-Year Outcomes for the Fiscal Year 2014-15 Release Cohort



Of the 39,205 offenders released during FY 2014-15, 53.5 percent (20,970 offenders) had no convictions and 46.5 percent (18,235 offenders) were convicted of either a misdemeanor or felony offense. Over 20 percent of the release cohort (22.1 percent or 8,679 offenders) were convicted of a felony offense and 24.4 percent (9,556 offenders) were convicted of a misdemeanor offense.

For comparative purposes, Table 1 presents the type of conviction for the 33,113 offenders released from CDCR during FY 2013-14 and the 39,205 offenders released during FY 2014-15. While the three-year conviction rate remained relatively stable between the two cohorts of releases, changes were observed in the percentage of offenders convicted of felonies and misdemeanors. The percentage of offenders convicted of felonies decreased by 2.2 percentage points (from 24.3 percent to 22.1 percent) and the percentage of offenders convicted of misdemeanors increased by 2.6 percentage points (from 21.8 percent to 24.4 percent) between the two release cohorts.

The type of felony or misdemeanor offense (e.g. felony crimes against persons, misdemeanor drug/alcohol crimes) is also provided in Table 1. The largest percentage of felony convictions were for felony crimes against persons (7.1 percent or 2,788 offenders), which increased by less than a

percentage point (from 6.4 percent to 7.1 percent) between the two release cohorts. Following felony crimes against persons were felony property crimes (5.9 percent or 2,306 offenders) and felony other crimes (5.8 percent or 2,291 offenders). Felony drug/alcohol crimes comprised the smallest percentage of felony convictions (3.3 percent or 1,294 offenders) and decreased by 3.1 percentage points (from 6.4 percent to 3.3 percent) between the FY 2013-14 and 2014-15 release cohorts.

Misdemeanor drug/alcohol crimes comprised the largest percentage of all conviction types (10.1 percent or 3,950 offenders) and also saw the largest increase between the FY 2013-14 and 2014-15 release cohorts (from 8.7 percent to 10.1 percent). Misdemeanor property crimes comprised 5.5 percent (2,147 offenders) of all misdemeanor convictions, followed by misdemeanor crimes against persons (5.3 percent or 2,069 offenders) and misdemeanor other crimes (3.5 percent or 1,390 offenders). While the percentage of misdemeanor other crimes was unchanged between the FY 2013-14 and 2014-15 release cohorts at 3.5 percent, misdemeanor property crimes increased by one percentage point and misdemeanor crimes against persons increased by less than a percentage point (0.2 of a percentage point).

Much of the decrease in felony drug/alcohol crimes and increase in misdemeanor drug/alcohol crimes can be attributed to the implementation of Proposition 47. The following section isolates only the offenders convicted during the three-year follow-up period, allowing for a more detailed discussion of the impacts of Proposition 47.

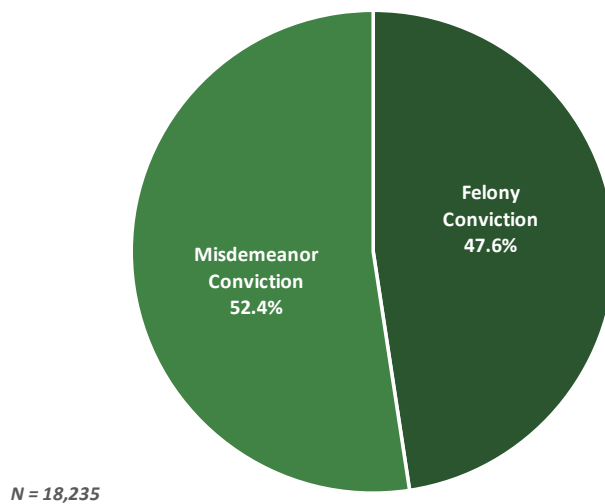
Table 1. Three-Year Outcomes for the Fiscal Year 2013-14 and Fiscal Year 2014-15 Release Cohorts

Type of Conviction	FY 2013-14		FY 2014-15	
	Number	Percent	Number	Percent
No Convictions	17,849	53.9%	20,970	53.5%
All Felonies	8,041	24.3%	8,679	22.1%
Felony Crimes Against Persons	2,121	6.4%	2,788	7.1%
Felony Property Crimes	1,983	6.0%	2,306	5.9%
Felony Other Crimes	1,827	5.5%	2,291	5.8%
Felony Drug/Alcohol Crimes	2,110	6.4%	1,294	3.3%
All Misdemeanors	7,223	21.8%	9,556	24.4%
Misdemeanor Drug/Alcohol Crimes	2,889	8.7%	3,950	10.1%
Misdemeanor Property Crimes	1,483	4.5%	2,147	5.5%
Misdemeanor Crimes Against Persons	1,685	5.1%	2,069	5.3%
Misdemeanor Other Crimes	1,166	3.5%	1,390	3.5%
Total	33,113	100.0%	39,205	100.0%

3.2 Type of Conviction for the Fiscal Year 2014-15 Offenders Convicted During the Three-Year Follow-up Period

This section includes an examination of the 18,235 offenders in the FY 2014-15 release cohort who were convicted during the three-year follow-up period and excludes the 20,970 offenders who completed the three-year follow-up period without a conviction. Isolating only those offenders convicted during the three-year follow-up period, allows for a better understanding of the type of crimes offenders are convicted for after their releases, and how those convictions change over time.

Figure 7. Type of Conviction for the 18,235 Offenders Convicted During the Three-Year Follow-Up Period



Of the 18,235 offenders convicted during the three-year follow-up period, 47.6 percent (8,679 offenders) were convicted of a felony offense and 52.4 percent (9,556 offenders) were convicted of a misdemeanor offense. Between the two release cohorts, felony convictions decreased 5.1 percentage points (from 52.7 percent to 47.6 percent) and misdemeanors increased by 5.1 percentage points (from 47.3 percent to 52.4 percent). These Proposition 47 related changes were largely driven by a decrease in post-release convictions for felony drug/alcohol and property crimes and an increase in misdemeanors for the same crimes, as discussed in Section 2.4.2.

The decrease in felony convictions among offenders released in FY 2014-15 was largely driven by a decline in felony drug/alcohol crimes, which decreased 6.7 percentage points between the FY 2013-14 and FY 2013-14 release cohorts. Felony property crimes decreased by less than a percentage point (from 13.0 percent to 12.6 percent). The other two categories of felony offenses increased between the FY 2013-14 and FY 2014-15 release cohorts: felony crimes against persons increased from 13.9 percent to 15.3 and felony other crimes increased from 12.0 percent to 12.6 percent of all convictions.

The percentage of offenders convicted of each category of misdemeanor offenses increased between the FY 2013-14 and 2014-15 release cohorts, with the exception of misdemeanor other crimes, which remained stable at 7.6 percent. Misdemeanor drug/alcohol crimes saw the largest increase (2.8 percentage points) of all misdemeanor categories, followed by misdemeanor property crimes (2.1 percentage points), and misdemeanor crimes against persons (0.3 of percentage points).

Historically, felony drug/alcohol crimes comprised the largest percentage of all post-release convictions. With the implementation of Proposition 47, drug/alcohol crimes comprised the smallest percentage of post-release felony convictions (7.1 percent) and the largest percentage of post-release misdemeanor convictions (21.7 percent). In general, all other categories of felony and misdemeanor conviction have remained fairly stable between CDCR release cohorts.

Table 2. Type of Conviction for the Fiscal Year 2013-14 and Fiscal Year 2014-15 Release Cohorts

Type of Conviction	FY 2013-14		FY 2014-15	
	Number	Percent	Number	Percent
All Felonies	8,041	52.7%	8,679	47.6%
Felony Crimes Against Persons	2,121	13.9%	2,788	15.3%
Felony Property Crimes	1,983	13.0%	2,306	12.6%
Felony Other Crimes	1,827	12.0%	2,291	12.6%
Felony Drug/Alcohol Crimes	2,110	13.8%	1,294	7.1%
All Misdemeanors	7,223	47.3%	9,556	52.4%
Misdemeanor Drug/Alcohol Crimes	2,889	18.9%	3,950	21.7%
Misdemeanor Property Crimes	1,483	9.7%	2,147	11.8%
Misdemeanor Crimes Against Persons	1,685	11.0%	2,069	11.3%
Misdemeanor Other Crimes	1,166	7.6%	1,390	7.6%
Total	15,264	100.0%	18,235	100.0%

3.3 Time to Conviction for Offenders Convicted During the Three-Year Follow-up Period

Figure 8. Three-Year Quarterly and Cumulative Rate of Conviction for the 18,235 Offenders Convicted During the Three-Year Follow-Up Period

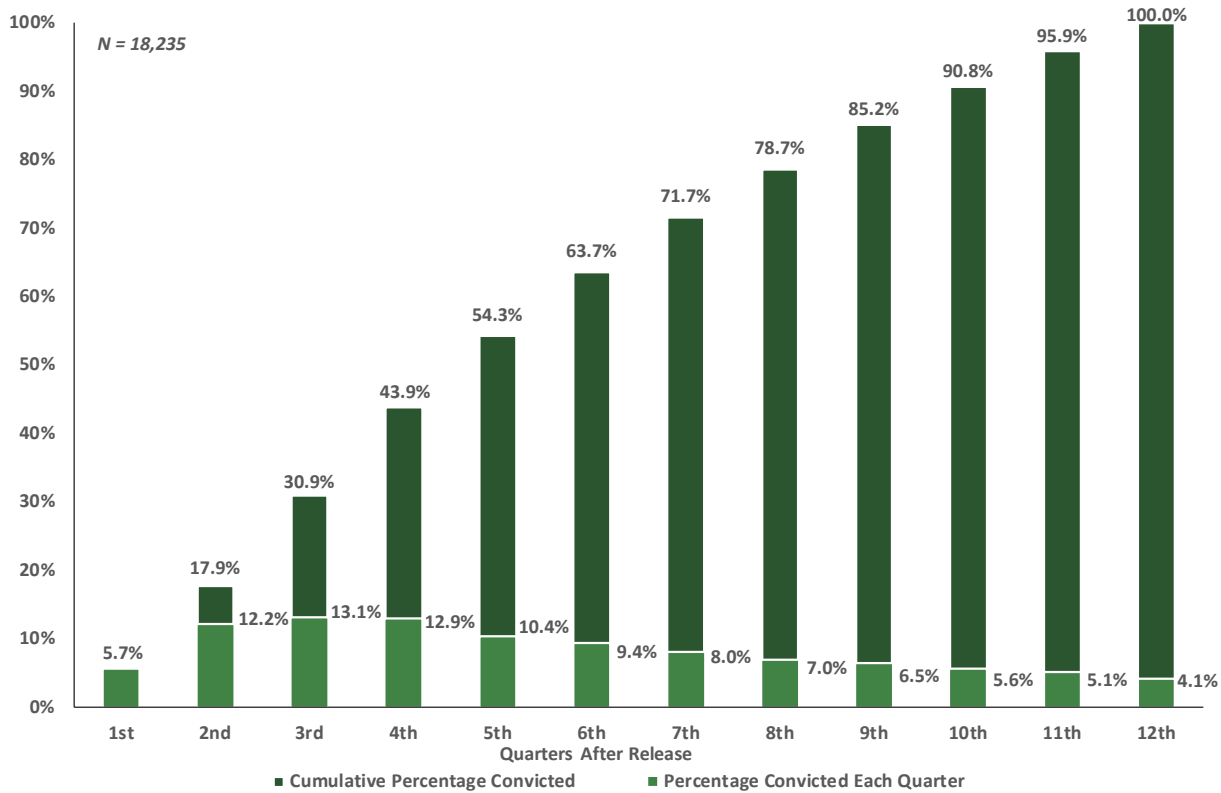


Figure 8 and Table 3 show the percentage and number of offenders who were convicted during each quarter (three-month period) of the three-year follow-up period, as well as the cumulative percentage and number of offenders convicted. Only the 18,235 offenders convicted during the three-year follow-up period are represented in this section to better understand how long offenders were in the community before recidivating. The twelfth quarter represents the final, cumulative results (i.e. 100 percent) of the 18,235 offenders that were convicted.

Of the 18,235 convicted offenders, under one half (43.9 percent or 8,003 offenders) were convicted in the first year. By year two, nearly 80 percent (78.7 percent or 14,355 offenders) were convicted and by year three, 100 percent (18,235 offenders) were convicted. The largest number of offenders (13.1 percent or 2,388 offenders) were convicted during the third quarter following their release and the fewest were convicted in the twelfth and final quarter of their release (4.1 percent or 748 offenders).

Table 3. Three-Year Quarterly and Cumulative Rate of Conviction for the 18,235 Offenders Convicted During the Three-Year Follow-Up Period

Quarters After Release	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	12th
Percentage Convicted	5.7%	12.2%	13.1%	12.9%	10.4%	9.4%	8.0%	7.0%	6.5%	5.6%	5.1%	4.1%
Cumulative Percentage	5.7%	17.9%	30.9%	43.9%	54.3%	63.7%	71.7%	78.7%	85.2%	90.8%	95.9%	100.0%
Number Convicted	1,035	2,220	2,388	2,360	1,897	1,716	1,462	1,277	1,183	1,017	932	748
Cumulative Number	1,035	3,255	5,643	8,003	9,900	11,616	13,078	14,355	15,538	16,555	17,487	18,235

4 Conviction Rates by Selected Demographics and Characteristics

4.1 Conviction Rates by Post-Release Supervision

Figure 9. Conviction Rate for the Fiscal Year 2014-15 Release Cohort by Post-Release Supervision

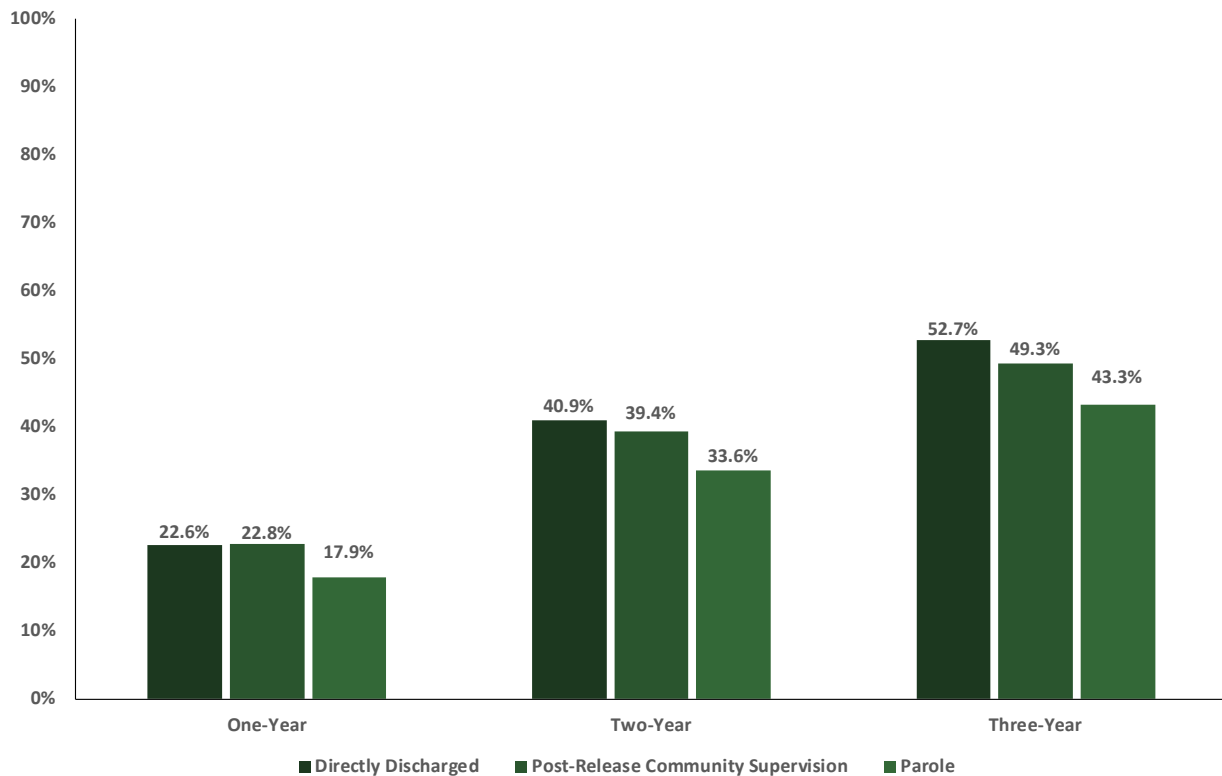


Figure 9 and Table 4 show the three-year conviction rate for direct discharges and offenders released to Post-Release Community Supervision (PRCS) or parole. Approximately half of the 39,205 offenders released in FY 2014-15 (49.9 percent or 19,571 offenders) were released to PRCS, 48.0 percent (18,830 offenders) were released to parole, and 2.1 percent (804 offenders) were directly discharged from prison. Offenders directly discharged from prison had the highest three-year conviction rate (52.7 percent or 424 offenders), followed by offenders released to PRCS (49.3 percent or 9,653 offenders), and offenders released to parole (43.3 percent or 8,158 offenders).

Historically, the three-year conviction rate for direct discharges is lower than the rates of offenders released to both PRCS and parole. The three-year conviction rate for offenders directly discharged in the previous fiscal year (FY 2013-14) was 27.6 percent, which is 25.1 percentage points lower than the rate of offenders directly discharged from prison in FY 2014-15 (52.7 percent). Some of the increase in the three-year conviction rate for offenders directly discharged from prison in FY 2014-15 may be attributed to the high concentration of drug and property offenders (who are characterized by higher recidivism rates) released as a result of Proposition 47, as discussed in Section 2.4.2. Of the 804 offenders who

were directly discharged from prison, 88.8 percent (714 offenders) were Proposition 47 releases and 11.2 percent were non-Proposition 47 releases.

With the exception of direct discharges, the three-year conviction rate for offenders released to PRCS and parole remained relatively stable when comparing the FY 2013-14 and FY 2014-15 release cohorts: offenders released to PRCS in FY 2013-14 had a rate of 50.4 percent, which was 1.1 percentage points higher than the rate of offenders released to PRCS in FY 2014-15 (49.3 percent). The three-year conviction rate for offenders released to parole in FY 2013-14 was 41.4 percent, which was 1.9 percentage points lower than the rate of offenders released to parole in FY 2014-15 (43.3 percent)

Under Realignment most non-serious and non-violent offenders, who are characterized by a higher risk to reoffend, are released to PRCS, and as a result, their three-year conviction rate tends to be higher than offenders released to parole. In general, CDCR advises against making direct comparisons between offenders released to PRCS, parole, and directly discharged from prison, as the three groups represent substantially different groups and differences in the demographics and characteristics of each group may influence the rate either upward or downward, as was demonstrated with the increased rate observed among direct discharges. Rather, offenders belonging to one group of releases may be compared to offenders in the same group although released during a different fiscal year (e.g. offenders released to parole should be compared to other groups of offenders released to parole in an earlier fiscal year).

Table 4. Conviction Rates for the Fiscal Year 2014-15 Release Cohort by Type of Release

Type of Release	Number Released	One-Year		Two-Year		Three-Year	
		Number Convicted	Conviction Rate	Number Convicted	Conviction Rate	Number Convicted	Conviction Rate
Directly Discharged	804	182	22.6%	329	40.9%	424	52.7%
Post-Release Community Supervision	19,571	4,458	22.8%	7,702	39.4%	9,653	49.3%
Parole	18,830	3,363	17.9%	6,324	33.6%	8,158	43.3%
Total	39,205	8,003	20.4%	14,355	36.6%	18,235	46.5%

4.2 Conviction Rate by Sentence Type

Figure 10. Conviction Rates by Sentence Type

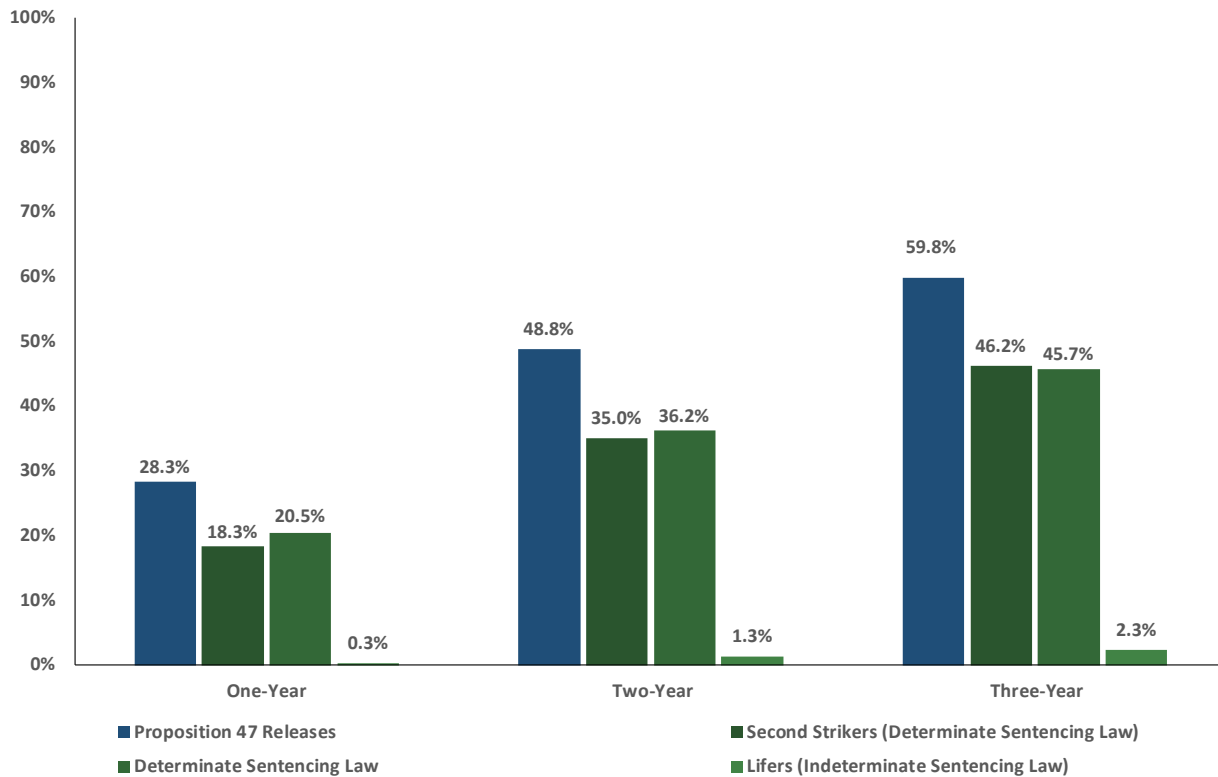


Figure 10 and Table 5 present conviction rates for offenders released under Proposition 47, as well as conviction rates by sentence type, including offenders sentenced under Determinate Sentencing Law (DSL), offenders sentenced under DSL as second strikers, and offenders sentenced under Indeterminate Sentencing Law (ISL). Most offenders sentenced in California serve a determinate term (a specified length) and are released once their sentence is complete. Generally, offenders sentenced to an indeterminate term (lifera) are released once the Board of Parole Hearings (BPH) has found them suitable for release or a court orders their release. Offenders released under Proposition 47 were sentenced to serve a CDCR felony sentence in one of the three sentence type categories (determinate, second striker, or indeterminate) prior to its passage.

Most offenders in the FY 2014-15 release cohort served a determinate term (63.5 percent or 24,888 offenders), followed by second strikers who served a determinate term (24.3 percent or 9,518 offenders), and offenders who served an indeterminate term (1.8 percent or 688 offenders). Second strikers who served a determinate term had the highest three-year conviction rate among each sentence type (46.2 percent or 4,395 offenders), followed by offenders who served a determinate term (45.7 percent or 11,366 offenders), and the 688 lifera released in FY 2014-15 (2.3 percent or 16 offenders).

Approximately ten percent of the release cohort (10.5 percent or 4,111 offenders) were released under Proposition 47 and their three-year conviction rate was 59.8 percent (2,458 offenders), which is higher than the overall three-year conviction rate of 46.5 percent (18,235 offenders) and higher than each of the sentence type categories. The higher conviction rate among Proposition 47 releases is generally due to the large concentration of drug and property offenders in this group.

Table 5. Conviction Rates by Sentence Type

Sentence Type	Number Released	One-Year		Two-Year		Three-Year	
		Number Convicted	Conviction Rate	Number Convicted	Conviction Rate	Number Convicted	Conviction Rate
Second Strikers (Determinate Sentencing Law)	9,518	1,746	18.3%	3,334	35.0%	4,395	46.2%
Determinate Sentencing Law	24,888	5,091	20.5%	9,005	36.2%	11,366	45.7%
Lifers (Indeterminate Sentencing Law)	688	2	0.3%	9	1.3%	16	2.3%
Proposition 47 Releases	4,111	1,164	28.3%	2,007	48.8%	2,458	59.8%
Total	39,205	8,003	20.4%	14,355	36.6%	18,235	46.5%

4.3 Conviction Rate for Offenders Sentenced to an Indeterminate Term (Lifers)

In FY 2014-15, 688 offenders were released from CDCR after serving an indeterminate term (lifers). The number of lifers has increased consistently with only 56 lifers released in FY 2007-08. Despite the increase in lifer releases, their three-year conviction rate remains low. Of the 514 lifers released in FY 2013-14, 16 were convicted for a three-year conviction rate of 3.1 percent. The rate further decreased (by 0.8 of a percentage point) with the FY 2014-15 release cohort with a three-year conviction rate of 2.3 percent.

Most offenders who serve an indeterminate term are released from prison when BPH finds them suitable for parole or after the court orders their release from prison. Table 6 shows the number of lifers released by BPH, as well as “Other Releases”, which are comprised of both offenders who were granted parole when BPH was restricted from considering all parole suitability factors by the court, or the court ordered their release. Of the 682 lifers released by BPH, only 2.3 percent (16 offenders) were convicted during the follow-up period. Seven of the convictions were for felony offenses and nine of the convictions were for misdemeanor offenses. None of the six offenders categorized as “Other Releases” were convicted during the three-year follow-up period.

Table 6. Type of Conviction for Offenders Released by the Board of Parole Hearings and Other Releases

	Board of Parole Hearings (BPH)		Other Releases		Total	
	Number	Percent	Number	Percent	Number	Percent
Total Released	682	100.0%	6	100.0%	688	100.0%
Type of Conviction						
Felony Crimes Against Persons	3	0.4%	0	0.0%	3	0.4%
Felony Drug/Alcohol Crimes	2	0.3%	0	0.0%	2	0.3%
Felony Other Crimes	2	0.3%	0	0.0%	2	0.3%
Misdemeanor Crimes Against Persons	3	0.4%	0	0.0%	3	0.4%
Misdemeanor Drug/Alcohol Crimes	4	0.6%	0	0.0%	4	0.6%
Misdemeanor Other Crimes	1	0.1%	0	0.0%	1	0.1%
Misdemeanor Property Crimes	1	0.1%	0	0.0%	1	0.1%
Total Convicted	16	2.3%	0	0.0%	16	2.3%

4.4 Conviction Rates by Commitment Offense Category

Figure 11. Conviction Rates by Commitment Offense Category

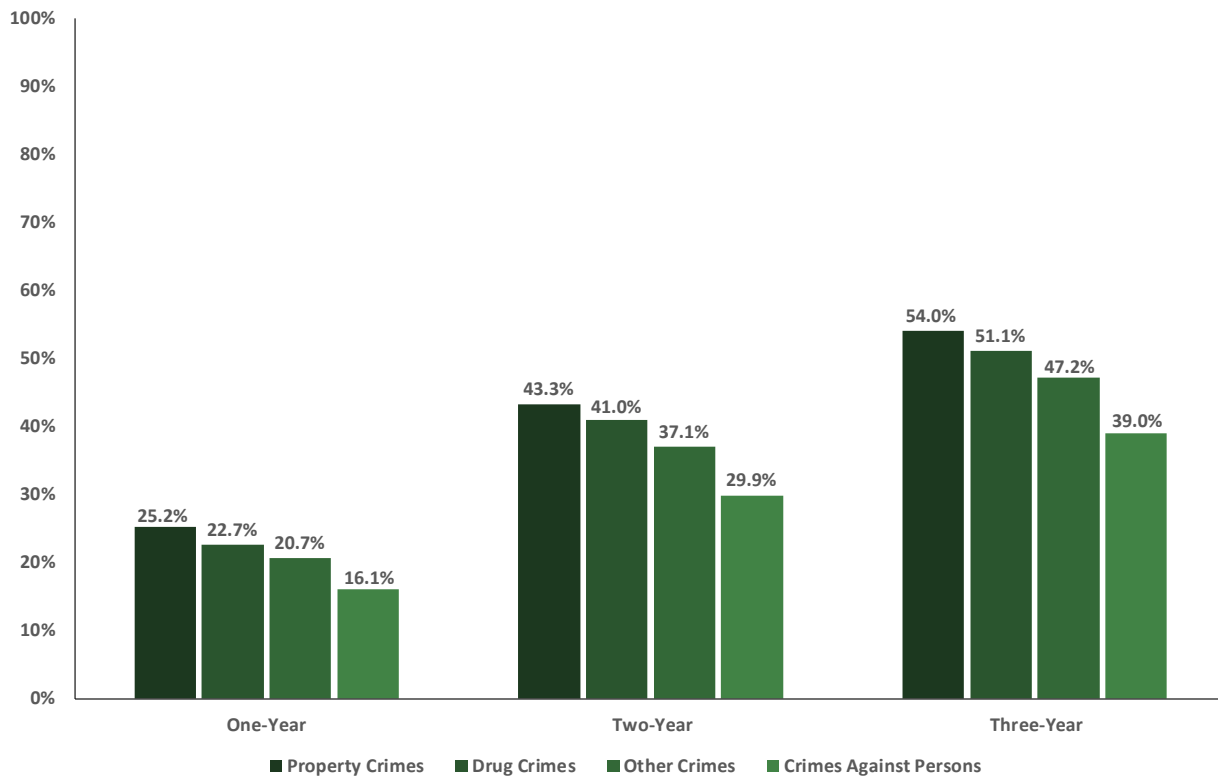


Figure 11 and Table 7 present conviction rates by commitment offense category. Each category (property crimes, drug crimes, other crimes, and crimes against persons) represents the category of offense an offender was committed to prison for prior to their release in FY 2014-15.

Offenders committed to prison for property crimes comprised 25.0 percent (9,801 offenders) of the FY 2014-15 release cohort and had the highest three-year conviction rate (54.0 percent or 5,296 offenders) among all commitment offense categories. The rate for offenders committing property crimes was followed by offenders committed to prison for drug crimes (51.1 percent or 3,918 offenders), and other crimes (47.2 percent or 3,133 offenders).⁴ Offenders committed for crimes against persons comprised the largest percentage of the release cohort (38.5 percent or 15,106 offenders) and had the lowest three-year conviction rate among all commitment offense categories at 39.0 percent (5,888 offenders).

⁴ Other crimes include arson, DUI, escape, possession of a weapon and other offenses (e.g. false imprisonment, stalking, street gang act).

Table 7. Conviction Rates by Commitment Offense Category

Commitment Offense Category	Number Released	One-Year		Two-Year		Three-Year	
		Number Convicted	Conviction Rate	Number Convicted	Conviction Rate	Number Convicted	Conviction Rate
Property Crimes	9,801	2,470	25.2%	4,239	43.3%	5,296	54.0%
Drug Crimes	7,661	1,736	22.7%	3,139	41.0%	3,918	51.1%
Other Crimes	6,637	1,372	20.7%	2,460	37.1%	3,133	47.2%
Crimes Against Persons	15,106	2,425	16.1%	4,517	29.9%	5,888	39.0%
Total	39,205	8,003	20.4%	14,355	36.6%	18,235	46.5%

4.5 Conviction Rates by Serious and Violent Offenses

Figure 12. Conviction Rates for Offenders with a Serious or Violent Offense

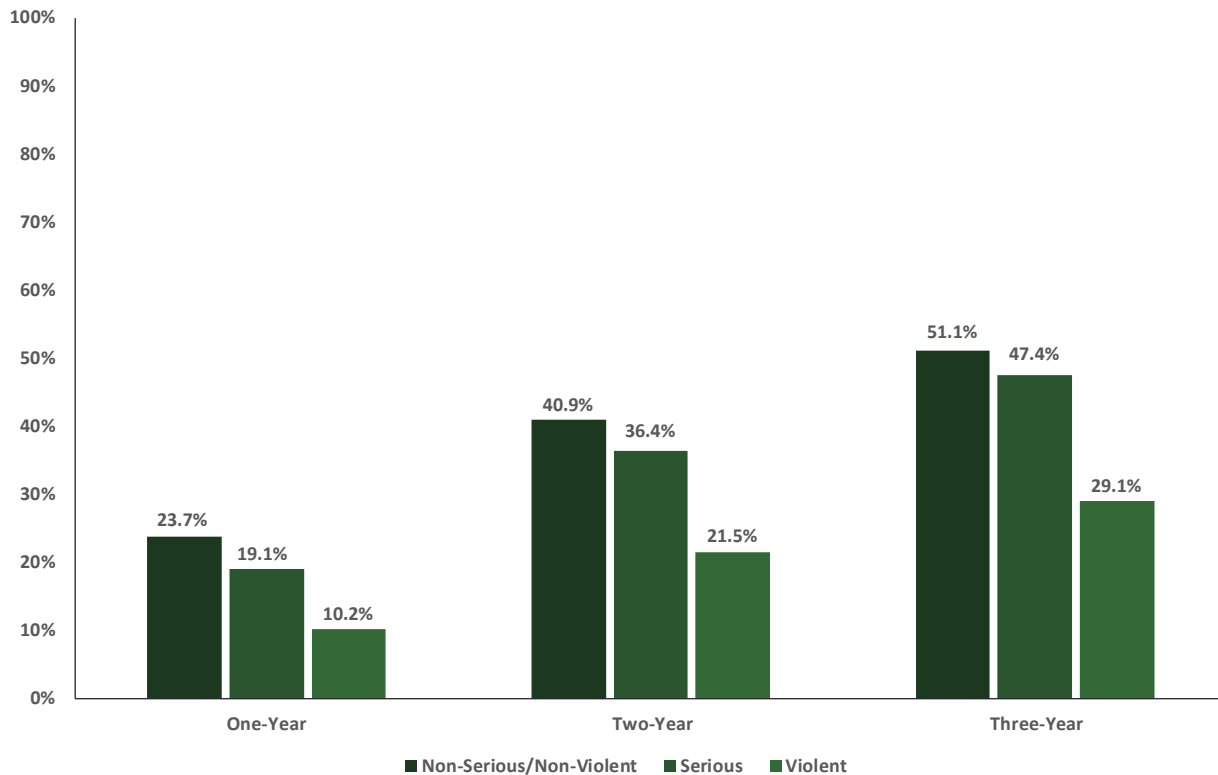


Figure 12 and Table 8 present conviction rates for offenders in the FY 2014-15 release cohort who were committed to prison for a serious offense, a violent offense, or a non-serious/non-violent offense. Most offenders in the release cohort did not have a serious or violent offense (62.0 percent or 24,313 offenders). Slightly over 20 percent (20.6 percent or 8,076 offenders) had a serious offense and 17.4 percent (6,816 offenders) had a violent offense.

Offenders without a serious or violent offense had the highest three-year conviction rate among the three categories at 51.1 percent (12,421 offenders). Offenders with a serious offense had a rate of 47.4 percent (3,832 offenders) and offenders with a violent offense had a rate of 29.1 percent (1,982 offenders).

Table 8. Conviction Rates for Offenders with a Serious or Violent Offense

Serious/Violent Offense	Number Released	One-Year		Two-Year		Three-Year	
		Number Convicted	Conviction Rate	Number Convicted	Conviction Rate	Number Convicted	Conviction Rate
Serious	8,076	1,540	19.1%	2,938	36.4%	3,832	47.4%
Violent	6,816	692	10.2%	1,463	21.5%	1,982	29.1%
Non-Serious/Non-Violent	24,313	5,771	23.7%	9,954	40.9%	12,421	51.1%
Total	39,205	8,003	20.4%	14,355	36.6%	18,235	46.5%

4.6 Conviction Rate by Risk of Conviction

Figure 13. Conviction Rates by Risk of Conviction

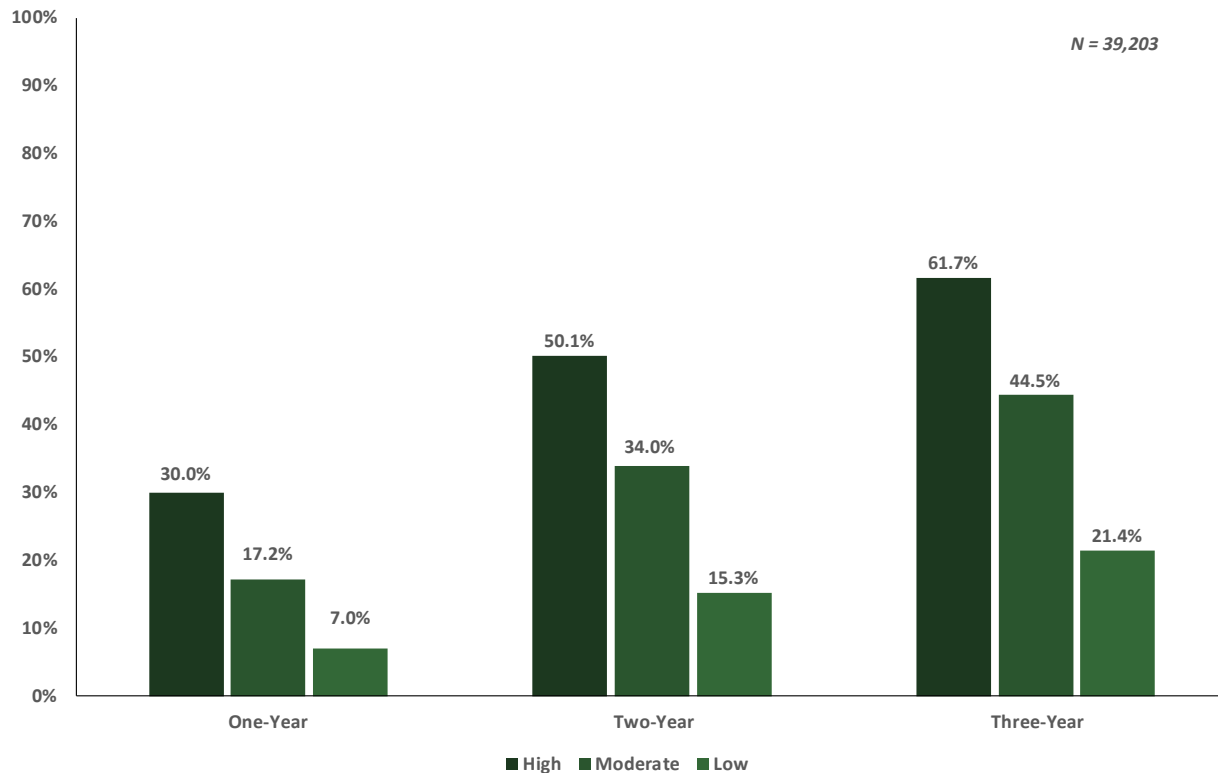


Figure 13 and Table 9 show conviction rates by California Static Risk Assessment (CSRA) score. The CSRA is a tool used to calculate an offender’s risk of conviction for a new offense after release from prison. Based on criminal history and demographics, including age, offenders are designated as having a low, moderate, or high risk of being convicted of a new offense. Slightly under half of the release cohort (44.9 percent or 17,619 offenders) had a score of high risk, followed by moderate risk (30.3 percent or 11,882 offenders), and low risk (24.7 percent or 9,702 offenders). At the time of their release, a CSRA score had not been calculated for two offenders.

The three-year conviction rates are consistent with CSRA scoring (high, medium, and low risk): offenders with a score of high risk had a three-year conviction rate of 61.7 percent (10,868 offenders), followed by moderate risk offenders (44.5 percent or 5,288 offenders), and low risk (21.4 percent or 2,079 offenders). Of the two offenders without a CSRA score, neither were convicted during the three-year follow-up period.

Table 9. Conviction Rates by Risk of Conviction

CSRA Score	Number Released	One-Year		Two-Year		Three-Year	
		Number Convicted	Conviction Rate	Number Convicted	Conviction Rate	Number Convicted	Conviction Rate
High	17,619	5,283	30.0%	8,830	50.1%	10,868	61.7%
Moderate	11,882	2,043	17.2%	4,041	34.0%	5,288	44.5%
Low	9,702	677	7.0%	1,484	15.3%	2,079	21.4%
N/A	2	0	N/A	0	N/A	0	N/A
Total	39,205	8,003	20.4%	14,355	36.6%	18,235	46.5%

4.7 Conviction Rates by In-Prison and Community-Based Substance Use Disorder Treatment

Figure 14. Three-Year Conviction Rate by Substance Use Disorder Treatment Participation

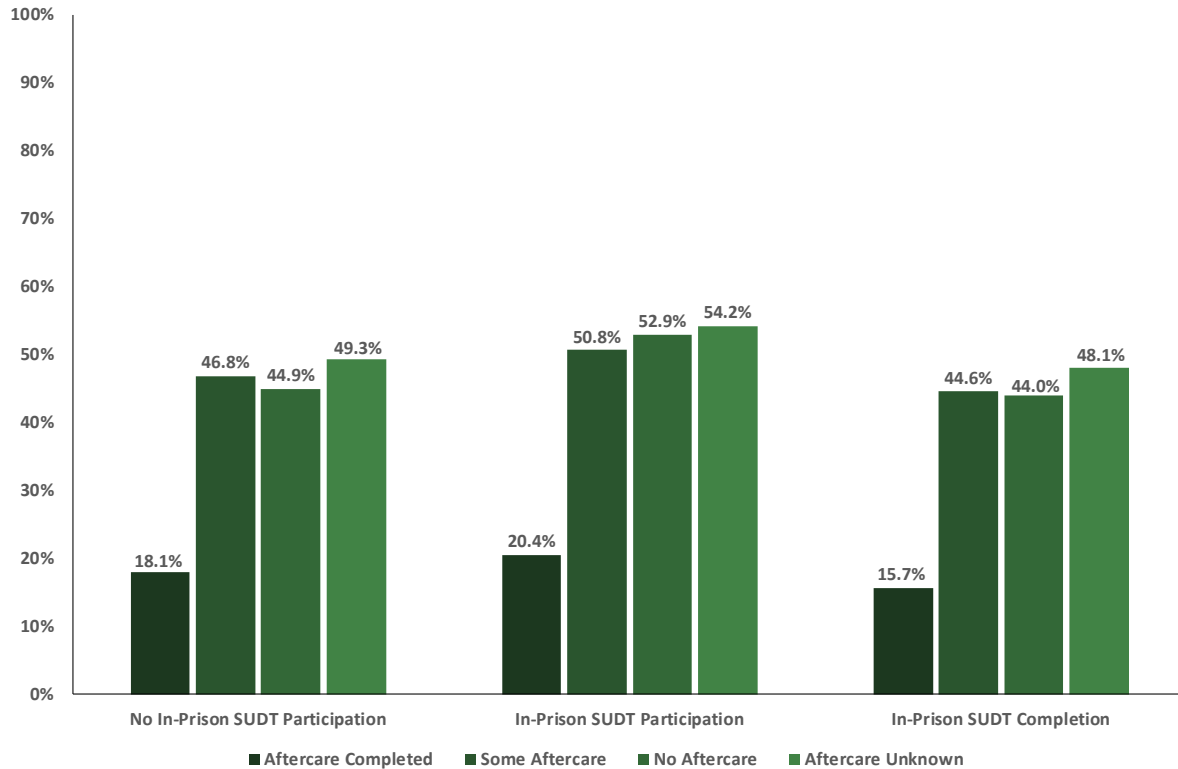


Figure 14 and Table 10 present conviction rates by in-prison Substance Use Disorder Treatment (SUDT) and aftercare programs, which provide post-release SUDT services in the community. Aftercare program data are only provided for offenders released to parole. Although offenders released to PRCS or directly discharged from CDCR may receive aftercare services after their release from CDCR, those services are not captured by CDCR’s data system and are not reflected in the data presented in this report. Please note that offenders in the FY 2014-15 release cohort were released prior to implementation of the ISUDT program, which includes comprehensive enhancements to CDCR’s SUDT programs.

With regard to in-prison and community-based SUDT, offenders are categorized in three ways: no in-prison SUDT, some in-prison SUDT participation, and in-prison SUDT completion. Depending on their release to either parole or PRCS offenders are further categorized as receiving no aftercare, some aftercare, or completing aftercare (offenders released to parole), or the status of aftercare is unknown (offenders released to PRCS). Across each of the three in-prison SUDT categories (no SUDT, participation, or completion) offenders who completed in-prison SUDT had the lowest three-year conviction rates overall, regardless of aftercare. Offenders who completed in-prison SUDT (regardless of aftercare) had a three-year conviction rate of 43.8 percent (1,065 offenders), followed by offenders without in-prison SUDT with a rate of 46.3 percent (15,843 offenders), and offenders with in-prison

SUDT participation with a rate of 51.6 percent (1,327 offenders). The three-year conviction rate for the 204 offenders who completed in-prison SUDT and aftercare (15.7 percent or 32 offenders) is the lowest across each combination of in-prison SUDT and aftercare as presented in Table 10. Offenders with no in-prison SUDT who completed aftercare and offenders with some in-prison SUDT who completed aftercare are also characterized by lower recidivism rates (18.1 percent and 20.4 percent, respectively).

Rates for parolees who received no aftercare or some aftercare are fairly consistent across the three categories of in-prison SUDT participation (no SUDT, participation, and completion). Rates range from a high of 52.9 percent among offenders who received some in-prison SUDT and no aftercare and a low of 44.0 percent among offenders who completed in-prison SUDT and received no aftercare. Overall, recidivism rates are lower for parolees who either complete in-prison SUDT or aftercare and are the lowest when offenders complete both in-prison SUDT and aftercare.

Rates for PRCS offenders and direct discharges, whose aftercare status is unknown, follow a similar pattern to those released to parole in terms of in-prison SUDT. Offenders who completed in-prison SUDT had the lowest three-year conviction rate among PRCS offenders (48.1 percent or 620 offenders), followed by no in-prison SUDT (49.3 percent or 8,695 offenders), and offenders who received some in-prison SUDT (54.2 percent or 729 offenders).

Table 10. Conviction Rates by Substance Use Disorder Treatment Participation

Substance Use Disorder Treatment Participation	Number Released	One-Year		Two-Year		Three-Year	
		Number Convicted	Conviction Rate	Number Convicted	Conviction Rate	Number Convicted	Conviction Rate
No In-Prison SUDT Participation							
No Aftercare (Parole)	12,655	2,565	20.3%	4,565	36.1%	5,688	44.9%
Some Aftercare (Parole)	2,611	385	14.7%	869	33.3%	1,223	46.8%
Completed Aftercare (Parole)	1,313	28	2.1%	132	10.1%	237	18.1%
Aftercare Unknown (PRCS)	17,627	4,033	22.9%	6,949	39.4%	8,695	49.3%
Subtotal	34,206	7,011	20.5%	12,515	36.6%	15,843	46.3%
In-Prison SUDT Participation							
No Aftercare (Parole)	841	202	24.0%	349	41.5%	445	52.9%
Some Aftercare (Parole)	246	40	16.3%	91	37.0%	125	50.8%
Completed Aftercare (Parole)	137	7	5.1%	18	13.1%	28	20.4%
Aftercare Unknown (PRCS)	1,346	329	24.4%	579	43.0%	729	54.2%
Subtotal	2,570	578	22.5%	1,037	40.4%	1,327	51.6%
In-Prison SUDT Completion							
No Aftercare (Parole)	696	112	16.1%	233	33.5%	306	44.0%
Some Aftercare (Parole)	240	33	13.8%	75	31.3%	107	44.6%
Completed Aftercare (Parole)	204	1	0.5%	15	7.4%	32	15.7%
Aftercare Unknown (PRCS)	1,289	268	20.8%	480	37.2%	620	48.1%
Subtotal	2,429	414	17.0%	803	33.1%	1,065	43.8%
Total	39,205	8,003	20.4%	14,355	36.6%	18,235	46.5%

4.8 Conviction Rate by Participation in Substance Abuse Disorder Treatment Programming

Table 11 presents conviction rates for offenders released to parole and PRCS by in-prison SUDT participation and treatment need, which is based on the Correctional Offender Management for Profiling Alternative Sanctions (COMPAS) tool. The COMPAS is used to inform decisions regarding placement, supervision and case management. The needs assessment categorizes offenders as having no need, a probable need, or a highly probable need for services and treatment in areas such as substance use, criminal thinking, and education. It should be noted that rates provided in Table 11 are not provided by participation in aftercare and that the status of aftercare treatment for offenders released to PRCS is unknown. Please note that offenders in the FY 2014-15 release cohort were released prior to implementation of the ISUDT program, which includes comprehensive enhancements to CDCR's SUDT programs.

Of the 20,130 offenders assessed with the COMPAS and shown to have a treatment need, 8.7 percent (1,752 offenders) received some in-prison SUDT and 7.7 percent (1,555 offenders) completed SUDT. Offenders who completed treatment, regardless of their release to parole or PRCS, had a lower three-year conviction rate than offenders who only participated in treatment or did not receive in-prison SUDT treatment. The rate for parolees who completed in-prison SUDT and had a treatment need was 42.9 percent (270 offenders) and the rate for PRCS offenders was 40.0 percent (370 offenders). Offenders with a treatment need who did not receive in-prison SUDT had higher three-year conviction rates: 47.8 percent (3,662 offenders) for those released to parole and 42.7 percent (3,913 offenders) for those released to PRCS. Offenders with some in-prison SUDT had the highest three-year conviction rates for offenders with a treatment need (46.6 percent or 472 offenders for those released to PRCS and 51.7 percent or 382 offenders for released to parole).

Of the 19,075 offenders without a SUDT treatment need or a COMPAS assessment, 5,692 offenders did not have a COMPAS assessment and 13,383 offenders did not show a need for SUDT treatment. Offenders released to parole who completed in-prison SUDT had the lowest three-year conviction rate (34.4 percent or 173 offenders) among offenders without a COMPAS assessment or offenders without a treatment need. This rate was followed by offenders released to parole that did not receive in-prison SUDT (39.2 percent or 3,457 offenders), and offenders released to parole that received some in-prison SUDT (45.3 percent or 214 offenders). With regard to offenders without a treatment need and released to PRCS or directly discharged from CDCR, offenders with no in-prison SUDT had the lowest three-year conviction rate (56.2 percent or 4,811 offenders), followed by offenders who completed SUDT (67.9 percent or 252 offenders), and offenders with some in-prison SUDT (74.9 percent or 259 offenders).

Table 11. Conviction Rates by Substance Use Disorder Treatment Participation and Substance Use Treatment Need

Substance Use Disorder Treatment Participation and Need	Number Released	One-Year		Two-Year		Three-Year	
		Number Convicted	Conviction Rate	Number Convicted	Conviction Rate	Number Convicted	Conviction Rate
Had SUDT Need (as indicated by the COMPAS)							
No In-Prison SUDT							
Released to Parole	7,664	1,609	21.0%	2,863	37.4%	3,662	47.8%
Released to PRCS/Discharged	9,159	1,544	16.9%	2,858	31.2%	3,913	42.7%
In-Prison SUDT Participation							
Released to Parole	739	153	20.7%	288	39.0%	382	51.7%
Released to PRCS/Discharged	1,013	183	18.1%	356	35.1%	472	46.6%
In-Prison SUDT Completion							
Released to Parole	629	93	14.8%	201	32.0%	270	42.9%
Released to PRCS/Discharged	926	133	14.4%	255	27.5%	370	40.0%
Subtotal	20,130	3,715	18.5%	6,821	33.9%	9,069	45.1%
No SUDT Need/No Assessment							
No In-Prison SUDT							
Released to Parole	8,823	1,360	15.4%	2,682	30.4%	3,457	39.2%
Released to PRCS/Discharged	8,560	2,498	29.2%	4,112	48.0%	4,811	56.2%
In-Prison SUDT Participation							
Released to Parole	472	95	20.1%	168	35.6%	214	45.3%
Released to PRCS/Discharged	346	147	42.5%	225	65.0%	259	74.9%
In-Prison SUDT Completion							
Released to Parole	503	53	10.5%	122	24.3%	173	34.4%
Released to PRCS/Discharged	371	135	36.4%	225	60.6%	252	67.9%
Subtotal	19,075	4,288	22.5%	7,534	39.5%	9,166	48.1%
Total	39,205	8,003	20.4%	14,355	36.6%	18,235	46.5%

4.9 Conviction Rates by Substance Use Disorder Treatment and Treatment Need (Offenders Released to Parole Only)

Table 12 shows conviction rates for the 9,032 offenders released to parole with a SUDT treatment need, as identified by the COMPAS. Rates are provided by in-prison SUDT and aftercare participation. Data do not include offenders released to PRCS (whose aftercare status is unknown), offenders released to parole that did not receive a COMPAS assessment, or offenders released to parole without a treatment need, as indicated by the COMPAS.

Offenders released to parole with an identified treatment need had the lowest three-year conviction rate when they completed both in-prison SUDT and aftercare (18.5 percent or 20 offenders). This rate was followed by the rate of offenders released to parole who received no in-prison SUDT, but completed aftercare (20.0 percent or 129 offenders), and offenders who received some in-prison SUDT and completed aftercare (22.5 percent or 18 offenders).

For offenders released to parole with an identified treatment need, rates were highest among offenders who received some in-prison SUDT and some aftercare (56.8 percent or 83 offenders), followed by offenders with some in-prison SUDT and no aftercare (54.8 percent or 281 offenders), and offenders with no in-prison SUDT and some aftercare (51.2 percent or 672 offenders).

Overall, the 629 offenders released to parole with an identified treatment need who completed in-prison SUDT (regardless of aftercare) had the lowest three-year conviction rate (42.9 percent or 270 offenders), followed by offenders with no in-prison SUDT, regardless of aftercare (47.8 percent or 3,662 offenders). The highest three-year conviction rate (51.7 percent or 382 offenders) was observed for offenders released to parole with an identified treatment need that only received some in-prison SUDT (regardless of aftercare).

Table 12. Conviction Rates for Offenders Released to Parole with a Substance Abuse Treatment Need by Substance Use Disorder Treatment Participation

Substance Use Disorder Treatment Participation and Need (Parole Only)	Number Released	One-Year		Two-Year		Three-Year	
		Number Convicted	Conviction Rate	Number Convicted	Conviction Rate	Number Convicted	Conviction Rate
No In-Prison SUDT Participation							
No Aftercare	5,705	1,363	23.9%	2,309	40.5%	2,861	50.1%
Some Aftercare	1,313	231	17.6%	484	36.9%	672	51.2%
Completed Aftercare	646	15	2.3%	70	10.8%	129	20.0%
Subtotal	7,664	1,609	21.0%	2,863	37.4%	3,662	47.8%
In-Prison SUDT Participation							
No Aftercare	513	122	23.8%	217	42.3%	281	54.8%
Some Aftercare	146	29	19.9%	60	41.1%	83	56.8%
Completed Aftercare	80	2	2.5%	11	13.8%	18	22.5%
Subtotal	739	153	20.7%	288	39.0%	382	51.7%
In-Prison SUDT Completion							
No Aftercare	366	71	19.4%	142	38.8%	179	48.9%
Some Aftercare	155	21	13.5%	48	31.0%	71	45.8%
Completed Aftercare	108	1	0.9%	11	10.2%	20	18.5%
Subtotal	629	93	14.8%	201	32.0%	270	42.9%
Total	9,032	1,855	20.5%	3,352	37.1%	4,314	47.8%

5 Primary and Supplemental Measures of Recidivism Over Time

5.1 Arrest, Conviction, and Return-to-Prison Rates Over Time

The following tables and figures present supplemental recidivism measures (arrests and returns to prison), as well as CDCR's primary measure of recidivism (convictions), in one-, two-, and three-year intervals, when available, for adult offenders released from CDCR adult institutions between FY 2002-03 and 2016-17. One-year rates are provided for offenders released from CDCR in FY 2002-03 through FY 2016-17 and provide the most years of comparative data.⁵ Two-year rates are provided for offenders released from CDCR between FY 2002-03 through 2015-16 and three-year rates are provided for offenders released between FY 2002-03 and 2014-15.⁶ Although three-year recidivism rates provide the most comprehensive picture of reoffending among CDCR offenders, one- and two-year rates present the most recent data available and offer insight into trends associated with the three-year recidivism rates of future cohorts.

Arrests

Following 10 years of relative stability, the three-year arrest rate saw an 8.6 percentage point decline (from 75.3 percent to 66.7 percent) between the FY 2011-12 and 2012-13 release cohorts. Following this decline, the three-year arrest rate has seen two small increases: the FY 2013-14 release cohort's three-year arrest rate was 68.6 percent and the FY 2014-15 release cohort's three-year arrest rate was 69.5 percent, which represent increases of 1.9 percentage points and 0.9 percentage points, respectively. Despite recent increases, the three-year arrest rate stands at much lower levels than when CDCR first began reporting with the FY 2002-03 release cohort. Prior to the 8.6 percentage point decline that occurred between the FY 2011-12 and 2012-13 release cohorts, the three-year arrest rate ranged from a high of 77.2 percent with the FY 2005-06 release cohort and a low of 74.6 percent with the FY 2009-10 release cohort.

Convictions

In general, the three-year conviction rate has remained relatively stable over the last 13 cohorts of releases (FY 2002-03 through 2014-15), although more pronounced fluctuations have occurred since the release of the FY 2011-12 release cohort when the rate peaked at 54.3 percent. Following the FY 2011-12 release cohort's three-year conviction rate of 54.3 percent, the three-year conviction rate decreased 8.2 percentage points reaching 46.1 percent with the FY 2012-13 release cohort, which was the largest decrease observed since CDCR began reporting. The rate was stable for the following two releases of cohorts: the FY 2013-14 release cohort had a three-year conviction rate of 46.1 percent and the FY

⁵ Return-to-prison data were extracted in February 2019 and arrest and conviction data were extracted in July 2019 to minimize the effects of any lag time of data entry into the State's system.

⁶ Supplemental recidivism rates are "frozen" at three years, meaning the three-year follow-up period is complete and no further analyses are performed. One-year and two-year rates may fluctuate slightly, as the data used in subsequent reporting years will likely increase, particularly for arrests and convictions, since these data are routinely updated in accordance with criminal justice processing.

2014-15 release cohort had a rate of 46.5 percent. Prior to the recent fluctuations, the three-year conviction rate was very stable, ranging from a low of 47.7 percent with the FY 2002-03 release cohort and a high of 51.5 percent with the FY 2006-07 release cohort. Of the 13 release cohorts reported, the FY 2011-12 release cohort had the highest three-year conviction rate (54.3 percent) and the FY 2012-13 and 2013-14 release cohorts had the lowest conviction rate (46.1 percent).

Returns to Prison

Of the three measures of recidivism (arrests, convictions, and returns to prison), the three-year return-to-prison rate experienced the most substantial changes since reporting began with the FY 2002-03 release cohort. Most of the change is directly attributed to decreases in returns to prison for parole violations, as a result of Realignment. Between the FY 2002-03 and 2007-08 release cohorts, the three-year return-to-prison rate was stable, reaching a high of 67.5 percent with the FY 2005-06 release cohort and a low of 63.7 percent with the FY 2007-08 release cohort, which was the last pre-Realignment cohort. From this point, the three-year return-to-prison rate began a series of decreases, reaching 22.2 percent with the FY 2012-13 release cohort. Following this decline, the three-year conviction rate saw two small increases: reaching 23.1 percent with the FY 2013-14 release cohort and 24.1 percent with the FY 2014-15 release cohort.

Figure 15. One-Year Arrest, Conviction, and Return-to-Prison Rates by Fiscal Year

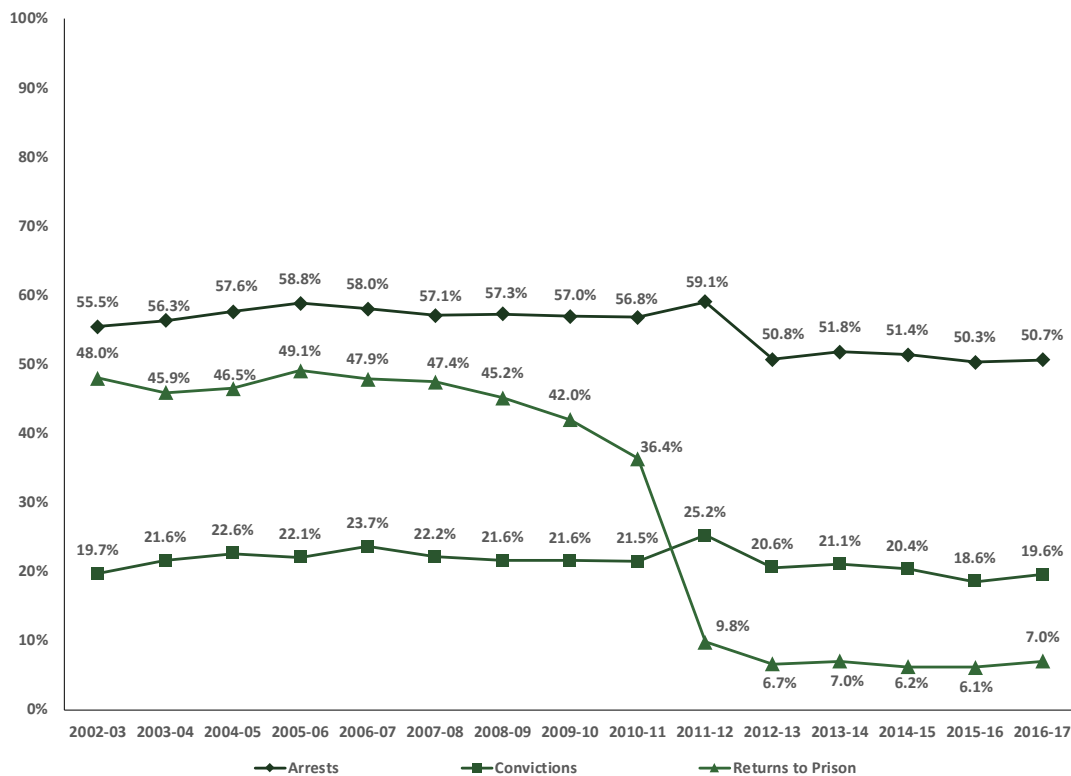


Figure 16. Two-Year Arrest, Conviction, and Return-to-Prison Rates by Fiscal Year

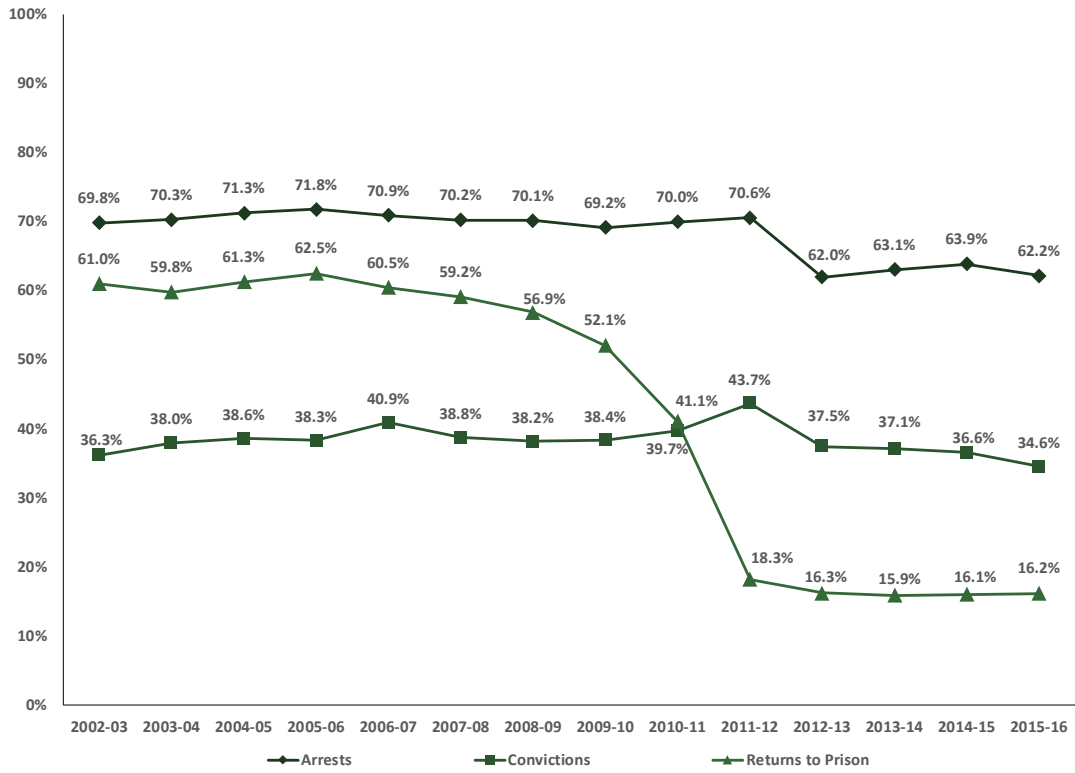
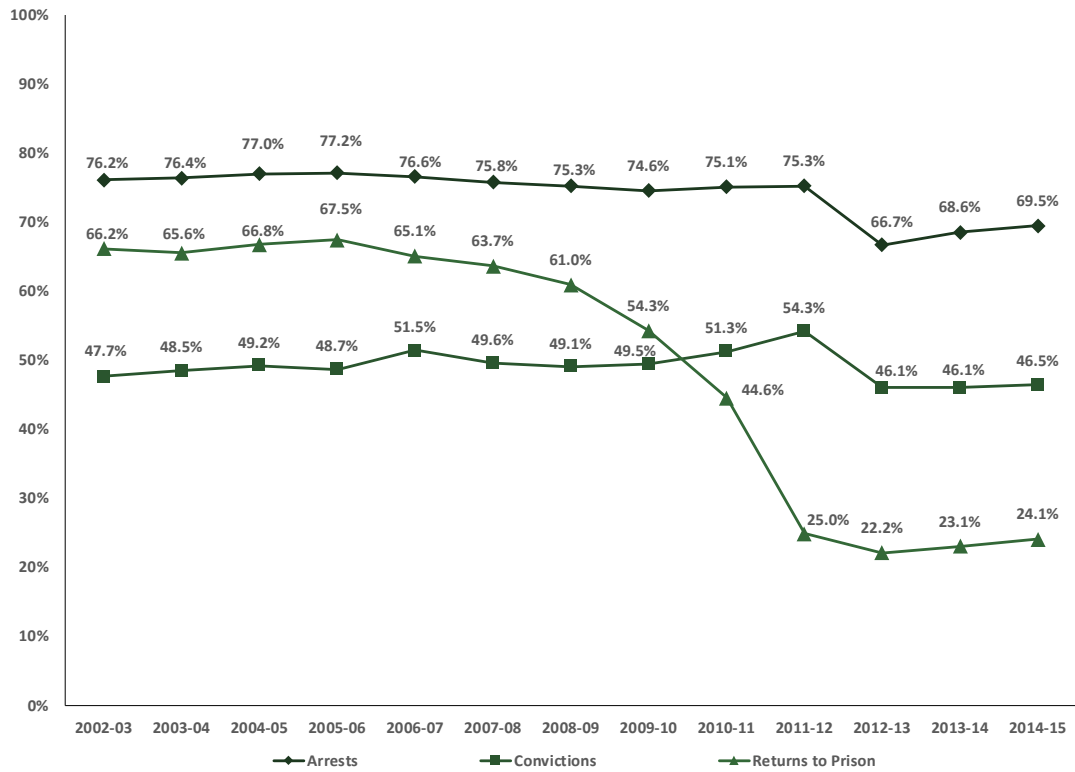


Figure 17. Three-Year Arrest, Conviction, and Return-to-Prison Rates by Fiscal Year



Primary and Supplemental Recidivism Rates: Arrests, Convictions, and Returns to Prison
(continued)

Table 13. Arrest Rates for the Fiscal Year 2002-03 through Fiscal Year 2016-17 Release Cohorts

Fiscal Year	Number Released	One-Year		Two-Year		Three-Year	
		Number Arrested	Arrest Rate	Number Arrested	Arrest Rate	Number Arrested	Arrest Rate
2002-03	99,482	55,204	55.5%	69,449	69.8%	75,765	76.2%
2003-04	99,635	56,127	56.3%	70,070	70.3%	76,135	76.4%
2004-05	103,647	59,703	57.6%	73,881	71.3%	79,819	77.0%
2005-06	105,974	62,331	58.8%	76,079	71.8%	81,786	77.2%
2006-07	112,665	65,369	58.0%	79,893	70.9%	86,330	76.6%
2007-08	113,888	64,981	57.1%	79,978	70.2%	86,309	75.8%
2008-09	110,356	63,193	57.3%	77,412	70.1%	83,080	75.3%
2009-10	103,867	59,159	57.0%	71,837	69.2%	77,495	74.6%
2010-11	94,888	53,911	56.8%	66,399	70.0%	71,284	75.1%
2011-12	74,875	44,236	59.1%	52,829	70.6%	56,371	75.3%
2012-13	35,790	18,165	50.8%	22,184	62.0%	23,885	66.7%
2013-14	33,113	17,153	51.8%	20,893	63.1%	22,700	68.6%
2014-15	39,205	20,142	51.4%	25,047	63.9%	27,239	69.5%
2015-16	33,802	17,011	50.3%	21,017	62.2%	N/A	N/A
2016-17	31,924	16,174	50.7%	N/A	N/A	N/A	N/A

Table 14. Conviction Rates for the Fiscal Year 2002-03 through Fiscal Year 2016-17 Release Cohorts

Fiscal Year	Number Released	One-Year		Two-Year		Three-Year	
		Number Convicted	Conviction Rate	Number Convicted	Conviction Rate	Number Convicted	Conviction Rate
2002-03	99,482	19,643	19.7%	36,087	36.3%	47,443	47.7%
2003-04	99,635	21,509	21.6%	37,881	38.0%	48,350	48.5%
2004-05	103,647	23,464	22.6%	40,022	38.6%	51,026	49.2%
2005-06	105,974	23,428	22.1%	40,635	38.3%	51,650	48.7%
2006-07	112,665	26,657	23.7%	46,106	40.9%	57,980	51.5%
2007-08	113,888	25,233	22.2%	44,164	38.8%	56,525	49.6%
2008-09	110,356	23,831	21.6%	42,181	38.2%	54,175	49.1%
2009-10	103,867	22,410	21.6%	39,908	38.4%	51,456	49.5%
2010-11	94,888	20,403	21.5%	37,710	39.7%	48,689	51.3%
2011-12	74,875	18,894	25.2%	32,746	43.7%	40,644	54.3%
2012-13	35,790	7,363	20.6%	13,423	37.5%	16,496	46.1%
2013-14	33,113	6,990	21.1%	12,295	37.1%	15,264	46.1%
2014-15	39,205	8,003	20.4%	14,355	36.6%	18,235	46.5%
2015-16	33,802	6,282	18.6%	11,679	34.6%	N/A	N/A
2016-17	31,924	6,253	19.6%	N/A	N/A	N/A	N/A

Table 15. Return-to-Prison Rates for the Fiscal Year 2002-03 through Fiscal Year 2016-17 Release Cohorts

Fiscal Year	Number Released	One-Year		Two-Year		Three-Year	
		Number Returned	Return Rate	Number Returned	Return Rate	Number Returned	Return Rate
2002-03	103,934	49,924	48.0%	63,415	61.0%	68,810	66.2%
2003-04	103,296	47,423	45.9%	61,788	59.8%	67,734	65.6%
2004-05	106,920	49,761	46.5%	65,559	61.3%	71,444	66.8%
2005-06	108,662	53,330	49.1%	67,958	62.5%	73,350	67.5%
2006-07	115,254	55,167	47.9%	69,691	60.5%	75,018	65.1%
2007-08	116,015	55,049	47.4%	68,643	59.2%	73,885	63.7%
2008-09	112,877	51,010	45.2%	64,244	56.9%	68,803	61.0%
2009-10	104,981	44,104	42.0%	54,713	52.1%	57,022	54.3%
2010-11	95,690	34,810	36.4%	39,331	41.1%	42,661	44.6%
2011-12	75,733	7,456	9.8%	13,843	18.3%	18,908	25.0%
2012-13	36,527	2,435	6.7%	5,937	16.3%	8,110	22.2%
2013-14	33,449	2,348	7.0%	5,334	15.9%	7,726	23.1%
2014-15	39,399	2,447	6.2%	6,336	16.1%	9,505	24.1%
2015-16	33,921	2,086	6.1%	5,505	16.2%	N/A	N/A
2016-17	32,129	2,257	7.0%	N/A	N/A	N/A	N/A

5.2 Type of Arrest for the Fiscal Year 2014-15 Release Cohort

Table 16 shows the type of arrest for the FY 2013-14 and 2014-15 release cohorts. Data represent the most serious offense in the first arrest cycle. At the time of this report, the type of arrest for some offenders was unknown.

Table 16. Type of Arrest for Offenders Released in Fiscal Year 2013-14 and Fiscal Year 2014-15

Type of Arrest	FY 2013-14		FY 2014-15	
	Number	Percent	Number	Percent
No Arrest	10,413	31.4%	11,966	30.5%
All Felonies	8,425	25.4%	9,066	23.1%
Felony Crimes Against Persons	2,464	7.4%	3,077	7.8%
Felony Property Crimes	2,017	6.1%	2,368	6.0%
Felony Drug/Alcohol Crimes	2,530	7.6%	1,805	4.6%
Felony Other Crimes	1,414	4.3%	1,816	4.6%
All Misdemeanors	5,201	15.7%	7,816	19.9%
Misdemeanor Drug/Alcohol Crimes	2,655	8.0%	4,204	10.7%
Misdemeanor Crimes Against Persons	1,236	3.7%	1,567	4.0%
Misdemeanor Property Crimes	910	2.7%	1,526	3.9%
Misdemeanor Other Crimes	400	1.2%	519	1.3%
Supervision Violations	7,235	21.8%	8,187	20.9%
Unknown	1,839	5.6%	2,170	5.5%
Total	33,113	100.0%	39,205	100.0%

Less than one-third (30.5 percent or 11,966 offenders) of the FY 2014-15 release cohort completed the three-year follow-up period without an arrest. The percentage of offenders with no arrests in the FY 2014-15 release cohort (30.5 percent) decreased slightly (0.9 of a percentage point) when compared to the percentage of offenders with no arrests in the FY 2013-14 release cohort (31.4 percent or 10,413 offenders). Less than a quarter of the FY 2014-15 release cohort (23.1 percent or 9,066 offenders) were arrested for felony crimes and 19.9 percent (7,816 offenders) were arrested for misdemeanors. The percentage of felony arrests decreased (from 25.4 percent to 23.1 percent) when comparing the FY 2013-14 and 2014-15 release cohorts, while misdemeanor crimes increased slightly (from 15.7 percent to 19.9 percent). Arrests for supervision violations remained stable between the two release cohorts with 21.8 percent of the FY 2013-14 release cohort and 20.9 percent in the FY 2014-15 release cohort arrested for supervision violations. The percentage of arrests that were unknown were also similar: 5.6 percent of arrests were unknown for the FY 2013-14 release cohort and 5.5 percent were unknown for the FY 2014-15 release cohort.

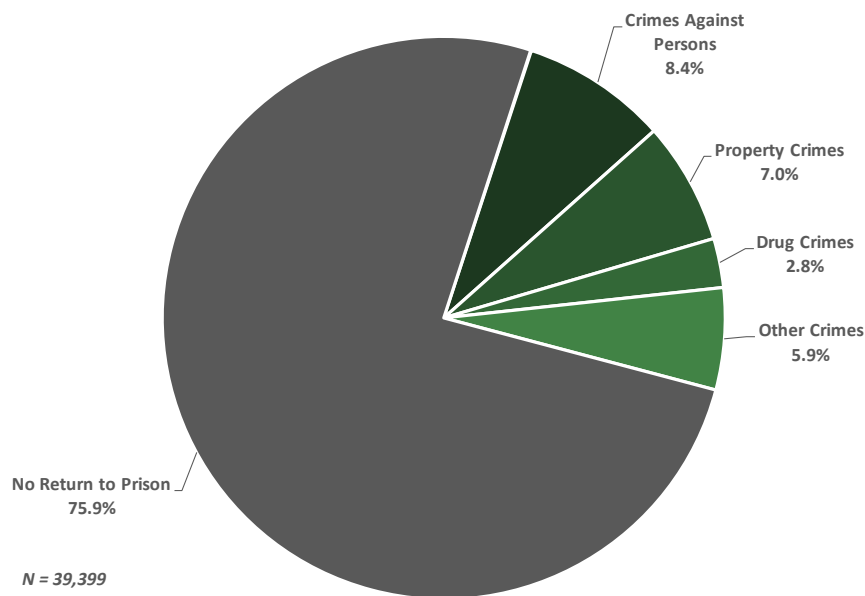
When comparing arrests for the FY 2013-14 and 2014-15 release cohorts, the largest decrease in arrests was observed among felony drug/alcohol crimes. Conversely, the largest increase in arrests was observed among misdemeanor drug/alcohol crimes. Between the two release cohorts, felony drug/alcohol crimes decreased by three percentage points, from 7.6 percent to 4.6 percent, while misdemeanor drug/alcohol crimes increased by 2.7 percentage points, from 8.0 percent to 10.7 percent. For other types of crimes (crimes against persons, property crimes, and other crimes), the difference

between the FY 2013-14 and 2014-15 release cohorts were subtle: misdemeanor property crimes increased by 1.2 percent (from 2.7 percent to 3.9 percent), while each other type of crime increased or decreased by less than one percentage point.

5.3 Type of Return-to-Prison for the Fiscal Year 2014-15 Release Cohort

The type of return to prison section includes all of the 39,399 offenders released from CDCR during FY 2014-15, while arrest and conviction sections only include the 39,205 offenders with an automated DOJ rap sheet. Prior to the 2016 Recidivism Report, the three-year return-to-prison rate was CDCR’s primary measure of recidivism. Commencing with the 2016 Recidivism Report, CDCR transitioned its primary measure of recidivism from the three-year return-to-prison rate to the three-year conviction rate. Therefore, type of return data is provided for the FY 2008-09 through FY 2014-15 release cohort for comparative purposes (Table 17).

Figure 18. Type of Return for the Fiscal Year 2014-15 Release Cohort



Over three quarters of the FY 2014-15 release cohort (75.9 percent or 29,894 offenders) completed the three-year follow-up period without returning to prison and 24.1 percent (9,505 offenders) were returned to prison. The three-year return-to-prison rate increased between the FY 2013-14 and 2014-15 release cohorts (from 23.1 percent to 24.1 percent), however, the proportion of offenders returned for each category remained stable. The largest percentage of offenders in both cohorts were returned to prison for crimes against persons, with 7.7 percent of the FY 2013-14 release cohort returning to prison for crimes against persons and 8.4 percent of the FY 2014-15 release cohort returning for crimes against persons. The percentage of offenders returning to prison for property crimes also increased slightly (from 6.4 percent to 7.0 percent) between the two release cohorts, as did the percentage of offenders returning for other crimes (from 5.2 percent to 5.9 percent). Offenders returning to prison for drug crimes decreased by one percentage point between FY 2013-14 and FY 2014-15 release cohorts (from 3.8 percent to 2.8 percent) and the number of offenders returned for parole violations was the same: 16 offenders were returned in each release cohort for parole violations.

Post-Realignment, only offenders previously sentenced to a life term and some sex offenders are returned to prison for parole violations, resulting in substantial decreases in the percentage of offenders returned to prison for parole violations.⁷ Nearly half of the FY 2008-09 release cohort (42.3 percent or 47,793 offenders) were returned to prison for parole violations and only 16 offenders belonging to the FY 2014-15 release cohort were returned to prison for parole violations. The decrease in returns to prison for parole violations largely drove the decline in the three-year return-to-prison rate, which started experiencing large decreases with the FY 2008-09 release cohort. In addition to drastic decreases in parole violations, Realignment also impacted the percentage of offenders returning to prison for crimes against persons, which comprised only 3.5 percent of all returns to prison among FY 2008-09 releases and 8.4 percent of FY 2014-15 releases. The percentage of offenders returned to prison for crimes against persons has slowly increased since Realignment, as crimes against persons tend to be more serious and violent than other commitment offense categories and are more likely to require a prison sentence.

Table 17. Type of Return for the Fiscal Year 2008-09 through Fiscal Year 2014-15 Release Cohorts

Type of Return	FY 2008-09		FY 2009-10		FY 2010-11		FY 2011-12		FY 2012-13		FY 2013-14		FY 2014-15	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Parole Violations	47,793	42.3%	39,747	37.9%	29,028	30.3%	3,126	4.1%	8	0.0%	16	0.0%	16	0.0%
Crimes Against Persons	3,925	3.5%	3,771	3.6%	3,834	4.0%	5,247	6.9%	2,527	6.9%	2,570	7.7%	3,304	8.4%
Property Crimes	8,055	7.1%	6,541	6.2%	4,520	4.7%	4,238	5.6%	2,249	6.2%	2,125	6.4%	2,766	7.0%
Drug Crimes	6,299	5.6%	4,730	4.5%	3,279	3.4%	3,278	4.3%	1,815	5.0%	1,271	3.8%	1,113	2.8%
Other Crimes	2,731	2.4%	2,233	2.1%	2,000	2.1%	3,019	4.0%	1,511	4.1%	1,744	5.2%	2,306	5.9%
No Return to Prison	44,074	39.0%	47,959	45.7%	53,029	55.4%	56,825	75.0%	28,417	77.8%	25,723	76.9%	29,894	75.9%
Total	112,877	100.0%	104,981	100.0%	95,690	100.0%	75,733	100.0%	36,527	100.0%	33,449	100.0%	39,399	100.0%

⁷ Penal Code section 3000.8 remands persons on parole pursuant to section 3000.0, subdivision (b), paragraph (4) to the custody of CDCR. For more information regarding specific sex offenses, please see Penal Code section 3000.0(b)(4).

6 Evaluation Design

6.1 Definitions

The State of California defines recidivism as “conviction of a new felony or misdemeanor committed within three years of release from custody or committed within three years of placement on supervision for a previous criminal conviction.”⁸ The definition also allows for supplemental measures of recidivism including: new arrests, returns to custody, criminal filings, or supervision violations. In prior reports, CDCR used a supplemental measure, the three-year return-to-prison rate, as the primary measure of recidivism. Commencing with the 2016 Outcome Evaluation Report, CDCR implemented the State of California’s definition of recidivism and used the three-year conviction rate as the primary measure of recidivism.⁹

The three-year conviction rate is defined as follows:

“An individual convicted of a felony and incarcerated in a CDCR adult institution who was released to parole, discharged after being paroled, or directly discharged during Fiscal Year 2014-15 and subsequently convicted of a felony or misdemeanor offense within three years of their release date.”

The conviction rate is calculated using the ratio of the number of offenders in the release cohort who were convicted during the follow-up period, to the total number of offenders in the release cohort, multiplied by 100.

$$\text{Conviction Rate} = \frac{\text{Number Convicted}}{\text{Release Cohort}} \times 100$$

Section 5 of this report provides supplemental recidivism rates using arrest and return-to-prison data for year-to-year comparisons. Three-year rates for each of the supplemental measures are available from FY 2002-03 through 2014-15. One-year and two-year rates are available for the FY 2015-16 release cohort and one-year rates are available for the FY 2016-17 release cohort.

6.2 Methods

This report provides conviction rates at one-, two-, and three-year intervals for offenders released from CDCR’s Division of Adult Institutions (DAI) between July 1, 2014 and June 30, 2015 (FY 2014-15). The release cohort includes: 1) offenders who were directly discharged from CDCR; 2) offenders who were released to parole or PRCS for the first time on their current term; and 3) offenders who were released to parole on their current term prior to FY 2014-15, returned to prison on this term, and were then

⁸ Section 3027 of California Penal Code required the Board of State and Community Corrections to develop a state-wide definition of recidivism.

⁹ CDCR’s Recidivism Report series was previously titled the “Outcome Evaluation Report” series. The 2018 Recidivism Report follows the 2017 Outcome Evaluation Report, both of which provide recidivism rates (arrest, conviction, and return-to-prison) rates for offenders released during a given fiscal year.

re-released during FY 2014-15. Convictions are further examined according to offender demographics (e.g. gender and age) and offender characteristics (e.g. commitment offense and sentence type).

6.3 Data Sources

Data were extracted from CDCR's Strategic Offender Management System (SOMS), CDCR's system of record, to identify offenders released between July 1, 2014 and June 30, 2015 and to determine which released offenders returned to state prison during the three-year follow-up period. Arrest and conviction data were obtained from DOJ's Criminal Justice Information System and the California Law Enforcement Telecommunications System.

6.4 Data Limitations

Data quality is important with all analyses performed by CDCR's Office of Research. The intent of this report is to provide summary (aggregate) information, rather than individual information. The aggregate data are strong when a large number of records (releases) are available for analysis, but are less robust as subgroups are influenced by nuances associated with each case. Therefore, caution should be exercised when interpreting results associated with fewer records. As such, conviction rates are only presented for offender releases (i.e. denominators) that are equal to or greater than 30.

Conviction rates are fixed at three years, meaning the follow-up period is considered complete and no further analyses are performed. Arrest, conviction, and return-to-prison data presented in the appendices of this report may see slight fluctuations, particularly as the one-year and two-year rates are updated in subsequent reporting years. These data are routinely updated in accordance with criminal justice system processing. As data become available, subsequent reports will be updated.

7 Definition of Terms

Arrest

Taking a person into custody, in a case and in the manner authorized by the law, California Penal Code (PC) section 834.

California Static Risk Assessment (CSRA)

The CSRA is an actuarial tool that utilizes demographic and criminal history data to predict an offender's risk of conviction at the time they are released from CDCR. Offenders are categorized as low, moderate, or high risk of incurring a new criminal conviction.

Cohort

A group of individuals who share a common characteristic, such as all offenders who were released during a given fiscal year.

Controlling Crime or Commitment Offense

The most serious offense on the conviction for which the offender was sentenced to prison on that term.

Conviction

A judgement, based either on the verdict of a jury or a judicial officer or on the guilty plea of the defendant, that the defendant is guilty.

Correctional Clinical Case Management System (CCCMS)

The CCCMS facilitates mental health care by linking offenders/patients to needed services and providing sustained support while accessing such services. CCCMS services are provided as outpatient services within the general population setting at all institutions.

Determinate Sentencing Law (DSL)

Established by Penal Code section 1170 in 1977, Determinate Sentencing Law identifies a specified sentence length for convicted felons who are remanded to state prison. Essentially, three specific terms of imprisonment (low, middle, and high) are assigned for crimes, as well as enhancements (specific case factors that allow judges to add time to a sentence). Opportunities to earn "credits" can reduce the length of incarceration.

Enhanced Outpatient Program (EOP)

A mental health services designation applied to a severely mentally ill offender receiving treatment at a level similar to day treatment services.

First Release

The first release on the current term for felons with new admissions and parole violators returning with a new term (PV-WNT).

Indeterminate Sentencing Law (ISL)

Established by Penal Code section 1168 in 1917, the Indeterminate Sentencing Law allowed judges to determine a range of time (minimum and maximum) a convicted felon would serve. Different felons convicted for the same crimes could spend varying lengths of time in prison; release depended on many factors, including each prisoner's individual conduct in prison. After the minimum sentence passed, felons were brought to a parole board that would identify the actual date of release. Indeterminate Sentencing was replaced by Determinate Sentencing (Penal Code section 1170) in 1977. After the implementation of Determinate Sentencing, only individuals with life sentences and third strikers are considered "indeterminately" sentenced, since the parole board determines their release.

Manual California Static Risk Assessment (CSRA)

Offenders who do not have automated criminal history data available from the Department of Justice (DOJ) must have their CSRA score calculated manually. This is done with a review of a paper copy of the offender's rap sheet. Manual scores calculated in FY 2008-09 are not readily available for some offenders included in this report.

Parole

A period of conditional supervised release following a prison term. Prior to Public Safety Realignment, almost all offenders released from CDCR were placed on state parole supervision after their release. After Public Safety Realignment, most serious or violent offenders, high-risk sex offenders, and offenders released after serving a life term are released to CDCR parole supervision and most non-serious, non-violent, non-sex registrant offenders are released to county supervision.

Parole Violation (Law)

A law violation occurs when a parolee commits a crime while on parole and returns to CDCR custody (RTC) by action of the Board of Parole Hearings rather than by prosecution in the courts.

Parole Violation (Technical)

A technical violation occurs when a parolee violates a condition of his/her parole that is not considered a new crime and returns to CDCR custody (RTC).

Parole Violator Returning With a New Term (PV-WNT)

A parolee who receives a court sentence for a new crime committed while under parole supervision and returned to prison.

Post-Release Community Supervision (PRCS)

Post Release Community Supervision is a form of supervision provided to an offender who has been released from a CDCR institution to the jurisdiction of a county agency, pursuant to the Post Release Community Supervision Act of 2011. Prior to Public Safety Realignment, almost all offenders released from CDCR were placed on state parole supervision after their release. After Public Safety Realignment, most non-serious, non-violent, and non-sex registrant offenders are release to PRCS.

Recidivism

Conviction of a new felony or misdemeanor committed within three years of release from custody or committed within three years of placement on supervision for a previous criminal conviction.

Registered Sex Offender

An offender is designated as a registered sex offender if CDCR records show that the offender has at some point been convicted of an offense that requires registration as a sex offender under Penal Code section 290. This designation is permanent in CDCR records.

Re-Release

After a return-to-prison for a parole violation, any subsequent release on the same (current) term is a re-release.

Return-to-Prison

An individual convicted of a felony and incarcerated in a CDCR adult institution who was released to parole, discharged after being paroled, or directly discharged during FY 2013-14 and subsequently returned to prison within three years of their release date.

Serious Felony Offenses

Serious felony offenses are specified in Penal Code section 1192.7(c) and Penal Code section 1192.8

Stay

A stay is any period of time an offender is housed in a CDCR institution. Each time an offender returns to prison it is considered a new stay, regardless of the reason for returning.

Term

A term is a sentence an offender receives from a court to be committed to CDCR for a length-of-time. If an offender is released after serving a term and is later returned-to-prison for a parole violation, the offender returns and continues serving the original (current) term. If that offender returns for committing a new crime, the offender begins serving a new term.

Violent Felony Offense

Violent felony offenses are specified in Penal Code section 667.5(c).



**California Department of Corrections and Rehabilitation
Division of Correctional Policy Research and Internal Oversight
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