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CPRC REPORT

Understanding California Corrections

Joan Petersilia

A Policy Research Program Report



CALIFORNIA POLICY RESEARCH CENTER
UNIVERSITY OF CALIFORNIA

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About the California Policy Research Center

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About This Report and the Author

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The views and recommendations in this report are those of the author and do not necessarily represent those of the California Department of Corrections and Rehabilitation, the California Policy Research Center, or the Regents of the University of California.

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Executive Summary

On July 1, 2005, a remarkable thing happened in California. With little fanfare, the Department of Corrections became the Department of Corrections *and Rehabilitation* (CDCR)—reflecting Governor Schwarzenegger’s desire to return to a strategy that provides work, education, and substance abuse programs for motivated inmates. This change of strategy comes at a time when California’s correctional system is clearly in trouble. The total inmate population is at an all-time high of 168,350, which has made prisons overcrowded and compromised safety as well as the ability to deliver needed programs.

The state’s approach to corrections is enormously expensive and ineffective. Although California spent more than \$7 billion on its correction system in 2005, it produced one of the highest return-to-prison rates in the nation—66% of released inmates return to California prisons within three years.

But corrections is highly politicized and hard facts are surprisingly scarce. Most Californians, including elected officials, become puzzled when trying to separate the reality from the fiery rhetoric. Is it true that California prisoners are more serious offenders than those in other states? Are there subgroups of prisoners who could be released without posing a significant public threat? Is it possible to divert technical parole violators to community programs without threatening public safety? Why is the cost of corrections so high in California? What role do prison gangs and the powerful prison guard union play in the prison culture? Does California *really* have the highest recidivism rate in the nation and, if so, what accounts for it?

These are tough questions, and the author has been asked all of them in the past two years as she helped top corrections officials tackle prison reform. Unfortunately, data to answer these questions—if they exist at all—are spread across more than 80 separate CDCR databases, most of which can’t be linked.

Surprisingly, California has no longitudinal study of who comes into prison, what their experiences are like, and how those experiences affect post-prison behavior—making it impossible to accurately project the costs and benefits of prison versus alternative sentencing policies. In fact, almost no information exists concerning most of the important questions being asked of corrections officials, and understanding what is available is difficult. The research unit of the former California Department of Corrections was abolished in the mid-1990s and was only reestablished in July 2005.

This report summarizes existing data about California corrections in the hope that reform can be discussed on the basis of evidence rather than politics.

California Corrections: A Clearer Picture

California has the largest prison population of any state in the nation, with more than 168,000 inmates in 33 adult prisons, and the state’s annual correctional spending, including jails and probation, amounts to \$8.92 billion. Despite the high cost of corrections, fewer California prisoners participate in relevant treatment programs than comparable states, and its inmate-to-officer ratio is considerably higher.

California's high recidivism rates are clearly unacceptable. However, when one defines recidivism equivalently across states, using the same follow-up period, and compares similarly serious offenders, only California's *technical* parole violation rates are significantly higher. Its rates of new arrests and new criminal convictions are not the highest in the nation, nor are they markedly different from those found in many other large states.

California's crime rate is considerably lower today than it was in the past, but so are crime rates across the nation. Crime rates dropped in the 1990s because of a number of factors, including demographic changes, aggressive policing, and longer prison sentences. Because the criminal justice system acts as a "correctional filter," diverting less serious offenders from prison, most California offenders remain in the community on probation or in county jail. Reforms that treat *only* prisons fail to address the significant structures—such as jails and probation—that actually handle the vast majority of the state's convicted criminals.

California's large prison population is generally a function of the state's large population rather than an unusually high probability of imprisonment upon conviction or an unusually high crime rate. The odds of a serious reported crime ultimately producing a prison sentence are about 5% in California, a rate similar to the national average.

California is the nation's most populous state, with about 34 million residents, and California's prison population is also the largest. However, California's *rate* of prison incarceration—that is, the percentage of its resident population in prison on any one day—is not unusually high when compared to other states. In 2004, it was only slightly above the national average (456 per 100,000 California residents, versus the U.S. average of 432 per 100,000). Texas, with about 22 million residents—13 million fewer than California—has virtually the same number of prisoners. Certainly we imprison too many people—but that is part of an *American* problem, not uniquely a California problem.

Other large states (e.g., Illinois, Ohio, New York) have managed to stabilize or reduce their prison populations by using intermediate sanctions (e.g., day-reporting centers) for parole violators. California has few such programs. In 2001 (the latest year for which information is available), California returned 18,000 purely technical violators (e.g., who failed drug tests or missed appointments) to prison. These parolees could have been kept in the community under an intermediate sanction program.

Governing California's Prisons

California classifies prison inmates into four housing categories based on such factors as criminal history and gang affiliation. This classification system has shown that the majority of California inmates should be housed in medium-security facilities, a statistic comparable with national norms. Like other states, 21% of California prisoners are classified minimum risk.

However, classification scores appear to be disregarded through administrative override in 25% of California's housing assignments. Overcrowding is a critical issue, and it frequently results in inmates being moved to higher-security facilities despite classification scores that suggest such housing is unnecessary. Higher-security cells cost more to operate, and prisoners sent there have less opportunity to participate in work or rehabilitation programs.

California's correctional officers are unionized and belong to the California Correctional Peace Officers Association. CCPOA is the most successful correctional union in the nation and, with more than 33,000 members and yearly membership dues totaling \$23 million, it has become a powerful political force.

California correctional officers now earn an average of \$59,000 per year, 58% more than officers nationally. But failure to hire new officers in recent years has resulted in a staff vacancy rate of 20%. Correctional officers work extensive overtime, making up for lack of staff but charging taxpayers dearly for their time. With overtime, it is not uncommon for California prison guards, who are only required to be high school graduates, to earn over \$100,000 a year. On the other hand, the turnover rate for California correctional staff is much lower than it is in comparable states, which should produce a more professionalized and trained workforce.

California's inmate-to-staff ratio is among the highest in the nation: 6.5 inmates per correctional officer, compared to a national average of 4.5 inmates per officer. Despite these working conditions, California has one of the lowest prison escape rates in the nation.

Suicides, Homicides, Assaults, and Prison Gangs

California's rates of reported prison assault, homicide, and suicide are higher than they are nationally. However, research shows that suicide and homicide rates increase as the inmate population ages and the length of term increases—both factors characterizing California's inmate population. Experts also attribute increases in violence to crowding and increased gang activity.

California is said to hold the largest group of gang-affiliated prisoners. Seven prison gangs operate in the state's prison system, and 7,700 current inmates have been validated as members or associates of prison gangs. Of course, gangs operate in secrecy, so there is no way of knowing the real threat they pose. California confines identified gang members in security housing units (SHUs), where inmates remain in their cells for up to 23 hours a day. These SHUs currently house about 3,000 prisoners.

Prison Programs: Needs Versus Treatment Received

Fewer California inmates participate in prison rehabilitation programs than those in comparable states, although its inmates have high needs for alcohol- and drug-abuse programs. Forty-two percent of California inmates are estimated to have a "high need" for alcohol treatment (43% nationally), but only 7.5% of those will participate in some alcohol treatment in prison (18% nationally). The need is even greater for drugs. Fifty-six percent of all California inmates have a "high need" for drug treatment (49% nationally), but only 9% of those will participate in drug treatment in prison (19% nationally).

Who Is In Prison? Demographics, Conviction Offenses, and Criminal Records

California's inmates are older than the national average, older than past inmates, and are more likely to grow old behind bars than they were in the past. The average age of a California prisoner is 36 years old. As inmates age, their health care costs increase and the incapacitative benefits of keeping them in prison decline.

The number of female inmates is steadily increasing and now accounts for 6.6% of California inmates. Ethnic minorities are overrepresented in California prisons, and the Latino male and female imprisonment rates are out of proportion to their growth in the state's resident population.

Increases in California's prison population in recent years are attributable more to violent crime than to drug crime. Two-thirds of the overall growth in the prison population since 1994 is due to crimes against persons (especially robbery, assault, and homicide), whereas only 10% is due to drug-related convictions. This should not be a surprise, since it is the violent criminals who stay in prison much longer.

In general, California's inmates have more extensive criminal records than their out-of-state counterparts, but these extensive criminal records, in many cases, are a function of the unusual way the state's parole revocation system operates.

Going Home: Prison Release and Parole Supervision

California is almost alone in the nation in combining mandatory parole supervision with a determinate sentencing scheme. This hybrid system mandates automatic release of most inmates after they complete a statutorily defined percentage of their sentences, *and* imposes parole supervision on all prisoners at release, regardless of inmates' risk of reoffending.

By national standards, the length of parole supervision California imposes at release is not particularly long (one to three years), but few parolees complete it without a revocation. At revocation, the clock stops on their required parole term and starts again at subsequent prison release. Parolees call this "doing life on the installment plan," because many of them are unable to ever earn their way off parole.

The state's determinate sentencing system is widely regarded as a failure—even by its creators. It has both reduced incentives for inmates to participate in rehabilitation programs while in prison and tied the state's hands in dealing with particularly dangerous offenders whose mandated sentence has elapsed.

The majority of parolees actually receive very little supervision, as 65% see their parole officer once every six weeks. Even "high control" and "high-risk sex offenders" see their parole officer only once every two weeks.

Understanding California's Recidivism

Though California is frequently described as having the nation's "worst" recidivism rate, the biggest factor driving up this statistic is California's heavy use of "administrative returns"—so-called "technical violations." Most observers do not understand California's unique parole revocation process and how differently things are classified here. Technical violations are often used to address new charges of serious crimes (such as assault and robbery), whereas other states are more likely to prosecute these offenses as new criminal cases. In California, only 20% of the technical violations are for administrative, *noncriminal* matters.

Because the average time served for an administrative criminal return is only five months, California's heavy use of technical violations tends to send offenders back to prison for very short stints and then put them quickly back on the street. This "catch and release" system results in inmates churning through the system repeatedly. Researchers Blumstein and Beck found that nearly 10% of California prisoners cycled in and out of prison six or more times over a seven-year follow-up period. No comparison state reported such high churning rates.

California uses resources to send individuals in and out of prison irrespective of the risk posed by any given person. As a result, a large percentage of nonviolent criminals accumulate extensive criminal records as a souvenir of the catch-and-release system. Despite their records, they may not be any more dangerous than their counterparts in other states who are successfully handled through an array of community-based intermediate sanctions. On the other hand, the state's sentencing system also releases violent offenders who amass lengthy criminal records—individuals who, in a system more carefully tailored to protect public safety, probably should not have been released in the first place.

Concluding Remarks

This report makes several suggestions for policy changes related to the shift toward rehabilitation. Among the suggestions are:

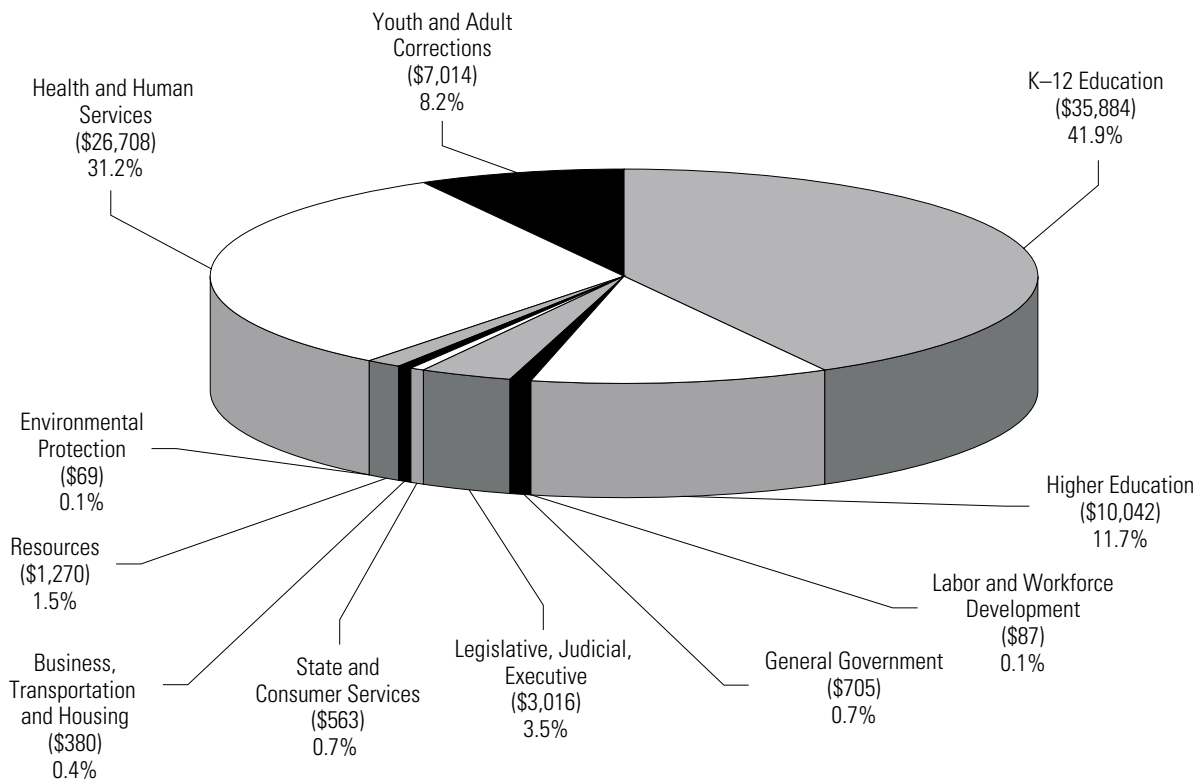
- ▶ Restore discretion to prison release decisions so that inmates feel that responsible behavior is rewarded and so state officials can deny early release to those considered dangerous. One viable approach is the presumptive sentencing model suggested by the Independent Review Panel in 2004.
- ▶ Employ parole supervision in a more selective way, so that parole is used for higher-risk offenders. Doing otherwise wastes resources and provides a negligible public safety benefit.
- ▶ Criminally prosecute parolees' new crimes whenever possible rather than using the administrative parole revocation route as an expedient and inexpensive fix.
- ▶ Prioritize the delivery of substance abuse, education, and job training programs. Motivated inmates should be given access to these programs in prison and on parole. Seeing such programs as coddling criminals is short-sighted and ultimately threatens public safety.

Overview of Concerns

California’s state correctional system is the largest in the nation,¹ and one of the most troubled. Total inmate population stands at an all-time high of 168,350, and projections suggest it will reach 180,000 by 2010.² Of the 1.2 million people now incarcerated in state prisons across the U.S., one of every nine was housed in California.

The cost of operating this system is tremendous: California plans to spend \$7 billion in 2005–2006 to operate all state correctional programs, which amounts to 8.2% of the state’s general fund expenditures (see Figure 1)—up from 2% of the general fund in 1981–1982. This figure excludes county spending on jails and probation, which is estimated to cost Californians an additional \$1.92 billion per year,³ bringing the estimated total annual bill for corrections to a whopping \$8.92 billion for this fiscal year.

FIGURE 1
California State General Fund Expenditures 2005–2006 (in millions of dollars)



Source: California Department of Finance, Governor’s Budget 2005–2006.

Despite that high cost, however, minimal rehabilitation programming is delivered to California inmates. Nationwide, about 25% of all state prisoners released report having participated in some type of drug or alcohol program while they were in prison.⁴ In California, by contrast, only 11% of all prisoners released report participating in such a program, yet more California prisoners report having serious substance-abuse problems than the national average.⁵ California also trails the nation in providing vocational and educational program-

More California prisoners report having serious substance-abuse problems than the national average.

ming. Nationwide, 31% of all prison inmates participate in vocational programs and 38% participate in educational programs, whereas the combined figure for educational and vocational participation in California is only 13.8%.⁶

Administrators appointed by Governor Schwarzenegger are diligently trying to increase the number of inmates who receive treatment, but it still remains unusually low. Nearly one in five of all California's prisoners were not assigned to any rehabilitation program or work assignment during their entire prison stay—a symptom of the aversion to rehabilitative approaches that has held sway for decades in California.⁷

The state's prisons are dramatically overcrowded, operating at roughly 200% of their design capacity.⁸ Inmates are being crowded into gyms, TV lounges, cafeterias, and hallways. Correctional staff-to-inmate ratios are also below average. While the nation's prisons average one correctional officer to every 4.5 inmates, the average California officer is responsible for 6.5 inmates. Although officer salaries are higher than average, their ranks are spread dangerously thin and there is a severe vacancy rate.

Recent years have also seen the development of a rift between correctional administrators and the employees who work directly with offenders—exacerbated in 2004 by the announcement of greater leniency in parole revocation policies. The California Correctional Peace Officers Association, the union for state correctional officers, argued that the changes were “a detriment to public safety,” and a spokesman for the group noted that “parole agents were given little notice of the changes and no additional training for what could have been a major policy shift.”⁹ This sense of disconnection between line staff and administrative decision-makers, along with the officers' general sense of being overextended, are further indications of a system in trouble.

Perhaps the most conspicuous example of California's correctional breakdown is its recidivism rate. Only 21% of California parolees successfully complete parole—half of the national average—and two out of three inmates returning to prison are parolees.

Perhaps the most conspicuous example of California's correctional breakdown is its recidivism rate. Only 21% of California parolees successfully complete parole—half of the national average—and two out of three inmates returning to prison are parolees.¹⁰

Claims that the California correctional system is broken or has failed must be balanced against competing assertions that the system's primary goal—ensuring public safety—is in certain respects fulfilled by the present system. The Attorney General's latest *Crime in California* report notes that California's rate of violent crime has been falling for 11 consecutive years and is at a nearly 30-year low.¹¹

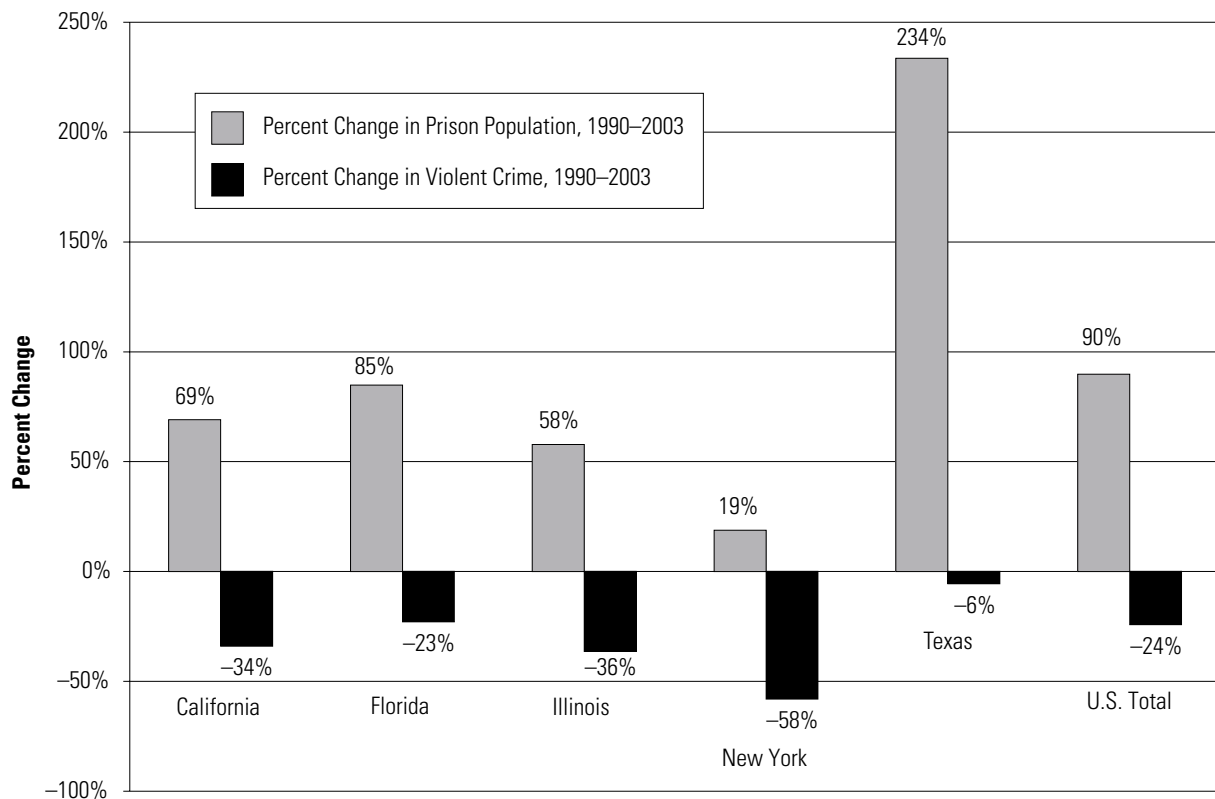
As encouraging as the state's overall crime figures may be, though, they do not tell the entire story. Violent crime has been declining for years all across the nation—not just in California—and is today at its lowest level in 32 years.¹² Given this nationwide trend, the drop in California crime rates is not likely to be a function of the state's approach to corrections. Moreover, the decline in violent crime has not affected everyone equally:

As the *Los Angeles Times* has reported, murder rates in Los Angeles actually went up in 2002, and African Americans were disproportionately likely to be the victims of these homicides.¹³ Among African Americans across the state, moreover, the last years of the period from 1999 through 2002 saw significant increases in the murder rate, after five years of decline.¹⁴

Some commentators have also suggested that the strong gang culture inside prisons has contributed to the growing power of gangs in inner-city communities. The violence that recently broke out in Los Angeles County’s jail system between blacks and Latinos suggests to some that gang ties started in prison continue in the streets and infiltrate back into the state’s jail system.¹⁵

In addition to these areas where serious violent crime is increasing, California property crimes have been going up statewide since 1999.¹⁶ The state’s crime rate, though it is roughly on par with the national average, is also considerably higher than that of New York, and somewhat higher than that of Illinois—and neither of these states has increased its prison population as much as California (see Figure 2). Thus it would be a mistake to conclude that California’s crime figures should somehow lead to support for its current corrections policies.

FIGURE 2
Changes in U.S. Violent Crime and Prison Populations, 1990–2003



Source: Data for percent change in violent crime were obtained by doing a custom search through the website of the Bureau of Justice Statistics, U.S. Department of Justice, Office of Justice Programs, by year and state, at <http://bjsdata.ojp.usdoj.gov/dataonline/Search/Crime/State/StateCrime.cfm> (accessed November 2005). Changes in prison population were obtained from Bureau of Justice Statistics publications on prisoners incarcerated on January 1 each year.

Moreover, the high cost and dramatic collateral consequences of California’s approach to corrections strongly argue in favor of reform. The men and women who move through the state’s jails, prisons, parole and probation

Ultimately, a correctional system that ignores the profound needs of the individuals it controls misses an important opportunity to make society safer. At its worst, it may even exacerbate criminality.

systems have, on average, a seventh-grade reading level, and only about half have been employed before entering the correctional system.¹⁷ Among prisoners, 80% have substance-abuse problems.¹⁸ If time spent in a correctional setting fails to provide these individuals with any new skills and instead saddles them with increased barriers to employment, housing, and public benefits by virtue of their conviction, they are certain to have fewer options for eventually creating noncriminal lifestyles. Ultimately, a correctional system that ignores the profound needs of the individuals it controls misses an important opportunity to make society safer. At its worst, such a

system may even exacerbate criminality by compounding the hopelessness, anger, and propensities for lawlessness among the population it seeks to correct.

California can and should improve its correctional system, not only as an economic matter but as a question of public safety. Such improvements, as we will see, must address the *entire* correctional system, not just its prisons, in order to be effective.

Most California Offenders Don’t Go to Prison

Prisons and secure state juvenile facilities are the most visible and expensive component of the California corrections system. These are the facilities that get the most media and policy attention, and the structures that loom largest in the public’s mind during debates about corrections. In truth, however, these facilities are only a small part of the corrections system: *Most active offenders are not in prison, but are instead on probation, parole, or in jail.* Any discussion about reforming California corrections, therefore, must begin with an understanding of the

broader correctional picture and address the entirety of the state’s complex system.

The criminal justice system is designed to divert people out—at each processing stage—so that prison is reserved for society’s most serious offenders. The odds of a serious crime ultimately producing a prison sentence are only about 5%.

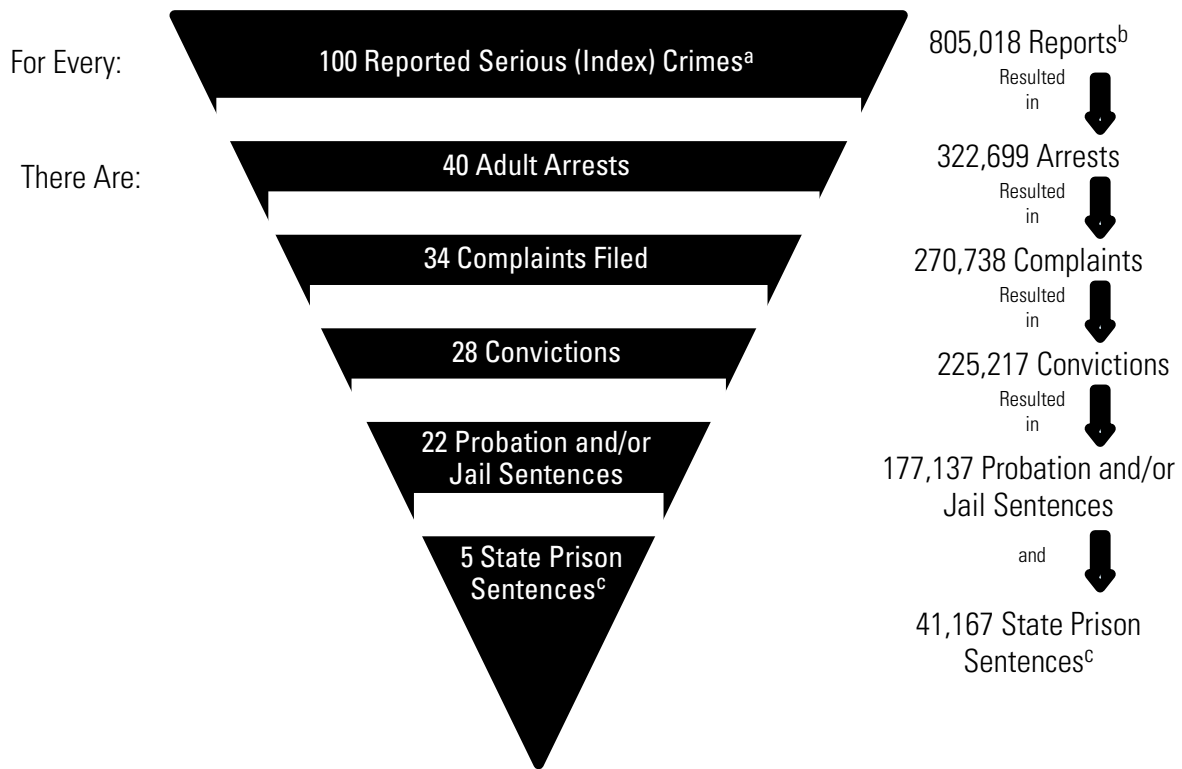
The system can be thought of as a “correctional filter,” with suspected criminals coming in at the top of the filter through arrest. Ideally, only the most serious convicted offenders end up coming out of the bottom of the filter to serve state prison time. The criminal justice system is designed to divert people out—at each processing stage—so that prison is reserved for society’s most serious offenders. As Figure 3 illustrates, this filtering system means that the odds of a serious index crime ultimately producing a prison sentence are only about 5%. It’s far more likely that a criminal conviction

will result in some combination of jail time and probation, and more likely still that other factors—such as the failure to arrest a suspect or failure to obtain a conviction—will filter out individuals from the system altogether, so they are not under any form of correctional supervision.

To a significant extent, this filtering is a predictable and appropriate outcome in a system in which the state has the burden of proving criminal liability beyond a reasonable doubt and is not always able to do so. But over the last three decades the comparatively low percentage of arrests that result in prison sentences, and the even lower

FIGURE 3

Processing of Serious Crime by the California Criminal Justice System, 2004



Notes:

a. Homicide, rape, robbery, aggravated assault, burglary, motor vehicle theft, larceny-theft over \$400.

b. Reported index crimes do not differentiate between adults and juveniles. This number is derived from the total number of reported index crimes (909,625) by using a factor of the number of juvenile vs. adult arrests. Juveniles accounted for 11.5% of total arrests; therefore the number of total crimes is reduced by 11.5% to be consistent with the other adult numbers.

c. Sentences to death, prison, California Rehabilitation Center, and adults sentenced to the Youth Authority. The sentences imposed do not add up to the number of convictions because of rounding and a small number of "other" (e.g., fines) sentences imposed.

Source: *Crime in California, 2004*, California Department of Justice, Bureau of Criminal Information and Analysis, Criminal Justice Statistics Center, Sacramento, California, 2005.

percentage of reported crimes that are turned into arrests, has encouraged Californians to push for tougher sentencing laws that have resulted in pushing more individuals all the way through the correctional filter.

The most powerful change made in this regard occurred in 1976, with passage of California's Determinate Sentencing Law, which eliminated most discretion in final sentencing decisions. More recently, in 1994, voters approved the "Three Strikes and You're Out" ballot initiative intended to incapacitate serious repeat felons through lengthy prison sentences. Before that, between 1984 and 1991, the California Legislature enacted over 1,000 crime bills, virtually none of them reducing sentences and most of them imposing stricter sanctions for such crimes as residential burglary, domestic violence, drunk driving, rape, and the use of a gun in committing a crime.¹⁹

These stricter laws, which tracked similar changes being made by states across the nation, helped push California's prison population up considerably, from 22,000 in 1980 to today's figure of more than 168,000. The same laws also resulted in an increase in the probability that a reported crime would produce a prison sentence.

The overall probability of a prison sentence per reported index crime in 1983 was just 2%. Today it is approximately 5%. So, although more criminals are going to prison in California, it is still the case that 95% of reported index crimes do not result in prison sentences.

Analysis conducted by Connie Ireland found that the overall probability of a prison sentence per reported index crime in 1983 was just 2%.²⁰ Today it is approximately 5%. So, although more criminals are going to prison, it is still the case that 95% of reported index crimes do *not* result in prison sentences.

Understanding this filtering leads to an important policy consideration: reforms that treat only prisons fail to address the significant structures of the correctional system—such as jails, probation, and parole—that actually handle the vast majority of the state's convicted criminals. While prisons are undoubtedly a critical component of the overall system, the 5% of the filter that they represent should not overwhelm our consideration of the whole range of correctional responses. This is particularly the case because California's use of prisons is actually quite ordinary in many ways compared to the rest of the country, whereas other aspects of the state's approach differ markedly from national norms.

California's Booming Prison Population in Context

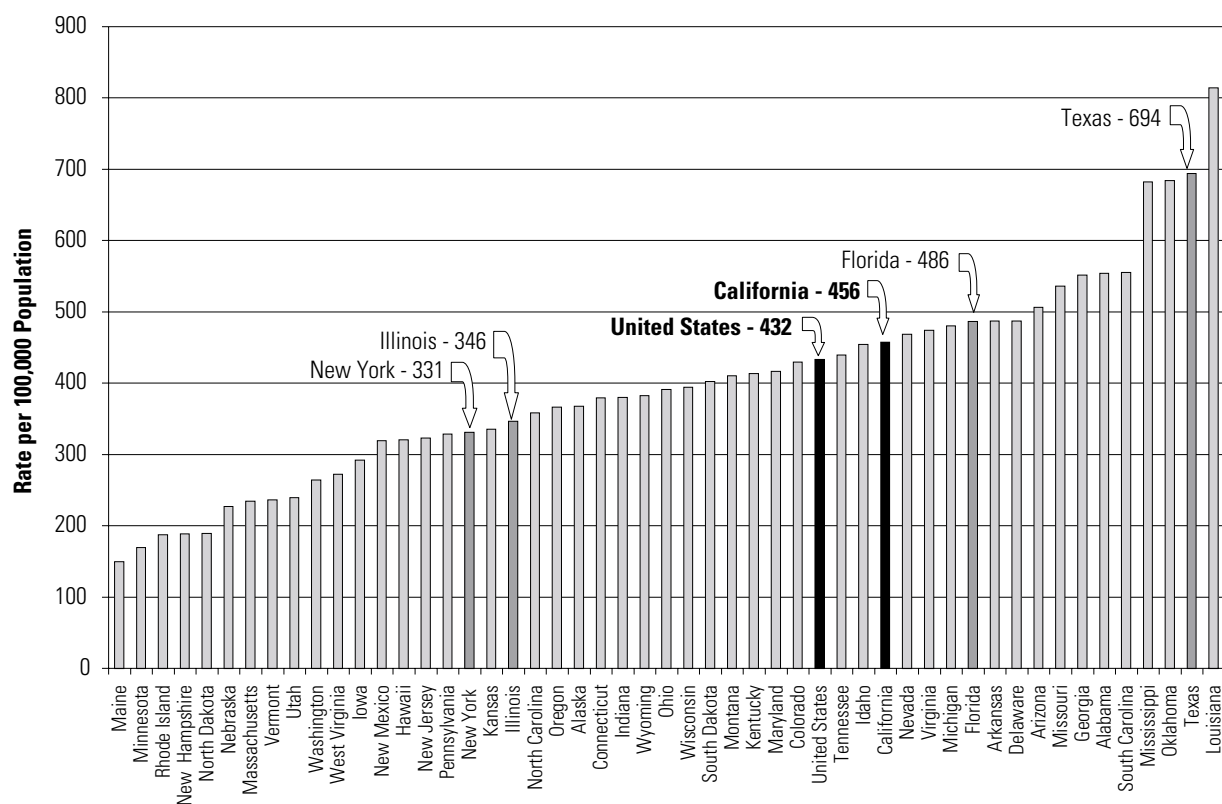
A commonly heard refrain related to prisons is that "California is different" from the rest of the nation, with a population that puts unique demands on its correctional system. While this is true to a certain extent, California uses prisons much like the rest of the country in several important ways. Understanding these similarities is critical for addressing the ways that the state differs most significantly from the rest of the nation. Throughout this report, California's correctional policies, staffing, programs, and outcomes are compared to those of other large states.

California is the nation's most populous state, with a total resident population of about 35.9 million.²¹ The next most populous state, Texas, with 22.9 million residents—13 million fewer than California—has virtually the same number of prisoners as California. So any discussion of the size of California's prison population must necessarily take into account the size of its resident population.

The Bureau of Justice Statistics reports that California's incarceration rate—that is, the percentage of its total resident population in prison on any one day—is not unusually high relative to U.S. standards.

The Bureau of Justice Statistics (BJS) reports that California's incarceration rate—that is, the percentage of its total resident population in prison on any one day—is not unusually high relative to U.S. standards. In fact, California's incarceration rate (state prisoners with a sentence of more than one year per 100,000 residents) is only slightly above than the national average. As shown in Figure 4, 456 per 100,000 California residents are in prison on any one day (about one-half of 1%, or 1 out of every 219 Californians) compared to the U.S. average of 432 per 100 population (1 out of every 231 U.S. residents).²² Put another way, California residents are 12.2% of the total U.S. resident population, and California prisoners are 12.9% of the total U.S. prison population.²³

FIGURE 4
Prison Incarceration Rate by State, 2004



Source: *Prisoners in 2004*, Harrison and Beck, 2005, Table 4, Bureau of Justice Statistics (<http://www.ojp.usdoj.gov/bjs/pub/pdf/p04.pdf>). The incarceration rate is defined as prisoners with a sentence of more than one year per 100,000 total residents.

However, these national averages should not cause Californians to feel comfortable about the size of our prison population. Several other large states—e.g., New York, Illinois, Ohio, Pennsylvania—have a lower percentage of their population in prison on any one day and have lower crime rates than California. Moreover, the U.S. incarceration rate is far higher than that of other industrialized nations, particularly among drug offenders. And finally, these are one-day counts; the lifetime probability of serving a prison sentence in the United States is much higher than 1 out of 219. The Bureau of Justice Statistics estimates that 1 in every 37 U.S. adults will serve time in a state or federal prison during their lifetime, and the rates are much higher for certain age and racial groups (particularly black males in their 20s and 30s).²⁴ The ripple effects of such high levels of imprisonment will surely be felt for generations of children, particularly minority children.

The probability of being sentenced to prison for a felony conviction in California is also comparable to the average percentage nationwide, and the state is even slightly less likely to sentence to prison individuals convicted of certain crimes—such as drug possession or aggravated assault—than the national average (Table 1).

In an analysis of 2002 data from the National Judicial Reporting Program, Fischer found that the length of prison term imposed in California appeared similar to that imposed in states having similar sentencing

TABLE 1
**Percent Sentenced to Prison After Felony Conviction,
 California vs. the Nation**

Most Serious Conviction Crime	Percent Sentenced to Prison After Felony Conviction		
	California	Nationwide	Nationwide (without California)
Murder	97	91	90
Sexual Assault	52	59	60
Robbery	70	70	71
Aggravated Assault	39	41	42
Other Violent	42	42	41
Burglary	41	47	48
Larceny	46	36	34
Fraud	27	31	32
Drug Possession	23	34	37
Drug Trafficking	46	42	42
Weapons Offense	43	45	45
Other Offense	42	34	34
Total	40	40	40

Source: Reanalysis of National Judicial Reporting Program (NJRP) 2002 data, Bureau of Justice Statistics, by Ryan Fischer, UCI.

The national averages should not cause Californians to feel comfortable about the size of our prison population. Several other large states—e.g., New York, Illinois, Ohio, Pennsylvania—have a lower percentage of their population in prison on any one day and have lower crime rates than California.

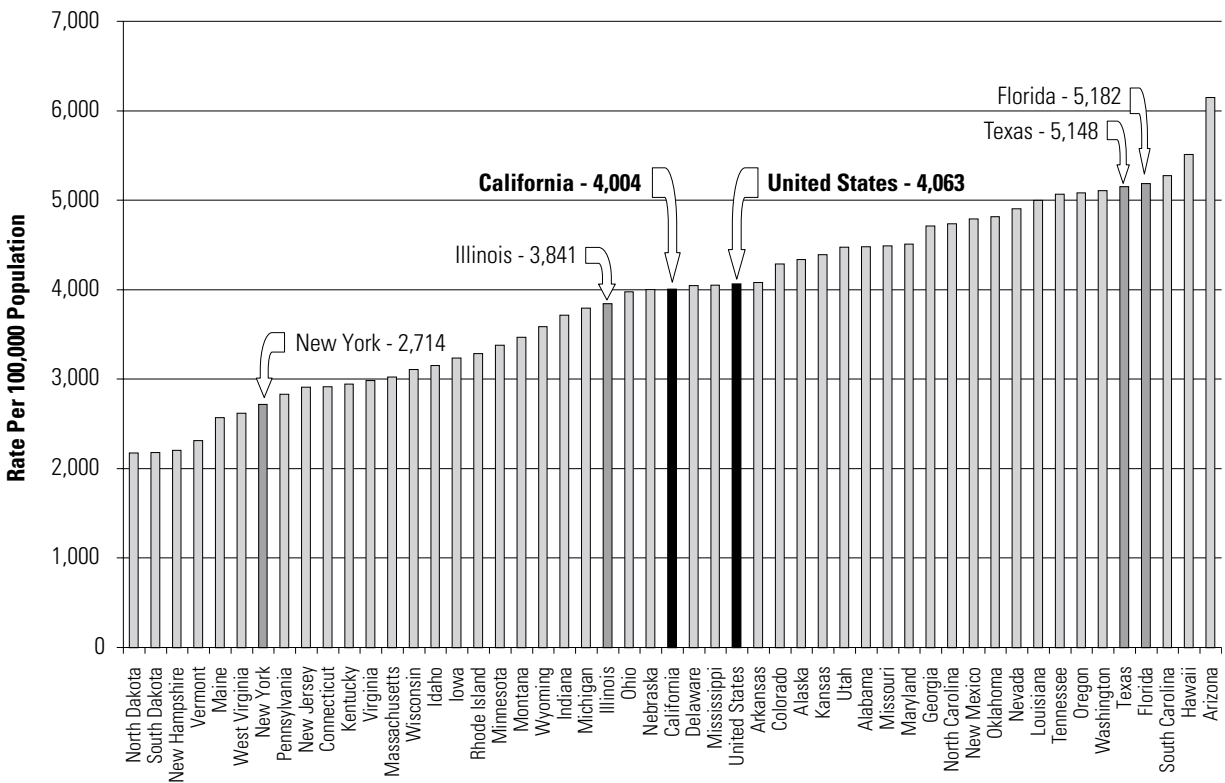
structures, and that California inmates served prison terms that did not differ in length from the national average (on their original conviction). However, since this dataset does not contain very detailed information on the crime and offenders background, it is impossible to statistically control for all the relevant variables. The average prison sentence imposed in California is currently about 48 months, and the average time served is 25 months.²⁵ As these figures imply, the large size of California’s prison population should not be attributed to a heavy-handed use of prison sentences at the original conviction stage.

California's crime rate is actually not particularly high. When compared to other states, it is about 2% lower than the national average. Both Florida and Texas have much higher crime rates, as do many smaller states.

California’s crime rate, another potential explanation for its large prison population, is actually not particularly high. When compared to other states, it is about 2% lower than the national average. When one looks at index crimes per population, California residents report 4,004 crimes per 100,000 residents—below the national average of 4,063 crimes (Figure 5). Both Florida and Texas have much higher crime rates, as do many smaller states.

The correctional system includes much more than prisons, of course. But even when considering the broader scope of correctional supervision—counting individuals on probation, parole, and in jail in addition to those in prisons—California’s comparatively moderate and mainstream use of prison supervision is apparent. It currently has about 725,000 adults under “correctional control,” and its correctional

FIGURE 5
Crime Rate per 100,000 Population, by State, 2003



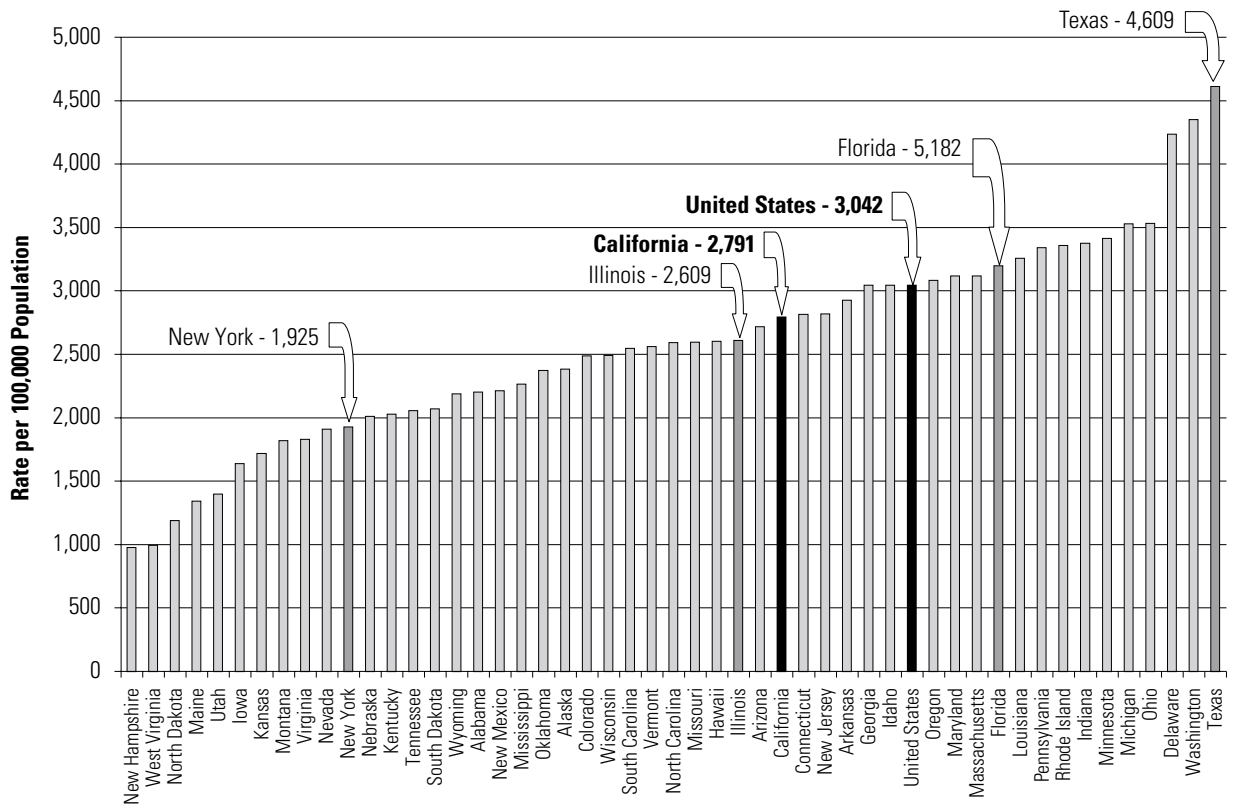
Source: *Crime in the United States, 2003*, Federal Bureau of Investigation (<http://www.fbi.gov/ucr/03cius.htm>). Total index crime rate derived by adding violent and property index crime rates. Index crimes are murder, rape, robbery, aggravated assault, burglary, larceny, and motor vehicle theft.

control rate is 2,791 individuals per 100,000—which is 7.3% lower than the national average of 3,042 individuals per 100,000 (see Figure 6).

These comparisons suggest that the size of California’s prison population is not caused by a particularly high level of crime committed by its residents or a particularly heavy-handed use of correctional sanctions relative to the nation. Instead, the state’s high numbers are mostly a function of its high resident population. As the most populous state in the country—with more than 50% more people than its closest rival, Texas²⁶—California produces extraordinarily high numbers of prisoners simply by enforcing the law and locking up residents at a rate that is, by American standards, rather ordinary.²⁷ We could argue that “American standards” are more punitive than necessary, and the author has made that case elsewhere,²⁸ but we can’t say “California is different” in terms of the commonly used indexes.

If California looks like a typical state in terms of common indices of “correctional control,” however, the similarities end once an individual has been sentenced to prison. California truly is different when it comes to the way inmates are housed, the way they are treated while incarcerated, the way they are released, and the way their parole is handled and revoked. In these differences lie some of the most serious weaknesses of the state’s correctional policy—and the greatest potential for reform.

FIGURE 6
Persons Under Correctional Control per 100,000 Population, by State, 2004



Source: National Institute of Corrections (<http://www.nicic.org/Library/020263>, accessed April 2006). Persons under correctional control count adults in prison, jail, probation, or parole. The original data are derived from various correctional surveys conducted by the Bureau of Justice Statistics.

Governing California's Prisons

California's correctional system and punitiveness are similar to those of other states in terms of the percentage of the total population in prison on any one day, the probability of being sentenced to prison upon conviction, and the length of the sentences imposed by the court and initially served. However, once individuals actually step inside a California prison, their experiences appear to differ significantly from those of inmates in other states. When it comes to the facilities that house inmates, the probability of participating in useful treatment or vocational programs, the influence of prison gangs, and the characteristics of correctional officers who control their day-to-day lives, California prisoners appear to live in a much different environment than their out-of-state counterparts. These differences are the issues we turn to now.

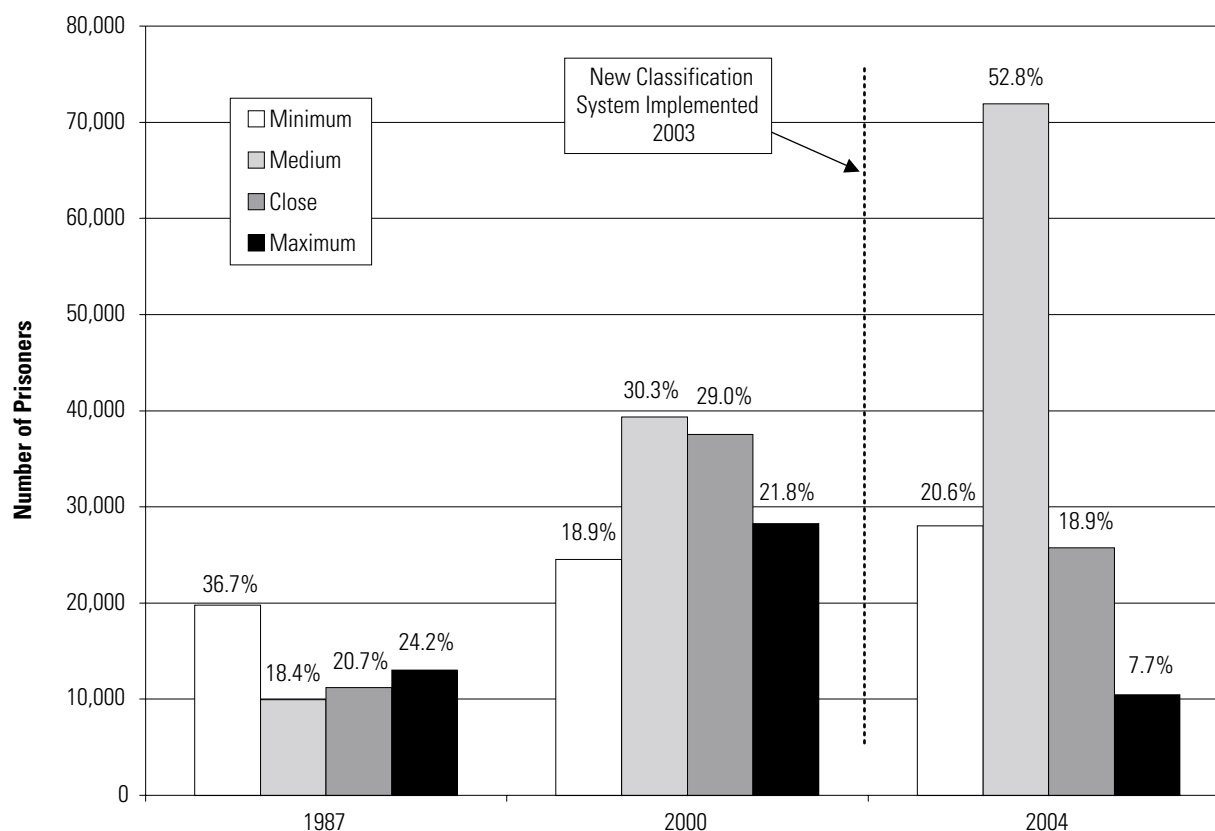
Inmate Reception, Custody, and Security

Inmates come to prison from a very wide range of backgrounds and levels of familiarity with the correctional system. Some are hardened and violent offenders, while others are nonviolent and new to the custodial environment. In California, as discussed in more detail later, 61.5% of the offenders coming to prison in a given year are parolees who have been violated by parole authorities after having previously served time behind bars. The other 38.5% come as a result of new criminal convictions, and these individuals may not be sophisticated at navigating behind prison bars. The first job of prison administrators is to sort out the various streams of inmates into housing assignments that will, to the greatest extent possible, minimize the dangers inherent in the correctional environment.

Inmate classification is the primary tool for making these assignments. This relatively unknown process affects not just housing but sets the tone for every aspect of an inmate's highly regulated existence: from the safety of an inmate's day-to-day environment to the amount of cell space that individual will have, to the opportunities to participate in educational programs and employment. This is the case because an inmate's classification score heavily influences how prison administrators determine where the inmate will serve time. Depending on the facility to which an inmate is assigned, the chances for participating in education, work, and rehabilitation programs, associating with other inmates, maintaining family connections, and so on will range from fairly significant to virtually nonexistent.

Classification starts in one of the state's 14 reception centers. In these facilities, during the course of a roughly 60-day stay, incoming prisoners are evaluated, their case summary is prepared, a classification score is computed, and they are assigned to one of the state's 33 prisons or 40 camps.²⁹ Camps, which are used for low-level offenders, are minimum-security facilities located in wilderness areas. The camps house about 4,000 total prisoners, who are typically trained as firefighters. Prisons, on the other hand, range from minimum-security facilities with open, dormitory-style housing to the highly fortified Secure Housing Units (SHUs) used to confine high-risk prisoners.

FIGURE 7
California Prisoner Classifications



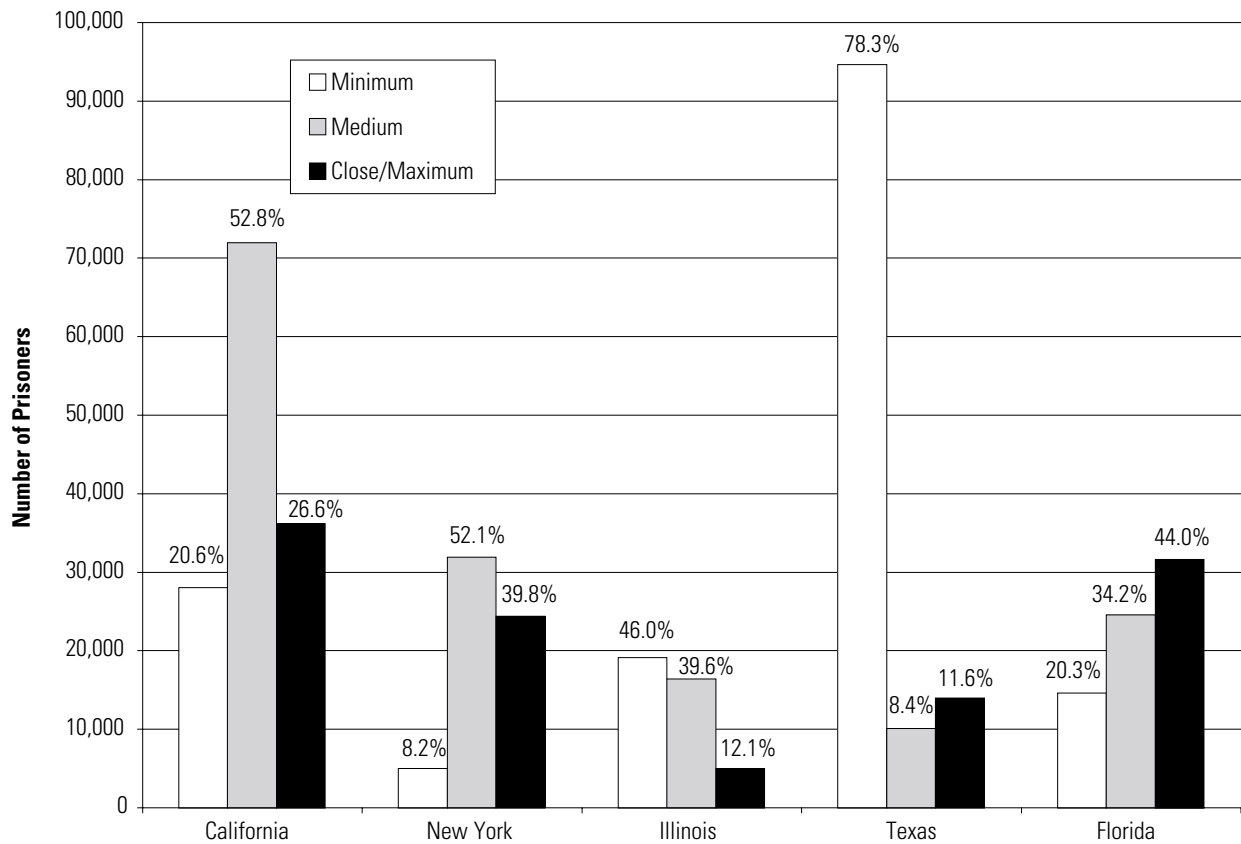
Note: In 2004, 2.2% of California's maximum-security inmates were classified as "supermax" and housed in the Security Housing Unit.

Source: *California Prisoners and Parolees*, various years, California Department of Corrections. Unclassified prisoners were excluded. In June 2004, this number represented approximately 12,000 prisoners.

During the classification process, each prisoner is given a medical exam, mental-health screening, a screening for developmental disabilities, and educational tests. The resulting classification score and other case factors are used to determine the facility or camp to which a prisoner will be transferred. The classification score is also used in prisons to make decisions regarding custody restrictions, work or program assignments, and subsequent transfers. Inmates' classification scores are recalculated at least yearly depending on their behavior and programming.

California's reception centers use an objective classification instrument that was adopted in March 2003. The classification system, based on research conducted by UCLA sociologist Richard Berk, modified an earlier assessment model that was criticized for relying too heavily on the length of a prisoner's sentence and other facts unrelated to in-prison behavior.³⁰ The new instrument places less emphasis on sentence length and considers instead factors such as criminal history, gang affiliation, propensity for violence and/or escape, degree of custodial supervision required, in-custody misconduct, programming needs, work skills, medical/mental health needs, reentry eligibility, and possible family hardship considerations. A lower score indicates that a prisoner has fewer security and custody needs than a prisoner with a higher score, and four levels of security have been

FIGURE 8
Prisoner Security Levels, Five Largest States, 2004



Source: American Correctional Association, *2005 Directory*, Lanham, Maryland. Unclassified prisoners in each state were excluded.

established corresponding to those needs. Facilities are ranked from I to IV, with higher numbers indicating higher security levels. California has several prisons to house inmates from each level.

Figure 7 shows the classification levels for California prisoners for three periods starting in 1987 (the first year that data apparently comparable to recent years are available). California’s prison population does not appear to be classified at an unusually high security level. In fact, in 1987, 24% of inmates were classified as maximum security, compared to only 8% today. Also, more than one in five prisoners are designated minimum security.

Sometimes it is alleged that California cannot implement the types of treatment and work programs that exist in other states because our prison population is higher risk and cannot “program” as easily as prisoners in other states. Figure 8 suggests that, at least on the basis of official prison classification levels,³¹ California’s population is not higher risk than the populations of comparable states. One in four (24%) California prisoners are classified “close/maximum,” which is the case for about 40% of prisoners in Florida and New York. Twenty-one percent of California’s prisoners—28,000—are classified minimum risk, which is similar to or higher than the percent

in other large state prison systems with the notable exception of Texas, where 58% of the total prison population is classified as minimum risk.

California's classification score is often not the determining factor in placing inmates. Instead, inmates' personal characteristics or their conviction offenses often lead to "administrative placements" determined by CDCR policy. For example, sex offenders are typically kept in higher-security facilities because if they were to escape, however unlikely that might be, it could be a public relations disaster.

Administrators can also override the classification score. The most common such adjustment, a "population override," occurs when no bed is available at the type of facility that would normally be used for an inmate with a given score. Under those circumstances, the classification staff representative has total discretion over

The pressures of overcrowding frequently lead to housing assignments that are more expensive and dangerous than necessary and less likely to encourage rehabilitation.

prisoner placement. This override has become increasingly common as California prisons have filled up beyond their designed capacity,³² and this shuffling of inmates to areas that were not designed to hold them has adverse consequences for both the facilities and the individuals they house.

Richard Berk of UCLA reported that such administrative decisions, rather than classification scores, now determine around 25% of California's prison placements, and believes that many of these result in higher-security placements.³³ There are significant implications of these frequent reassignments to more heavily fortified facilities, where inmate violence is higher,³⁴ the housing cost per-prisoner is higher, and a lower level of programming is available to inmates. In other words, the pressures of overcrowding frequently lead to housing assignments that are more expensive and dangerous than necessary and less likely to encourage rehabilitation. Moreover, although most prisoners would prefer to be in a prison located near family and friends—and research shows that those who establish and maintain ties with the outside world have an increased chance of success on parole³⁵—administrative population overrides can end up sending inmates to facilities hundreds of miles away from family members, severely limiting their opportunities for weekend visits.

Prison classification affects not only where inmates will serve time but what programs they are eligible to participate in once they arrive at prison. Prisoners in a maximum-security prison or unit spend a good part of the day in their cell, have strictly regulated movement, and are surrounded by a secure perimeter with extensive

Prison classification affects not only where inmates will serve time but what programs they are eligible to participate in once they arrive at prison.

gun coverage. At the other extreme, in a minimum-security conservation camp, prisoners spend a large part of the day out of their dorm and have few restrictions on movement within an unfenced security or work area.³⁶ These variations in inmates' level of movement translate into tremendous differences in their ability to participate in rehabilitation programs.

Lower-security prisons allow greater opportunities to participate in work.

Assignment to a lower-security facility will directly affect the amount of money an inmate can earn to draw upon at release, because lower-security facilities allow greater opportunities to participate in work. The prestige and pay of prison work and education assignments also vary greatly, and it is clearly advantageous for an inmate to be housed at a facility that will provide opportunities to participate in more rewarding programs. For example, some prisoners work without any pay at all, while those working for the state-run Prison Industry Authority (PIA) or for private

employers through the Joint Venture Programs can earn nearly minimum wage. PIA runs a variety of factories and services at different prisons, and many of the items produced are sold for use by other state agencies. Although PIA wages generally are better than other prison jobs, by state law prisoners employed in the PIA or other prison jobs may earn no more than half the state minimum wage (set in Labor Code 1182), which is currently \$6.75.³⁷ Moreover, only about 6,000 prisoners actually participate in PIA programs.

In contrast, inmates employed by a Joint Venture Program can earn the legal minimum wage or greater (although as much as 20% of their earnings are deducted or diverted for various uses). But participation in such programs is extremely limited; only 150 inmates were employed in that fashion as of July 2004.³⁸ Unfortunately, because there are not enough jobs and programs to employ all prisoners who are interested in working, many inmates must wait a long time to get an assignment. As of the first quarter of 2005, 53.6% of prisoners were employed and 17.7% were on waiting lists. The remaining 28.7% were considered ineligible (usually for security or health reasons).³⁹

A housing assignment that prevents an inmate from working will also extend his or her sentence and contribute to overcrowding, because most prisoners ordinarily can reduce the length of their terms by staying out of trouble and having a work assignment. These assignments are broadly defined to include education and vocational training as well as more traditional work that supports the prison's operation, such as gardening, maintenance, or food-service.

Most prisoners earn "day-for-day" credit, in which they earn one day off their sentence for each day they have a work assignment. Prisoners who are on a waiting list for an assignment earn one day off for every two days they are unassigned. Thus, an inmate who is placed in a facility with minimal programming as a result of a population override is cut off from a basic mechanism for demonstrating rehabilitation and earning time credits. Assigning inmates to appropriate prisons works to their advantage by allowing them to earn time back through labor and good conduct. Such assignments also benefit the state both by producing ex-inmates who have taken steps toward rehabilitation and saving the state money through shorter sentences.

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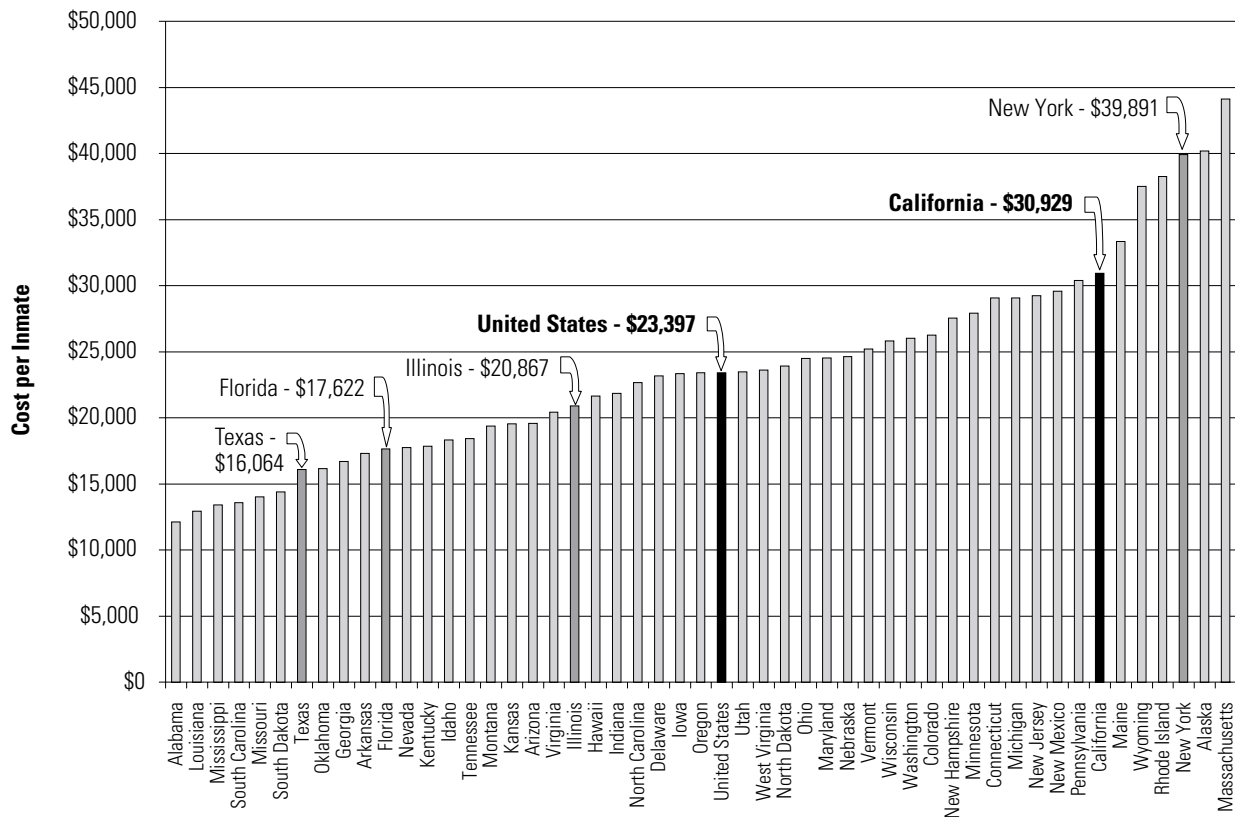
The Cost of Housing a Prisoner

California corrections is an expensive business. It is expensive in terms of the percentage of the state budget that the correctional system consumes, as well as when considered on a per-inmate basis: In 2004, each adult inmate cost California \$30,929 per year—32% higher than a national average of \$23,397 per year (see Figure 9).⁴⁰ By 2005, the average yearly cost of housing a California prisoner had increased to \$34,150, and the cost for each parolee was \$4,067.⁴¹

The sheer amount of resources being poured into the system demands answers to two interrelated questions: 1) why is the cost of corrections in California so high, and 2) is the state getting good value for its money?

Part of the reason for the high overall price tag on the state's system, of course, is that California developed the nation's largest prison population as its population grew and the state enacted more punitive policies. In addition, however, California increased its spending on corrections as a percentage of its total budget over the last

FIGURE 9
Annual Cost per Prison Inmate, by State, 2004



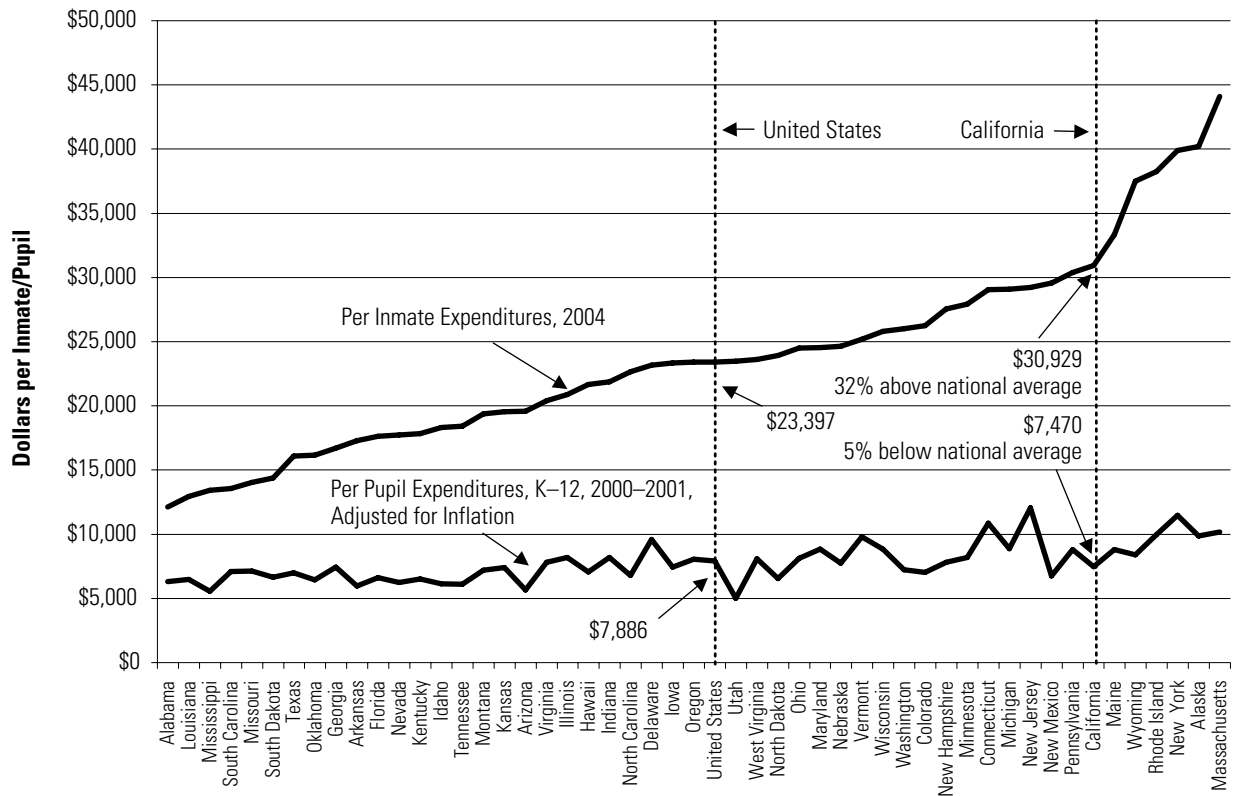
Source: American Correctional Association, *2005 Directory*, Lanham, Maryland.

several decades, shifting resources toward prisons and away from other areas. In 1981, California allocated just 2% of its general fund to corrections. Today, the figure is four times as high (8.2%).

In recent years California's per-inmate costs also increased more dramatically than they have in other states. From 1996 to 2004, the costs of housing an adult prisoner in California increased from \$20,142 to \$30,929 (53%), whereas the national average increased from \$20,261 in 1996 to \$23,397 in 2004 (15%).⁴² These increases in per-capita incarceration costs are all the more striking when compared to California's below-average per-pupil spending on K-12 education: 6% less than the national per-pupil during the same time period (see Figure 10).

What explains the state's high corrections costs and their tendency to continue rising even as the costs of other state correctional departments are falling below national averages? Part of the answer unquestionably lies in California's spending on staff salaries and benefits—an issue that can't be addressed without considering the role of the correctional officers' union in shaping the state's approach to this issue.⁴³

FIGURE 10
Comparison of Expenditures for Prisons vs. Education, K–12, 2004



Sources:

Prison data: American Correctional Association, *2005 Directory*, Lanham, Maryland.

Education data: National Center for Education Statistics, *Digest of Education Statistics Tables and Figures*, 2003, <http://nces.ed.gov/programs/digest/d03/tables/dt168.asp>.

Inflation data: InflationData.com calculator, June 2001 thru December 2004, rate = 6.91%, http://inflationdata.com/inflation/inflation_rate/InflationCalculator.asp.

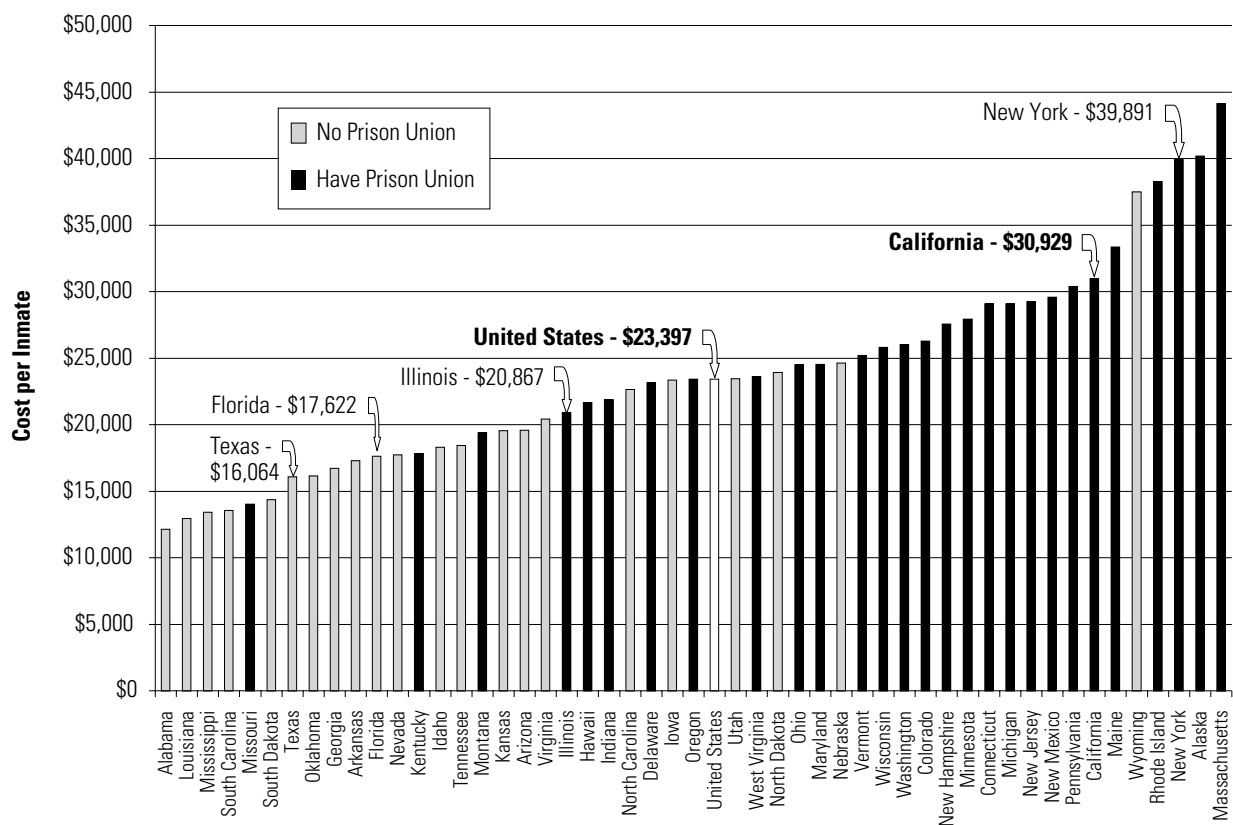
The California Correctional Peace Officers Association

As California's prison population increased, so did the size of its workforce. The California Department of Corrections and Rehabilitation now has a total of 55,050 employees, with 46,759 employed in youth or adult institutions, 3,126 in parole, and 4,513 in administration; 33,350 of the total are sworn peace officers.⁴⁴ Together, they represent 16% of the State of California's employee pool, making corrections the largest employer in the state Civil Service.

Spending on staff salaries and benefits accounts for 70% of the state's total corrections budget. That's not as high a percentage as some states—New York, for example, spends 77% of its correctional budget on staff salaries—but California's is above the national average of 65%.⁴⁵ Staff salaries, therefore, ought to be scrutinized carefully as a cause of California's unusually high per-inmate incarceration costs. However, any analysis of such spending must also take into account the benefits that may be associated with higher-than-average spending in this area.

FIGURE 11

Annual Costs per Prison Inmate and Prison Officers Union, 2005



Source: NIC survey conducted by Petersilia, October 2005.

Discussion of personnel costs inevitably brings up the question of the role of the California Correctional Peace Officers Association (CCPOA) in lobbying for its members.

Correctional officers are unionized in California and 28 other states, which do appear to have higher per-inmate costs for corrections than nonunionized states (see Figure 11). But CCPOA is not just another union. It has been more successful than any other correctional union in the nation at winning benefits for its members. Interestingly, CCPOA leaders have begun to consult with union leaders in other states to share their experience on how to bring more power to other statewide correctional unions.

The CCPOA's Growth and Political Influence

The CDCR administration widely perceives CCPOA to be a significant obstacle to correctional reform. On their part, union officials have stated publicly that they lack confidence in Governor Schwarzenegger and the CDCR administration to implement promised reforms.

In February 2006, Mike Jimenez, CCPOA president, gave a scathing review of CDCR’s performance over the past two years, noting that “absolutely no new rehabilitation efforts have been undertaken,” “the prisons are not safer, the communities are not safer,” “staff do not support this administration,”⁴⁶ and “despite countless ‘transfer of knowledge’ meetings to brainstorm about underlying factors which have led to the current crisis, nothing has gotten better.”⁴⁷ In the few months before Secretary Hickman resigned, it had become clear that the relationship between CDCR management and CCPOA members had become highly contentious and, given the political and financial power of CCPOA, one wonders how any reform can succeed in this conflict-ridden environment.

Over the past 20 years CCPOA has emerged as one of the state’s most powerful unions, and has used its lobbying and political activities to influence key elections and legislation. The union was not always so influential. Founded in 1957, the group was politically weak prior to the 1980s, when the membership was divided between the California State Employees’ Association and the California Correctional Officers’ Association. During the 1980s Don Novey took control of the organization, and under his leadership the Youth Authority supervisors, parole officers, and prison guards were consolidated under one organizational umbrella, and membership increased significantly as a result. Mr. Novey also launched an aggressive public relations campaign, spending over \$500,000 per year during the 1980s to boost the union’s public profile.⁴⁸

These organizational changes coincided with external political and social developments that would become instrumental to the CCPOA’s growth strategy. Crime began to rise and politicians responded by advocating more punitive policies, which in turn led to more prisoners and the need for more prisons. California built more prisons—21 since 1984—which had to be staffed. Between 1980 and 2005, CCPOA membership soared from 5,000 to over 33,000. The formula is simple: more prisoners lead to more prisons; more prisons require more guards; more guards equal more dues-paying members and fundraising capability; and fundraising, of course, translates into political influence.

The CCPOA made history in 1994 when it contributed \$425,000 to Republican Pete Wilson’s gubernatorial campaign—reportedly the largest single donation ever made to a California candidate until then. The CCPOA continued to contribute to Governor Wilson during his tenure, and he awarded the CCPOA an 11% pay raise on his way out of office in 1998. Seamlessly crossing party lines, the CCPOA spent \$2 million in direct and indirect donations to help Governor Wilson’s successor, Democrat Gray Davis, win election in 1998, and then gave him another \$1.4 million in his first term.⁴⁹ Both governors supported legislation that significantly increased the prison population, most notably the passage in 1994 of California’s “Three Strikes and You’re Out” law. Since 1994, the courts have sent more than 80,000 second-strikers and 7,500 third-strikers to state prison.⁵⁰

Over the years, with the continued popularity of tough-on-crime policies and initiatives among California voters, CCPOA became progressively larger and more influential. Throughout the late 1980s and 1990s, CCPOA-sponsored legislation was successful more than 80% of the time.⁵¹

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Don Novey remained CCPOA president from 1982 until 2002, and during that time he also used his political savvy to form strong alliances with crime victims' advocates—a much more sympathetic group than prison guards. CCPOA bankrolled and nurtured what have become the two most politically powerful victims' rights groups in the state—Crime Victims United of California (CVUC) and the Doris Tate Crime Victims' Bureau (CVB)—providing nearly all of their operating budgets and office space, and giving them access to CCPOA's lobbyists, media experts, and political consultants. These groups have shown that together they can flex their political muscle with success.

CCPOA has been more successful than any other correctional union in the nation at winning benefits for its members.

When Arnold Schwarzenegger announced that he would challenge then-Governor Gray Davis in a recall election, he said he would not accept campaign donations from any special-interest group, including CCPOA. In fact, just days before the election in November 2003, Schwarzenegger participated in a rally on the steps of the State Capitol holding a broom in his hands and promising to clean up special-interest politics in Sacramento. In his 2005 “State of the State” address, he singled out and admonished the state's prison system and attributed much of corrections' difficulties to the powerful CCPOA.⁵² He vowed to make changes, saying:

This is an agency in which there has been too much political influence, too much union control, and too little management courage and accountability . . . California was once the national leader, a pioneer, in corrections integrity, innovation and efficiency. We can make it so again.

Despite public pronouncements, reform has proven difficult. In fact, when Governor Schwarzenegger asked the voters to approve a number of initiatives in the November 2005 special election, the CCPOA collaborated with a traditional rival—the California Teachers Union—to oppose the initiatives. One of the eight ballot propositions in the special election was Proposition 75, which would have required employees' consent to use union dues for political contributions—a move CCPOA strongly opposed. Opponents of this proposition portrayed it as a measure to “silence the unions,” since private corporations would not be affected.

Over the years, with the continued popularity of tough-on-crime policies and initiatives among California voters, CCPOA became progressively larger and more influential. Throughout the late 1980s and 1990s, CCPOA-sponsored legislation was successful more than 80% of the time.

To defeat the measure, CCPOA increased its treasury by raising the dues of each of its 33,000 members for a 17-month period, adding a special assessment of \$33 per month to the normal \$74 per month dues. Thus CCPOA was able to contribute over \$2 million to defeat the governor's reform initiatives, which were soundly defeated by voters.⁵³ A nonpartisan Field Poll released a week later showed his support had dropped to 37%, one of the lowest approval ratings for any California governor and barely above the support of recalled former Governor Gray Davis.⁵⁴ CCPOA had once again flexed its political muscle and come away victorious.

The political power of CCPOA is likely to increase in the near future, as CDCR has promised to accelerate its recruitment efforts to fill an overall 20% staff vacancy rate. Former Secretary Hickman recently reported that the department planned to hire “2,460 new correctional cadets this year, and 3,720 the next year and for those years to come.”⁵⁵ As these ranks grow, so too does CCPOA membership and the union's financial leverage. Today's membership dues generate about \$23 million a year—without considering the special assessment that is still in effect. Thirty-five percent of that money—\$8 million per year—goes to

lobbying. With projected increases in staff hiring, CCPOA will be collecting well over \$25 million a year for many years to come.

Implications of CCPOA's Collective Bargaining for Salaries, Pensions, and Managerial Discretion

Salaries, Pensions, and Inmate-to-Staff Ratios

CCPOA has focused primarily on officer safety and security. The union has negotiated better working conditions, staff training, and safety equipment, including the right to carry weapons.⁵⁶ But CCPOA's most visible success has been its ability to gain favorable pay and benefit packages for members—exactly what a good union is supposed to do. Its collective bargaining efforts also have radically changed management's ability to control the day-to-day running of the prisons.

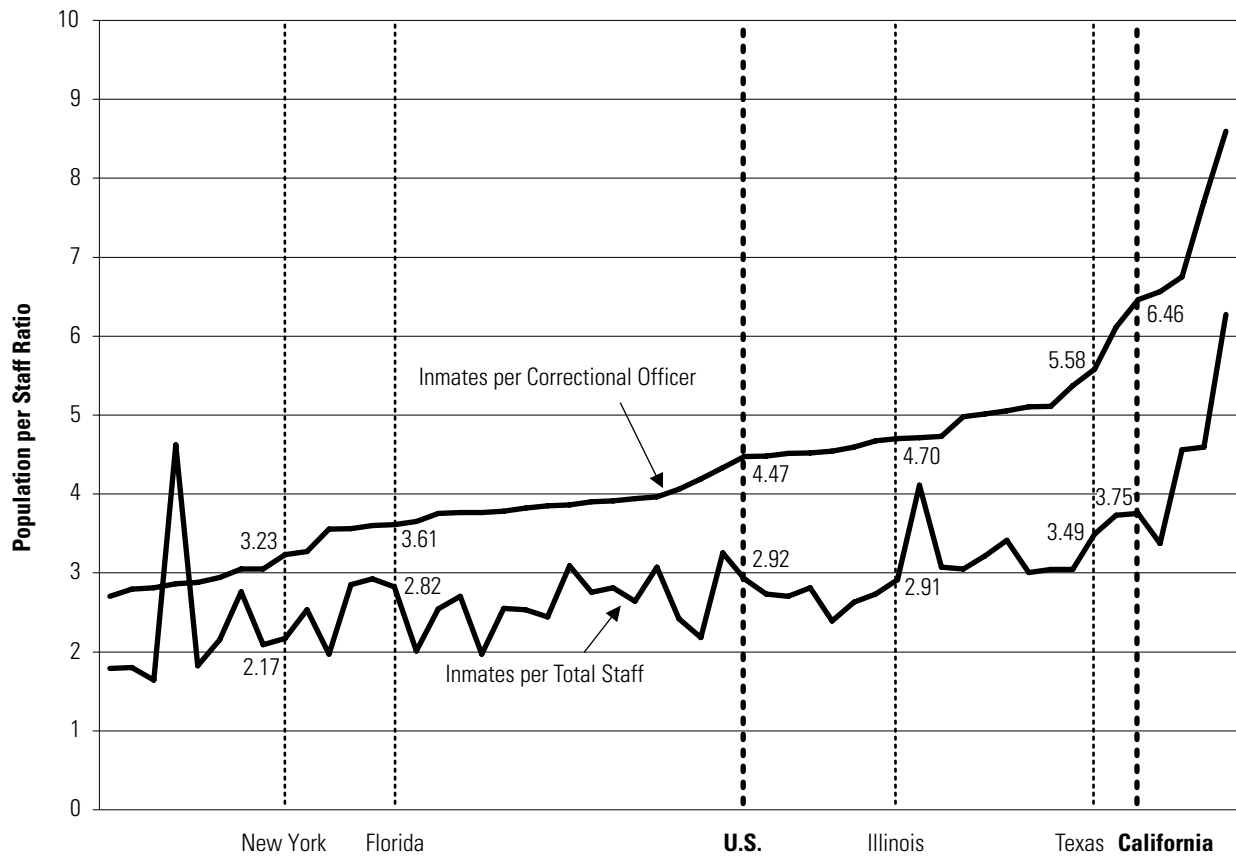
The situation that has unfolded in California was predicted in a 1979 report on the emergence of collective bargaining in U.S. prisons. As union membership grows, the authors forewarned, power would increasingly shift from management to rank-and-file, and line staff would be able to effectively thwart any attempts at change proposed by those outside of the union. This would cause a basic tension between industrial democracy and political democracy, since in a political democracy the public and its elected officials are presumed to be able to affect how they want criminals to be handled. The report's authors, Jacobs and Crotty, posed the question: "What if a majority of the voters or their elected governor want to implement a penal reform program that rank-and-file correctional officers and their labor organization oppose?" A powerful union will be able to effectively diminish the electorate's preferences.⁵⁷

This is exactly the situation California finds itself in today. It is for others to decide whether CCPOA's growth is "good" or "bad," but if observers do not understand how its growth and power seriously constrain the current administration's ability to implement promised reforms, they are hopelessly naïve. Over the past 25 years, CCPOA has used its collective bargaining expertise not only to improve wages and benefits, but also to negotiate issues outside the scope of employment conditions and salary that significantly limit managerial discretion.

Mr. Novey wanted CCPOA members to attain parity with the California Highway Patrol, contending that correctional officers have a far more difficult job. CCPOA also believed such parity would promote a more professionalized workforce, which in turn would create safer prisons, lower staff turnover, and lead to fewer violent outbreaks. Many believe, instead, that the current CCPOA contract imposes unbearable budget costs, reduces managerial discretion, and may hamper the state's ability to implement reform.

CCPOA's current labor agreement has received particularly bad press for gouging California taxpayers. At particular issue is the Memorandum of Understanding (MOU) adopted under Governor Gray Davis.⁵⁸ The average California correctional officer now earns \$59,000, which is 58% more than correctional officers earn nationally. By July 2006, when the current contract expires, the average pay is expected to reach \$73,248 a year.⁵⁹ With overtime, it is not uncommon for California correctional officers—who are required only to be 21 years of age and have a GED or a high school diploma—to earn over \$100,000 a year. The average salary of a correctional officer is reported to be more than the average salary of an associate professor with a PhD at the University of California—but professors teach only nine months a year.⁶⁰

FIGURE 12
Inmates per Correctional Officer, by State, 2000



Source: Census of State and Federal Correctional Facilities, Bureau of Justice Statistics, Washington, D.C., 2000.

While it is true that California correctional officers receive greater financial benefits than many other state employees and most correctional officers nationwide, they also work in extremely difficult conditions. As Jacobs and Crotty noted in their study of the rise and power of prison guard unions,⁶¹

A career officer in effect commits himself to a life sentence in prison. In addition to being dirty, malodorous, and confining, prisons are dangerous. The guard faces the constant possibility of being attacked or taken hostage . . . prisoners frequently carry or have access to knives, pipes, or bits of glass or metal. In addition, the guards are vastly outnumbered.

CCPOA's motto, displayed prominently on its website and all of its literature, is that correctional officers "walk the Toughest Beat in the State." There is evidence to support their claim. California's inmate-to-staff ratio is 6.46 inmates per correctional officer, compared to a national average of 4.47 (see Figure 12). Only Alabama, Oklahoma, and Nevada have higher inmate-to-staff ratios. And, as discussed later, gang violence makes California prisons particularly dangerous.

California assigns twice as many inmates to a given officer as New York does, and also assigns more than other large states like Florida, Texas, and Illinois. Numbers like this give the officers' union a strong basis to claim that California prisons are "understaffed," and they make that argument frequently.⁶² CCPOA President Mike Jimenez recently wrote: "The biggest problem facing corrections in California today is understaffing. Whether crowded or not, adequate staffing can always maintain security and operational integrity. CDCR is currently between 2,000 and 4,000 correctional officers short, depending on whose numbers are used."⁶³ In fact, because new officers were not hired and trained in 2004–2005, existing officers were required to work overtime, which in turn inflates their annual average salaries.

CCPOA members often say they would rather earn their regular salaries and not be forced to work so much overtime. They believe they get blamed by the media and the legislature for earning such high annual salaries, which are caused by the administration's failure to hire the required staff. In fairness, they have been urging the CDCR to reopen the academy, hire new recruits, and reduce officer overtime charges for several years. On October 30, 2005, CCPOA spokesman Lance Corcoran published a letter to the editor in a Vacaville paper in which he argued that "our members are suffering from dangerously understaffed and overcrowded prisons. Correctional officers are exhausted from working 16-hour shifts numerous times every week."⁶⁴

Overtime shifts, in addition to being draining for officers, are enormously expensive for the state. In a June 2005 *San Francisco Chronicle* survey of the 2,000 highest paid state employees, 50 were correctional officers who had clocked enough overtime to earn salaries normally associated with executives. One lieutenant at the California Institution for Men earned \$181,828, of which \$99,000 represented overtime pay.⁶⁵ But prisons must be fully staffed, and it isn't the fault of the CCPOA that sufficient staff have not been hired and trained. Without sufficient staff, existing staff have to work overtime—driving up costs and, in turn, public criticism of their high salaries.

CCPOA retirement benefits are also better than those of some other state employees. The CCPOA formula as of January 1, 2006, is a multiplication factor of 3.0 at 50 years of age (the minimum age for retirement): 3.0 multiplied by the number of years union members have worked for the state is the percent of their salary they will get at retirement. In other words, correctional officers who retire at age 50 after 20 years on the job will get 60% of their monthly salary during retirement (20 x 3.0). The maximum retirement benefits are 90%, which means that after working for 30 years, correctional officers get 90% of their monthly salary in retirement benefits, for life. Since 90% is the maximum one can earn in retirement, working past 30 years is basically working for free. Previous contracts used 2.5 as the multiplier, but the new contract increased it to 3.0.⁶⁶

State legislators have claimed that this is a different type of retirement system than other state employees receive. However, California Highway Patrol (CHP) employees receive the same benefit. If we compare this retirement system to that of California teachers, however, we discover a large disparity. Teachers receive only 2.5% of their salaries at age 63.⁶⁷ This means that after 30 years on the job, a correctional officer receives 90% of his salary for life but a teacher receives only 75%, and these benefits begin 12 years later. See Table 2 for a comparison of several state employee benefit systems.⁶⁸

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TABLE 2
Comparison of Several State Employee Benefit Systems

Age at Retirement	Retirement Factor				
	Teachers	Registered Nurses	Firefighters	CHP	CCPOA
50	1.10	1.10	2.40	3.00	3.00
51	1.28	1.28	2.52	3.00	3.00
52	1.46	1.46	2.64	3.00	3.00
53	1.64	1.64	2.76	3.00	3.00
54	1.82	1.82	2.88	3.00	3.00
55	2.00	2.00	3.00	3.00	3.00
56	2.06	2.06	3.00	3.00	3.00
57	2.13	2.13	3.00	3.00	3.00
58	2.19	2.19	3.00	3.00	3.00
59	2.25	2.25	3.00	3.00	3.00
60	2.31	2.31	3.00	3.00	3.00
61	2.38	2.38	3.00	3.00	3.00
62	2.44	2.44	3.00	3.00	3.00
63 and over	2.50	2.50	3.00	3.00	3.00
Maximum percentage of salary received upon retirement	75%	75%	90%	90%	90%

The average California correctional officer now earns \$59,000, which is 58% more than correctional officers earn nationally. By July 2006, when the current contract expires, the average pay is expected to reach \$73,248 a year.

CCPOA members also receive bonuses for fulfilling extra conditions. For example, correctional officers are entitled to additional income for physical fitness, educational incentives, bilingual facility, and rural assignment. Though these types of bonuses are used in other California law enforcement agencies,⁶⁹ in the corrections system several of them stand out.

First, correctional officers get a bonus of \$65 to \$130 per pay period for simply completing a physical fitness exam, regardless of their physical shape.⁷⁰ The CHP, on the other hand, requires employees to meet certain physical requirements to earn the bonus. As a result, all 33,000 CCPOA members are receiving fitness pay,⁷¹ in essence making it part of their income instead of being a performance-based bonus.

The current CCPOA contract also includes a “recruitment incentive” that grants bonuses to employees in the San Quentin and Salinas facilities. In reality, this is a stipend that acknowledges higher housing costs in these areas. Officers in these facilities receive \$175 per month of additional income, although other state employees who work in the San Francisco Bay Area receive no such subsidy.

Finally, the Rural Health Program, which also exists in other law enforcement agencies,⁷² appropriates \$1,500 per year to employees living in eligible rural areas. These programs generally allocate a certain amount per month that each rural employee is permitted to receive as a reimbursement for incurred health care costs, which are higher in rural areas. CCPOA’s 2001 MOU provided for a typical reimbursement program in which employees were required to claim reimbursements and provide proof of their health care expenses. Unclaimed money was placed into a bank account for rural employees with catastrophic health care conditions.

The addendum negotiated in July 2004 changed this reimbursement system to an out-of-pocket expenditure, so that employees are now paid the rural bonus without proving reimbursable costs. The union contends that health care costs are simply so high in these areas that all employees would be reimbursed the full amount anyway, making this a stipend that directly offsets higher health care costs. Senator Speier has expressed concern that “we are creating a different status for rural employees who are CDC members than rural employees who are not CDC members.”⁷³

Limits on Managerial Discretion: The “Post and Bid” Staffing System

Some critics contend that CCPOA’s influence isn’t limited to just pushing for high salaries, and that it wields more power than it should on substantive matters of crime policy. The Corrections Independent Review Panel report on California’s prison system, for example, argued that the 2001–2006 contract between the state and CCPOA resulted in “an unfair and unworkable tilt toward union influence” in a way that “seriously undermine[s] the ability of management to direct and control the activities of existing correctional departments.”⁷⁴ Of particular concern in this regard are the “post and bid” staffing provisions.

The CCPOA MOU stipulates that 70% of a prison’s posts are available for correctional officers to fill on a seniority basis, leaving only 30% for management to staff as they deem appropriate.⁷⁵ The assignment process begins with an agreement between the local union chapter and prison management on the number and makeup of posts. Next, correctional officers bid for 70% of the posts, and are assigned to them based on seniority. Management makes assignments at its discretion for the remaining 30% of the posted positions.

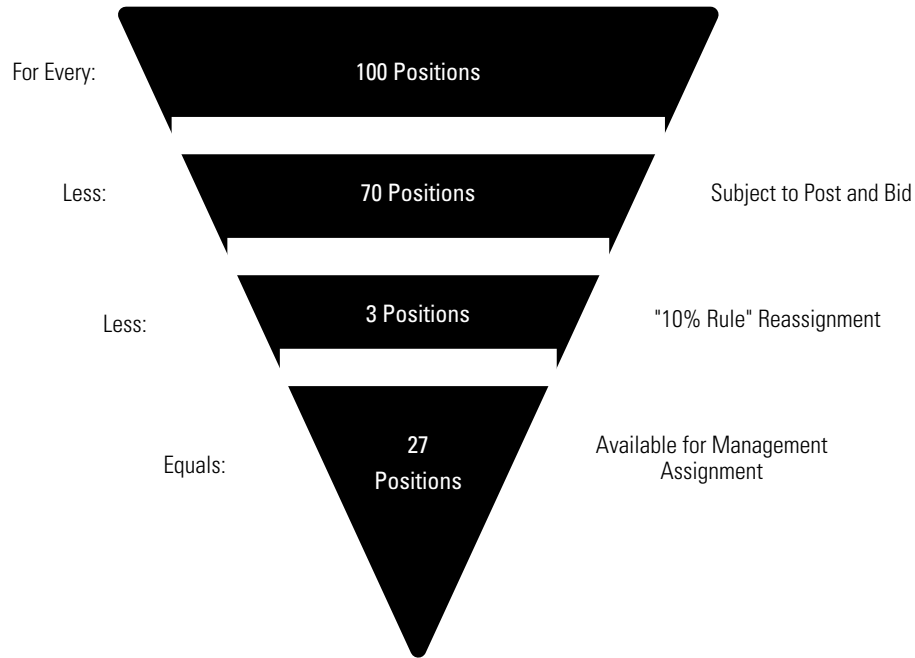
Although the post-and-bid provision has existed in previous agreements, the current MOU increased the percentage from 60/40 to 70/30. It also augmented the overall number of qualifying positions subject to the provision. None of the other five local law enforcement agencies in California have post-and-bid provisions.⁷⁶

The CCPOA contends that this system ensures fair assignments and safeguards officers from managers who would use the assignment process inappropriately, such as for retribution or favoritism. However, managers think the post-and-bid system prevents them from selecting the most appropriate employees for sensitive or critical posts, and limits their ability to reward or discipline staff in these positions. For example, if managers determine that an employee with high seniority is not performing up to standards in a seniority-based post, they may remove that employee. However, they must place the employee in one of their 30% posts, preventing them from making merit-based assignments. Similarly, if an employee with low seniority is performing above standards, management has limited ability to reward that employee with a desirable assignment.

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Management has some limited ability to exclude officers from assignments for which they have bid. Inattentiveness on the job, insubordination, or excessive force are permissible reasons, but abuse of sick leave, off-duty conduct, or adverse personnel action occurring more than 12 months prior to the requested assignment do not qualify as allowable justifications. One provision—the “Ten Percent Rule”—is intended to alleviate this problem: “[W]hen it becomes apparent [that] an employee does not possess the knowledge, skills, aptitude, or ability to perform at an acceptable standard” in the post position to which the employee has bid, he or she can be reassigned.

FIGURE 13
Staff Positions Available for Managerial Assignment



This reassignment is subject to some hefty procedural requirements. The employee's immediate supervisor must prepare a job-change memorandum, which must then be approved by the employee's second-line supervisor and section manager prior to being forwarded to the Personnel Assignment Office—and the number of these reassignments must not exceed 10% of the total post-and-bid positions.

Figure 13 illustrates how these rules work together to limit management's assignment discretion. Beginning with a hypothetical 100 positions eligible for posting and bidding, management may only be able to assign 27 posts. Managers frequently attribute their inability to implement new policies to these post-and-bid rules, which limit their ability to bring in staff who share their reform ideas.

Renegotiating Changes to the CCPOA Contract

Governor Schwarzenegger, facing a \$38 billion state budget gap in 2003, tried to win back some of the pay raises that CCPOA had been promised in its 2001 contract. In attempting to balance the budget in 2003–2004, he was forced to ask CCPOA to return to the bargaining table before the contract ended, and before these increases could take effect, to request that they forgo the scheduled pay raises. As described below, this was a costly move. Although the union acquiesced on the timing of its pay increases, CCPOA expanded its power and job security in other ways.

On July 1, 2004, the Schwarzenegger administration reached a deal with the CCPOA to delay the scheduled pay raise to save the state \$108 million in fiscal year 2004–2005. Instead of the original 10.9% raise that had been scheduled for July 2004, the agreement provided for a 5.1% raise on July 1, 2004, 5% on January 1, 2005,

and 0.9% on July 1, 2006.⁷⁷ This scheduling change led to about \$20 million in salary savings. To achieve the full \$108 million savings, the state agreed to defer payments into the correctional retirement fund, the POFF II.⁷⁸ In exchange for this agreement, the CCPOA achieved the following significant gains:

- ▶ The union was guaranteed no layoffs through 2006 unless the inmate population drops by more than 6%. This essentially ensures no layoffs, because the average yearly change in the California prison population since 1994 has exceeded 1%.⁷⁹ For prison population growth in California for 1994 through 2004, see the Bureau of Justice Statistics series on number of prisoners each year (<http://www.ojp.usdoj.gov/bjs/prisons.htm>). This provision appears to have been well-timed from the union's perspective because three CYA facilities were scheduled for closure, and this clause, along with a new transfer provision, ensured the absorption of those employees into the greater correctional system, instead of layoffs.⁸⁰
- ▶ The Department of Corrections and Rehabilitation agreed to give the CCPOA videotapes of prison riots or other incidents no later than 12 months after the occurrence. The union exacted this provision to resolve its concerns about CDCR reluctance to turn over the footage. The union traditionally has used these tapes in its lobbying and public relations efforts to publicize and provide support for its claim that correctional officers "walk the toughest beat."
- ▶ Employees working in rural areas were given an extra \$125 per month for health care costs. As discussed earlier, this provision changed the program from a health care reimbursement system to a flat income increase.
- ▶ The post-and-bid staffing system was extended to include prison supervisors. Although this decision further reduces the ability of wardens and top managers to staff prisons as they deem appropriate, from an operational perspective it has a positive effect: Encouraging union officers to work diligently in the hope of securing a promotion is one way to address officers' lack of interest in promotions because their benefits are better than supervisors' benefits.
- ▶ The addendum provides for distributing funds as a continuous appropriation. In most MOUs passed by the legislature, even with a contract in force, if the legislature elects not to appropriate funds in a fiscal year, the parties must return to the bargaining table to renegotiate. Continuous appropriation removes legislative authority to withhold appropriation of funds in this way.

Although the CCPOA is often criticized in the press, and there may be ample reasons to be concerned about the power the union wields, it is also true that California's unusually good treatment of its correctional officers benefits the state. In 2004, for example, only 1,000 of California's 36,000 sworn peace officers left the CDCR, an annual turnover rate of 3.6%. This is very low for public service generally and quite unusual for correctional settings, where burnout is typically a significant staff issue. California may have the lowest turnover rate of any state corrections department. In many states, by contrast, turnover rates among correctional officers hover around 20%. In Texas, for example, the annual turnover rate in 2004 was 21%, in Florida it was 13%, and in Illinois it was 8%.⁸¹ Kentucky lost nearly a third of its staff to turnover in 2004.⁸²

The administrative, training, and transactional costs of these turnover rates are significant, suggesting that California may recoup some of the money spent on lucrative contracts for officers by avoiding these wasted personnel expenses. Better staff retention and greater professionalization may also affect the conditions within California prisons, such as escapes, suicide attempts, and incidents of gang violence and assaults, the topics we turn to now.

▶ 3

Escapes, Suicides, Homicides, Assaults, and Prison Gangs

Prison Escapes

California has one of the lowest prison escape rates in the nation, and in recent years its escape rate has declined while that of many other states has increased.⁸³ In 2004, the California prison escape rate (per 100 average daily population) was 0.01%, or 16 inmates out of the approximately 165,000 housed that year.⁸⁴ Only one of these escapes was from a secure facility; the rest occurred through “walkaways” by work crews. The state’s escape rate has remained at 0.01% for each of the last five years, having declined significantly since 1986, when there were 70 escapes out of a population of 59,000. In Florida, by contrast, the escape rate rose from 0.04% in 2003 to 0.11% one year later.⁸⁵

While California’s low escape rate may be related in some sense to the quality of its correctional staff, escapes are also a function of facility construction and inmate mobility. Most of the state’s prisons are relatively new—21 of the 33 facilities were built since 1980—and take advantage of recent advances in correctional construction and security technology. In addition, however, California inmates may be on lock-down more than inmates in other states, and have less mobility to participate in programs. These restrictive living conditions make it unlikely that inmates will be able to escape.

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Prison Suicide and Homicide

Suicide and homicide rates have also declined in U.S. state prisons since the 1980s. The Bureau of Justice Statistics reports that the suicide rate in all state prisons dropped sharply from 34 per 100,000 inmates in 1980 to 14 per 100,000 in 2002 (the latest data available). Even more dramatic was the decline in homicide deaths, from 54 per 100,000 inmates in 1980 to 8 per 100,000 in 1990, and to 4 per 100,000 inmates in 2002.⁸⁶

California’s prison suicide and homicide rates have also declined since the 1980s, although its suicide rate increased in 2005. The state’s decline in homicide deaths has been particularly dramatic: from 54 per 100,000 inmates in 1980 to 8 per 100,000 inmates in 1990, and to 4 per 100,000 inmates in 2002. In the 20 years between 1965 and 1985, 16 correctional officers were killed by inmates. By contrast, over the next 20 years two correctional officers were killed. (On January 10, 2005, correctional officer Manuel A. Gonzalez, Jr. was fatally stabbed at California Institute for Men. Prior to that, no California correctional officer had been killed in a prison setting since June 8, 1985, when Sergeant Howell D. Burchfield was stabbed at San Quentin.)

California has higher rates of both prison suicide and homicide than the U.S. as a whole, and its homicide rate is higher than the rates of other large states.

TABLE 3
Number and Rate of Prisoner Suicides and Homicides, 2001–2002

State	Suicides		Homicides	
	Number of Prisoner Deaths	Average Annual Rate per 100,000 Prisoners	Number of Prisoner Deaths	Average Annual Rate per 100,000 Prisoners
California	52	16	21	7
Florida	11	8	3	2
Illinois	20	22	2	2
New York	21	15	3	2
Texas	49	17	10	3
U.S. Total	337	14	87	4

Source: *Suicide and Homicide in State Prisons and Jails*, Bureau of Justice Statistics, August 2005, NCJ 210036.

Judging by these numbers, California prisons appear to have become safer for both inmates and correctional officers. To some extent, this can be attributed to CCPOA’s strong emphasis on the safety of its members.

Nonetheless, California has higher rates of both prison suicide and homicide than the U.S. as a whole, and its homicide rate is higher than the rates of other large states (see Table 3). There were 87 homicides in U.S. prisons in 2001–2002 (the latest year for which national figures are available), and 21 of them—or 24% of the total—took place in California facilities.

During the same period there were 337 prison suicides, with 52—or 15% of the total—taking place in California. The state’s prison homicide rate, at 7 per 100,000 inmates, is more than twice that of Texas and more than three times as high as the rates of New York, Illinois, and Florida. California’s prison suicide rate, at 16 per 100,000 inmates, is higher than the national average.

The highest suicide rates nationwide were among violent offenders—more than twice as high as those of non-violent offenders, according to the Bureau of Justice Statistics—and violent offenders were also the victims of 61% of all state prison homicides. Suicide rates also increased with inmate age. Inmates age 18 to 24 were the least likely to commit suicide, with a rate of 13 to 14 suicides per 100,000 prisoners. This rate increased to 24% for inmates age 25–34, and to 39% for inmates age 35–44. The oldest inmates, age 55 or older, had the highest suicide rate (58 per 100,000) among adult inmates. Most state prison suicides (65%) took place after the inmate’s first year of confinement, and 33% took place after the inmate had served at least five years in prison.

These data suggest that as the inmate population ages, and length of term increases, suicide and homicide rates are likely to increase.⁸⁷ Since both of these factors characterize California’s current prison population, they may account for California’s higher-than-average numbers in these areas and also for the recent increase in prisoner suicides.

Prison Assaults

The Legislative Analyst’s Office compared California’s prison assault numbers with those of other large states and found that California reported considerably more violence behind bars—nearly twice the number of

assaults as Texas and almost three times the number of assaults as the federal prison system, although both of those systems had roughly the same number of inmates as California.⁸⁸

Many factors may explain California’s troublingly high numbers in this area: They may be a function of varying definitions of what constitutes an assault from system to system, they may be related to differences in characteristics of those incarcerated in California (recall that 78% of Texas inmates are classified minimum risk), and they may be a product of running prisons at 200% of capacity when prisons in other states are less congested. Nonetheless, such high rates are a cause for serious concern.

As part on an ongoing research project at the University of California, Irvine, researchers Sumner and Matsuda analyzed all officially recorded reports of adult inmate violence (Crime Incident Reports, or “837s”) where an inmate was the aggressor.⁸⁹ Between 1975 and 2004, 209,556 Crime Incident Reports were filed, although the data do not permit one to identify how many separate individuals received an 837. Sumner and Matsuda found that during this 29-year period, most incident reports reflect inmate-on-inmate nonsexual violence (79%), and a fair number (16%) reflect inmate-on-staff nonsexual violence.

Figure 14 depicts Sumner and Matsuda’s examination of the number of inmate incident reports over time. As shown, inmate-on-inmate violence rose slowly from 1975 to 1990, and then increased dramatically starting

FIGURE 14
Crime/Incident Reports (837s) for Inmates in California Adult Prisons, 1975–2004

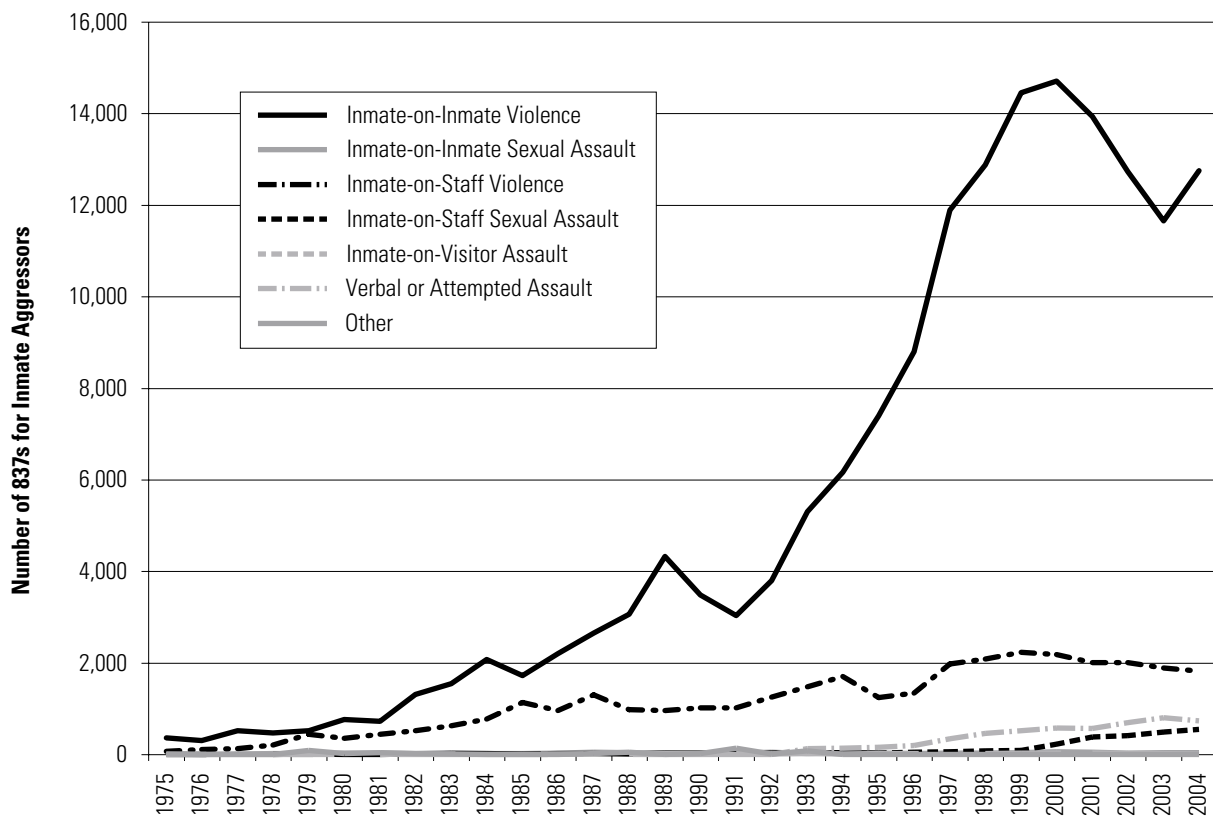
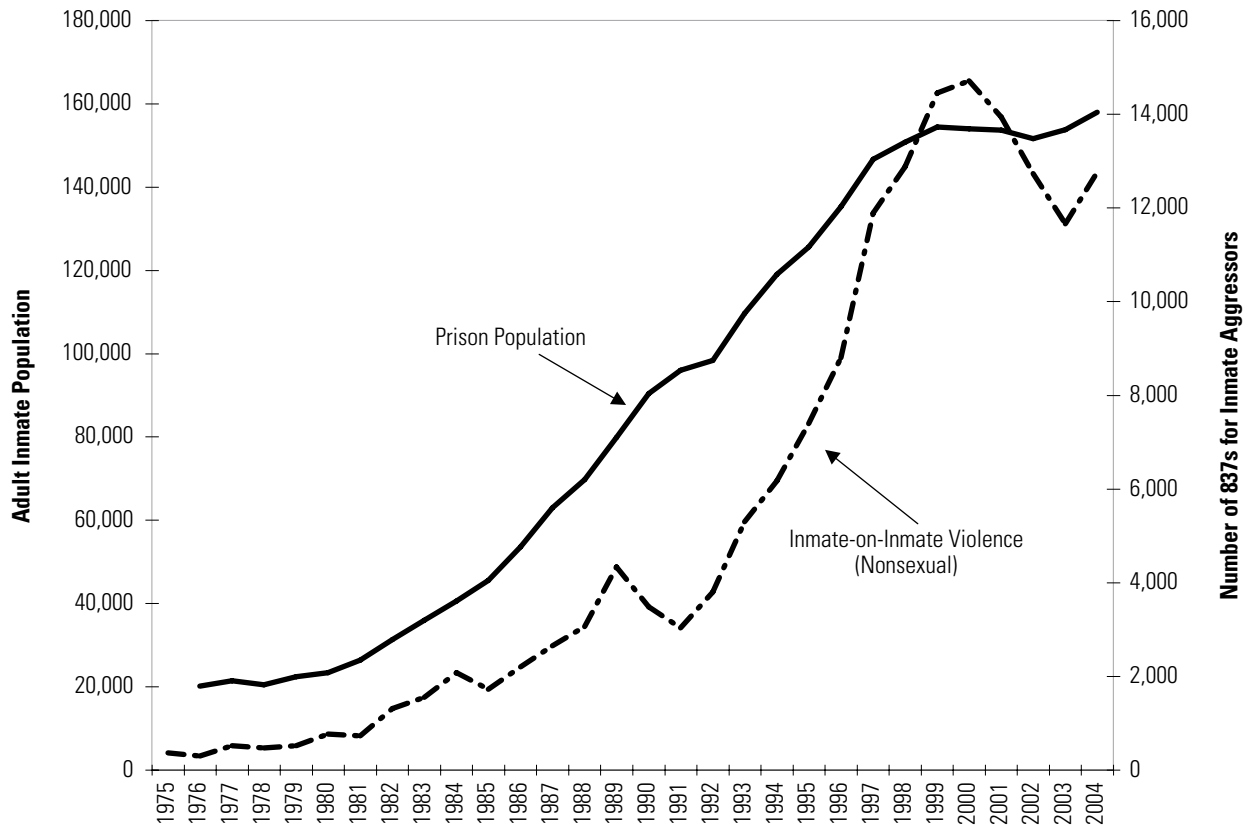


FIGURE 15
**Population and Crime/Incident Reports (837s) for Inmate-on-Inmate Incidents,
 California Prisons and Camps, 1975–2004**



in 1993 until it peaked in 2000 and began to decline. Since 2003, such incidents have been increasing. Official reports of inmate-on-staff violence do not show the same dramatic increase but do increase slightly over this period.

The data reported in Figure 14 do not control for the growing prison population, changes in inmate characteristics, or reporting practices. Increased inmate-on-inmate violence is probably caused in part by prison population increases. Thus, Figure 15 reports both the growth in the inmate population and the growth in officially reported inmate-on-inmate violence in adult prisons. Although both have increased over time, the extent of the growth in violence is greater for some years. Notably, between 1989 and 1992, the number of inmates issued 837s for inmate-on-inmate violence decreased slightly although the population was increasing.

It is not clear what explains these numbers, but prison managers attribute the upward trend to increased gang activity. A California prison official noted that “prison gang members and associates are responsible for the largest percentage of violence in our institutions.”⁹⁰ In recent years, there have been numerous instances of prison riots—most notably the infamous fatal fights at Pelican Bay and, most recently, a three-hour “racial clash” at the Men’s Correctional Center in Chino in 2005, which involved 200 men and left two inmates critically wounded. Gangs are widespread in the state’s prisons and clearly contribute to the prison assault rate.

Prison Gangs

California is often cited as the birthplace of America's most notorious prison gangs. Certainly, in terms of raw numbers, it is said to be holding the largest group of gang-affiliated prisoners.⁹¹ The influence of these groups on prison violence is widely recognized by state officials. For example, in a recent Supreme Court case, *Johnson v. California*, which challenged the policy of placing new inmates only with cellmates of the same race to avoid gang violence, officials described a "violent and murderous" gang culture in California prisons.⁹²

Research confirms what practitioners believe: in a comprehensive study of prison gangs, Gerald Gaes and his colleagues found that gang affiliation increases the likelihood of violence and other forms of prison misconduct, even after controlling for individual inmate characteristics that are associated with a violent predisposition.⁹³

Besides contributing to crime and violence in prisons, gangs exert tremendous influence on communities through their control over street gangs as well as their networks outside prison.⁹⁴ The California Department of Justice (DOJ) reports that prison gangs control numerous criminal enterprises from within prison, including extortion, illegal gambling, racketeering, robbery, smuggling of contraband and drug trafficking, assaults on inmates and staff, and murder. For example, in 2004, eight leaders of La Nuestra Familia pled guilty to federal racketeering conspiracy charges for directing drug deals, ordering murders, and orchestrating robberies from their cells at Pelican Bay State Prison, California's supermaximum-security prison.⁹⁵

According to DOJ specialists, much of the prison gangs' power derives from their control over street gangs. One of their tactics involves imposing "taxes" on the profits of street gangs.⁹⁶ Failure to pay often results in being placed on a hit-list, while those who do pay are offered protection by prison gangs when and if they are ever sent to prison.

Prison-gang dominance over street gangs is also maintained by young, new inmates who, having turned to gangs for protection and connections when they become incarcerated, and having made a lifetime commitment to the prison gang,⁹⁷ export these new connections, hostile attitudes, and skills back to their home communities when they are released.⁹⁸ California's "catch and release" parole policies, which continually recycle inmates between prison and home, clearly facilitate this linkage.

Obviously a prison cannot function properly if the staff cannot maintain sufficient control over the inmates. Gangs are essentially unauthorized prisoner associations, and thus represent potentially competing sources of authority within the prison. As the number of prison-gang members grows, the balance of power shifts from management to the gangs and administrators lose the leverage they need to achieve safety and correctional goals. Moreover, as gang power grows in prison, the gangs become more credible sources of authority and protection, which further increases the pressures for new individual inmates to join the gang.

The situation is cyclical and toxic. As prison gangs gain power, prisoners perceive the prison as being less safe and administrators in less control, causing more of them to join gangs for protection. As more inmates join the

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gang, the gang becomes more powerful, thus creating even more prison instability, which in turn leads to more recruits. Explaining to California officials why he joined a prison gang, a 26-year-old inmate said: "I had no choice. I'm an 18-year-old kid. I'm on a Level IV yard. I join a prison gang or my throat is slit." Another inmate concurred, saying: "You have no choice. Welcome to the California Department of Corrections."⁹⁹

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State officials acknowledge the importance of developing strategies to reduce gang influence and in their 2005 *Strategic Plan* promise to "develop and implement a comprehensive evidence-based gang management program."¹⁰⁰

Nature and Extent of the Prison-Gang Problem

Although the term gang is used loosely in a variety of contexts, the California Code of Regulations defines prison gang as any gang that has its origins in a correctional setting.¹⁰¹ The CDCR also defines disruptive groups as "any gang, other than a prison gang operating in the correctional setting."¹⁰²

The California code officially recognizes seven prison gangs, although only six are thought to be currently operating in the state's prison system: the Mexican Mafia, La Nuestra Familia, the Aryan Brotherhood, the Nazi Low Riders, the Northern Structure, and the Black Guerilla Family. California also identifies disruptive groups, which are typically street gangs and include Public Enemy Number One (PEN1), the Crips, Sureños, Norteños, and the Northern Ryders. Although both prison gangs and disruptive groups threaten prison security, "prison gangs are considered the greater threat."¹⁰³

Almost without exception, prison gangs are formed along racial and ethnic lines¹⁰⁴ and are less concerned with physical territory than street gangs are.¹⁰⁵ The Mexican Mafia and Nuestra Familia are predominately Latino, African Americans join the Black Guerilla Family, and whites comprise the Aryan Brotherhood and Nazi Low Riders.

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It is unknown—and probably unknowable—how many California inmates are members or affiliates of gangs, and estimates vary widely. The power of prison gangs is achieved through secrecy, and gangs often target informants for assassination. In addition, gang members go to great lengths to hide their affiliations from authorities, because once verified as gang members they will be placed in administrative segregation, which makes it more difficult to continue their criminal activities within and outside the prison.

Senator Gloria Romero, chair of the Senate Select Committee on the California Correctional System, reported in 2005 that official CDCR data noted 3,000 inmates as "validated" gang members or associates. She commented that, "The 3,000 even includes members who are inactive or who have dropped out of being a member of a race-based prison gang. If we add all those 3,000 together, however, [they comprise] less than 2% of the total inmate population."¹⁰⁶

Officials say this number is just the tip of the iceberg. Prison-gang experts wrote in 2001 that over one-third of California's approximately 160,000 inmates were being "tracked" for prison-gang activity.¹⁰⁷ In 2002, the state corrections director testified that there were probably 40,000 to 60,000 gang members of all types in California prisons.¹⁰⁸ Los Angeles Sheriff's officials estimated in 2006 that as many as 80% of their jail inmates were affiliated with known gangs, and most of those are awaiting transfer to state prison.¹⁰⁹

A spokesman for the CDCR told the author that as of December 2005 there were about 3,400 validated gang members or associates, and an additional 4,400 validated or associate members of street gangs or disruptive groups. In addition, there were about 2,150 dropouts or inactive members of the prison gangs, and about 100 for the disruptive groups. These estimates suggest the presence of about 10,000 officially identified gang members in prison currently, or about 6% of all prisoners. Nonetheless, it is unknown how many inmates are members of prison or street gangs because of how gang members are identified and validated, how we choose to define membership, and whether both prison and street gangs are included in the count.

Gang Identification and Validation

Validation is the process of officially identifying an inmate as being a gang member or associate. California uses a three-tiered system to establish gang identity: a member is "an inmate/parolee who has been accepted into membership by a gang"; an associate is "an inmate/parolee who is involved periodically or regularly with members or associates of a gang"; a "dropout" is an inmate/parolee who was either a gang member or associate and has discontinued gang affiliation.¹¹⁰ As one official explained, gang members call the shots and dictate what other people are doing, and associates service the gangs and carry out the trafficking, assaults, forward communications, make or carry the weapons, or further anything that a member wants them to do to support gang activity.¹¹¹

In order to officially validate an inmate as a gang member or associate, a gang investigator must find at least three independent and verifiable items of documentation that indicate actual membership or association.¹¹² The California Code of Regulations categorizes such source items as: 1) self-admission; 2) tattoos, body markings, hand signs, distinctive clothing, graffiti, etc., that gang investigators have identified as being "distinctive to specific gangs"; 3) written material evidencing gang activity, such as the "membership or enemy lists, constitutions, organization structures, codes, training material, etc., of specific gangs"; 4) photographs; 5) documentation of staff's visual or audible observations that reasonably indicate gang activity; 6) information from other agencies; 7) association; 8) gang-related offenses; 9) legal documentation; and 10) communications.¹¹³

The gang investigator bears the burden of articulating the importance of the source items and demonstrating their gang-related relevance, and also determines whether the evidence meets the threshold of "three independent source items." A test of reliability protects against the use of false information.¹¹⁴ If the evidence meets this threshold rule, the information is disclosed to the subject of the investigation. Confidential informant statements are disclosed to the subject without revealing the source's identity to protect the person from retaliation. Unlike a court proceeding, the subject does not have the right to confront his accuser or receive communication from

Currently there are four security housing units in California, three for men and one for women, and 2,986 inmates are housed here (about 2% of all prisoners). SHU inmates are confined to their cells up to 23 hours per day and are only allowed out for showers and minimal exercise. They are not allowed contact visits, have very limited phone privileges, and no rehabilitation programming.

others related to the gang activity. At least 24 hours after the subject has been given the disclosures he or she is interviewed by gang investigators and given the opportunity to explain the evidence or make a statement, for evaluators to use in their assessment. Finally, the subject is given a copy of the documentation that includes the investigator's opinion, and the package is sent for official validation.

There are four ways out of a SHU at present: 1) death; 2) parole; 3) demonstrating at least six consecutive years without evidence of gang participation; or 4) becoming a "drop out" by debriefing with prison officials.

The validation package is reviewed by a representative of the Law Enforcement and Investigations Unit, who determines if all the necessary information is present and is supported by the state's established criteria.¹¹⁵ The representative then presents the package to three unit supervisors, who review the source items, the statements of the gang investigator and the subject, and decide whether to accept or reject each source item. If at least three independent source items are accepted, the subject is validated. This opinion is then documented, returned to the investigator, and filed with the subject's permanent record. The most violent validated prison-gang members are assigned to an indeterminate term in the Security Housing Unit (SHU). A vali-

dated gang member could conceivably spend the rest of his or her life in a SHU. Other validated gang members or associates may be assigned to maximum-security (Level IV) classification.

Currently there are four SHU units in California, three for men and one for women, and 2,986 inmates are housed here (about 2% of all prisoners).¹¹⁶ SHU inmates are confined to their cells up to 23 hours per day and are only allowed out for showers and minimal exercise. SHU inmates are not allowed contact visits, have very limited phone privileges, and no rehabilitation programming (education, work, etc.). SHU housing isn't reserved exclusively for validated gang members. Inmates can also be placed in a SHU for a significant rule violation, such as seriously injuring a guard or other inmate. The latest documentation shows that about half of California SHU inmates are validated gang members.¹¹⁷

There are four ways out of a SHU at present: 1) death; 2) parole (between 2000 and 2003, officials testified that 403 inmates paroled directly from SHUs—with dire results: 80% of them returned to prison¹¹⁸); 3) demonstrating at least six consecutive years without evidence of gang participation;¹¹⁹ or 4) becoming a "drop out" by debriefing with prison officials.

The huge growth in the prison population in recent decades has provided a steady stream of new recruits to burgeoning prison gangs, which experts say has been matched by increased turmoil and violence as well as a serious deterioration in the quality of life inside prisons.

Debriefing essentially means telling everything an inmate knows about the prison gangs—a very risky proposition, to say the least. As Senator Polanco put it, "everyone knows . . . that once you've served in the SHU and you've come out, you've probably debriefed. And so debriefing means, in the eyes of those in that world, pretty much that you've given up something about somebody to the authorities."¹²⁰

As might be expected, debriefing occurs infrequently because it places inmates at risk of retaliation, and may expose them to further criminal prosecution and vulnerability. A debriefing subject has no protection against self-incrimination because the information is provided for "administrative purposes."¹²¹ Between October 2001 and September 2003, only 496 California inmates went through the debriefing process.¹²² After debriefing, prisoners are sent

to a sensitive-needs yard, if space is available, rather than to the general population. (A sensitive-needs yard is reserved for inmates who no longer wish to engage in any kind of prison misconduct.)

Trends and Strategies for Gang Containment

Regardless of which numbers one relies upon, everyone agrees that prison gangs remain mostly undetected and are growing, leading to serious problems that are likely to become more intractable than they were in previous years.

The huge growth in the prison population in recent decades has provided a steady stream of new recruits to burgeoning prison gangs, which experts say has been matched by increased turmoil and violence as well as a serious deterioration in the quality of life inside prisons. One study found that “[t]he reasons for this turmoil . . . included newly formed gangs, changes in prison population demographics, and new developments in prison policy, especially in relation to gangs. All these elements coalesced to create an increasingly unpredictable world in which prior loyalties, allegiances, and friendships were disrupted.”¹²³ If this hypothesis is correct, when inmates are confronted with increased instability, they turn to gangs for structure, protection, and community.

Some experts theorize that the war on drugs, which has led to higher incarceration rates for street-gang members, has led in turn to increased recruitment from street to prison gangs.¹²⁴ Many of these drug offenders are young and have served terms in the California Youth Authority. This younger generation of violent, poor, state-raised youth are now hitting the adult prison system, and older, less violent inmates are unable to control them.

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Whatever the reasons for the growing influence of gangs on prison life, officials throughout the United States are struggling to design effective strategies to lessen their influence. Following are the most popular strategies at present:

Making prisoners feel safer by changing the prison environment. Since gang membership appears to increase when inmates feel unsafe, one response is to make prisons safer by expanding the use of video surveillance, increasing the ratio of correctional officers to inmates, and increasing the frequency and efficacy of searches of both inmates and cells.

Increased prosecution for gang crime in prison. Some corrections systems are stepping up efforts to prosecute prison-gang members for the crimes they commit in prison, hoping to increase the “cost” of prison-gang activities and dissuade new inmates from joining. Such efforts are hampered by the inherent difficulty of gaining cooperation from witnesses and victims.

Transfer gang leaders to other prisons or other states. The most popular approach to dealing with prison gangs, and especially their leadership, has been to transfer members to different institutions (and, in the more exceptional cases, either sending them out of state or into the federal prison system). This approach is often referred to as “bus therapy.” In a survey of all 50 states’ prison systems, 73% reported using in-state transfers as one method of dealing with prison-gang members, and 47% reported using out-of-state transfers for this purpose.¹²⁵

The value of this approach has been debated. In the short term it may debilitate gangs by removing their leaders, but it appears that many gangs have strong enough chains of command to withstand significant disruption at the upper levels. In addition, experts warn that sending gang leaders to new prisons provides them with an opportunity to create chapters there.¹²⁶ Although there are no studies of the long-term impacts of such transfers, California uses them for its most notorious prison-gang members. In September 2005, five top Nuestra Familia members from the California prison system were sent to separate federal prisons out-of-state.¹²⁷

Administrative segregation for identified gang members. Removing validated prison-gang members and their associates from the general population and isolating them in high-security units is the most popular approach for managing prison gangs in California and nationally. The segregation model is based on straightforward logic: a relatively small proportion of inmates causes a disproportionate amount of prison disruptions, and the behavior of these inmates endangers staff, other inmates, and destabilizes the prison, which increases the likelihood that nonaffiliated inmates will also engage in violent behavior or choose to join prison gangs.

Arizona undertook a detailed study of the impact of its administrative segregation practices for its most serious gang members.¹²⁸ The investigators found, not surprisingly, that segregation did decrease the gang members' rates of assaults, drug violations, fighting, and rioting. They also found a substantial decrease among the general population in assaults, drug and weapons violations, threats, rioting, and other violations. In addition, they found that gang members who elected to renounce their gang membership and debrief rather than face administrative segregation had greater decreases in violent activity than did those who refused to renounce, but that their rates of violence remained significantly higher than those of the general population.

Gang-free prisons and sensitive-needs yards. These strategies inhibit prison gang influence because active prison-gang members and associates cannot be assigned to sensitive-needs yards. While such areas lack prison-gang influence, other criminal activities, such as trade of narcotics, thievery, and fights, may still occur. The population in these yards consists not only of gang drop-outs, but also victims or targets of gang violence, such as sex offenders, inmates who have testified for the prosecution, and convicted law enforcement officials. California's sensitive-needs yards have a rehabilitative, as well as a protective, purpose: they are meant to counteract gang members' racial and ethnic prejudices by forcing integration on inmates.

In 1996, the Illinois Department of Corrections, also faced with a growing prison-gang problem, transformed an existing minimum-security prison into a designated gang-free minimum-security prison.¹²⁹ Initially, all gang-affiliated inmates were transferred to other prisons, and an equivalent number of minimum-security inmates with no gang association, affiliation, or membership were brought in. New prisoners entering the system were permitted to request placement at the facility if they qualified. Disciplinary reports and inmate grievances decreased, and the amount of good-time credits in the gang-free prison increased.

California has attempted a somewhat more modest program with the same basic concept, apparently with some success. A few years ago CDCR instituted new sensitive-needs yards, which are recreation areas designated as gang-free zones and open only to prisoners who indicate a serious intention not to be involved in violent conduct. According to Acting Secretary Jeanne Woodford, approximately 30% of inmates in state prisons have requested access to sensitive-needs yards. Although these areas were not designed with former gang members in mind, they have since been opened to inmates who renounce membership and take part in debriefing. As of 2003, a prison spokesperson noted that ex-gang members made up only a small proportion of inmates using sensitive-needs yards.¹³⁰

Prison Program Needs Versus Treatment Received

The vast majority of California prisoners do not receive the rehabilitation they need. Like prisoners of all other states, they have problems with substance abuse, lack of education, and inadequate job skills. In some cases, California prisoners have even more severe issues in these areas than their counterparts in other states. Despite these critical needs, however, California provides fewer rehabilitation programs than comparable states, so the prison experience often fails to give inmates the tools for successful reintegration.

Nearly all U.S. prisons operate treatment and work programs. The latest *Census of State and Federal Correctional Facilities* shows that 97% of all confinement facilities have inmate-counseling programs, 90% have drug and alcohol counseling, 80% have secondary education programs, and 54% have vocational training programs.¹³¹

California, too, has a variety of prison programs, and a number are quite promising, among them the Mental Health Services Continuum Program; the Transitional Case Management Program for parolees with HIV/AIDS; the Inmate Firefighters Program; Patten University at San Quentin; and the Prison Industry Authority, which provides job training.¹³² But the state's prison population has expanded so rapidly that prison administrators have been unable to meet the expanding demand for these types of services.

California is not alone in this regard. James Lynch and William Sabol compared national prison program participation rates during the past decade, and found that in 1997, approximately a third of the inmates about to be released participated in vocational (27%) or educational (35%) programs—down from 31% and 43%, respectively, in 1991.¹³³

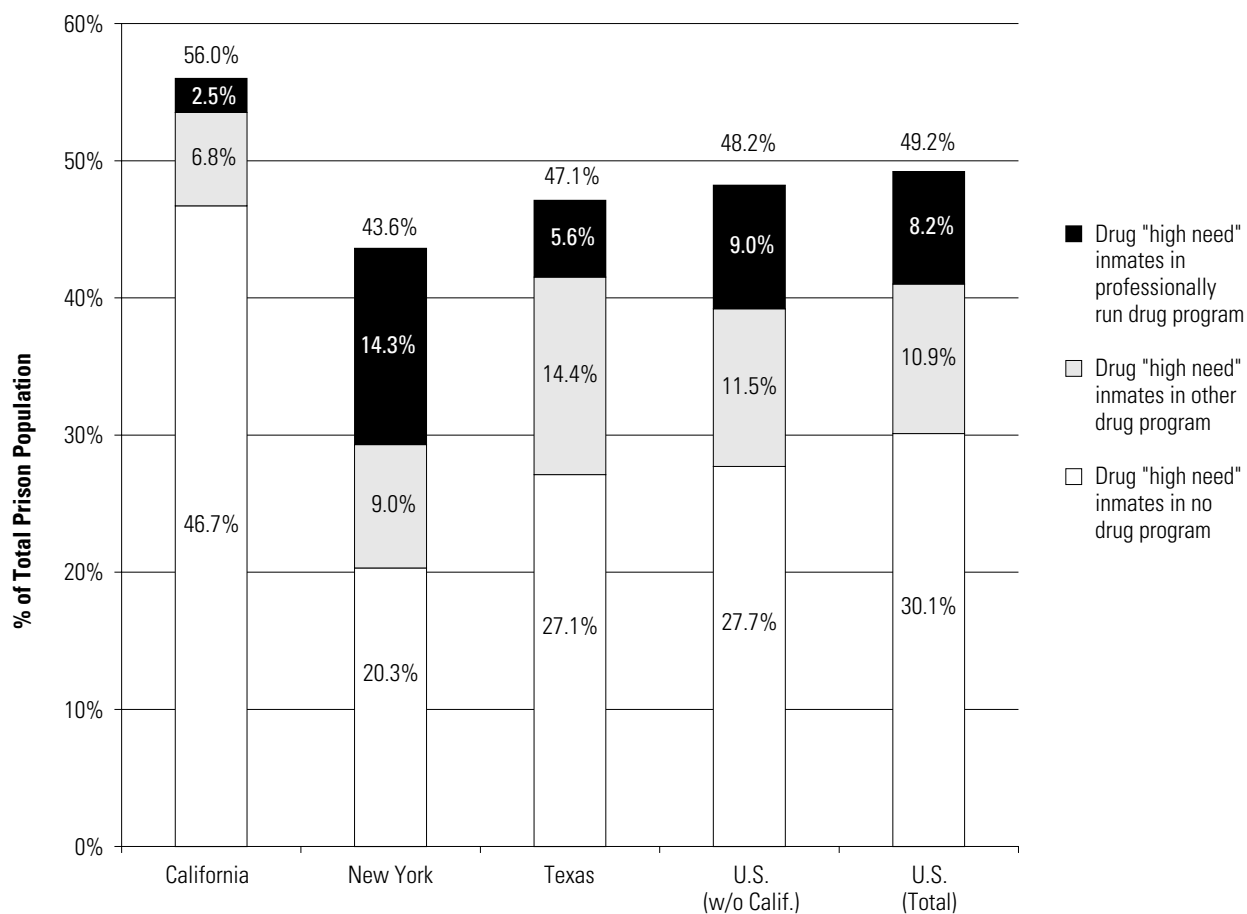
Once-vibrant California programs were also pared back in response to political pressure and the belief that they were ineffective. By 2004, the *Los Angeles Times* reported, California's Joint Venture program for providing jobs to inmates, which at one point was considered a national model, had dwindled to the point of providing fewer than 150 jobs to the state's incarcerated population.¹³⁴

In June 2005, legislators argued that the state should not subsidize a prison dairy program that provided jobs to inmates because "We're tired, as a Legislature, of funding bureaucracies that are totally out of control" and the benefit to the state was "absolutely zero."¹³⁵ Political pressure was also brought to bear against programs that would allow inmates to earn community college degrees while in prison on the grounds that providing state-funded education to inmates was wrong and cost too much money.¹³⁶ The consequence of such cutbacks and opposition to rehabilitation programs, over time, has been profound: Of the entire California prison population, an estimated 20% of inmates are altogether idle, never participating in any prison program during their entire stay.

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FIGURE 16

Inmate Need for Drug Treatment and Treatment Received, California vs. Nation, 1997



Note: "Any" treatment includes residential facilities/units, professional counseling, detoxification units, self-help groups, peer counseling, education programs, or other alcohol abuse programs. "Professionally run" treatment includes residential facilities/units, professional counseling by professionals, and detoxification units.

Source: Reanalysis by UCI students of the *1997 Survey of Inmates in State and Federal Correctional Facilities*, Bureau of Justice Statistics, U.S. Department of Justice.

This drop in participation is worrisome because California prisoners have acute needs for programs in certain areas. Reanalysis of the Bureau of Justice Statistics' *1997 Survey of Inmates in State and Federal Correctional Facilities* conducted by UC Irvine researchers suggests the areas where this is particularly the case: Compared to their counterparts in New York, Texas, and in the United States as a whole, California prisoners were more likely to report a high need for alcohol- and substance-abuse programs—factors that have been shown to be related to recidivism.

For example, 56% of California prisoners met the definition of having a high need for drug-treatment programs (Figure 16). High need meant that they reported major drug-related issues across several areas, including using drugs frequently, being under the influence when committing crimes, using different types of drugs,

struggling with treatment programs, and getting into trouble at work, home, and/or with the police because of their drug use. In New York, by contrast, 43% of inmates self-reported having high needs for this type of programming, and the national average is 49%.

Compared to other states, California is serving a smaller percentage of its inmates with serious needs for rehabilitative programs, and its failures are particularly acute in areas in which they are most needed. Thus, the percentage of needy inmates who actually receive drug treatment is far lower than it is in comparable states. Prisoners with a serious need for drug counseling were over three times more likely to get counseling if they were serving time in New York than in California (Figure 16). A scant 2.5% of California inmates with a serious need for drug treatment received professionally run treatment (as opposed to being in inmate self-help groups), far below the national average of 19%. This percentage reflects the number who report “ever” participating in the program while they were in prison, and it says nothing about the quality or intensity of the program they participated in. The lack of rehabilitation programs in California is exactly what led to demands for change and a renewed focus on providing prison programs.

Similar shortcomings are evident in the statistics on California’s delivery of alcohol counseling: While 42% of the state’s prisoners report having a high need for alcohol treatment—meaning that they reported being an alcoholic *and* admitted that their alcohol problem contributed to their criminality and social functioning—just 7.5% reported receiving any alcohol treatment (including self-help groups), and only 1% reported participating in alcohol programs run by professional staff (Figure 17). These numbers are considerably lower than national averages, which show roughly the same percentage of inmates reporting a high need for treatment (43%) but 17.7% of them actually participating, and nearly 7% participating in professionally run programs.

When it comes to educational and vocational skills, the needs of California’s prisoners are no more acute than the rest of the nation, but California does not address those needs as effectively as some other states (see Figure 18). Like comparable states, roughly 15% of California’s inmates have a high need for educational or vocational training—meaning they had been unemployed frequently, had few job skills, and had below 8th grade education levels. If these same high-need inmates were incarcerated in New York or Texas, they would be more likely to actually receive that training. California prisoners with a high need for education/job training report participating in such programs half as often as their counterparts in New York. This is true even though participation in a program is defined very liberally in the analysis, so that if an inmate participated in a relevant program for even one day it would count, regardless of the program’s quality.

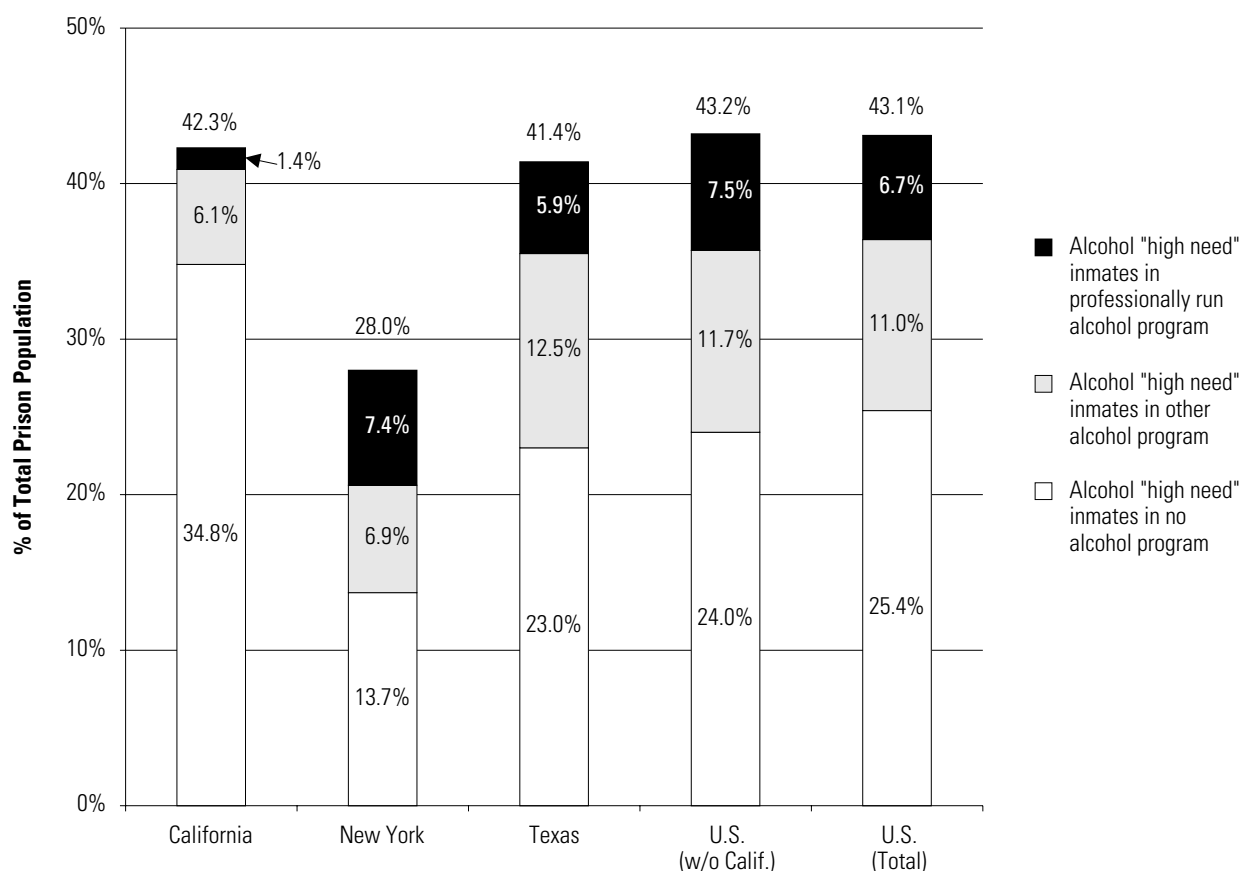
The fact that California’s numbers are so poor thus suggests that the vast majority of the state’s inmates who could truly benefit from education programs or vocational training are not even getting the most rudimentary

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FIGURE 17

Inmate Need for Alcohol Treatment and Treatment Received, California vs. Nation, 1997



Note: "Any" Treatment includes residential facilities/units, counseling by professionals, detoxification units, self-help groups, peer counseling, education programs, or other alcohol abuse programs. "Intensive" treatment includes residential facilities/units, counseling by professionals, and detoxification units.

Source: Reanalysis by UCI students of the 1997 Survey of Inmates in State and Federal Correctional Facilities, Bureau of Justice Statistics, U.S. Department of Justice.

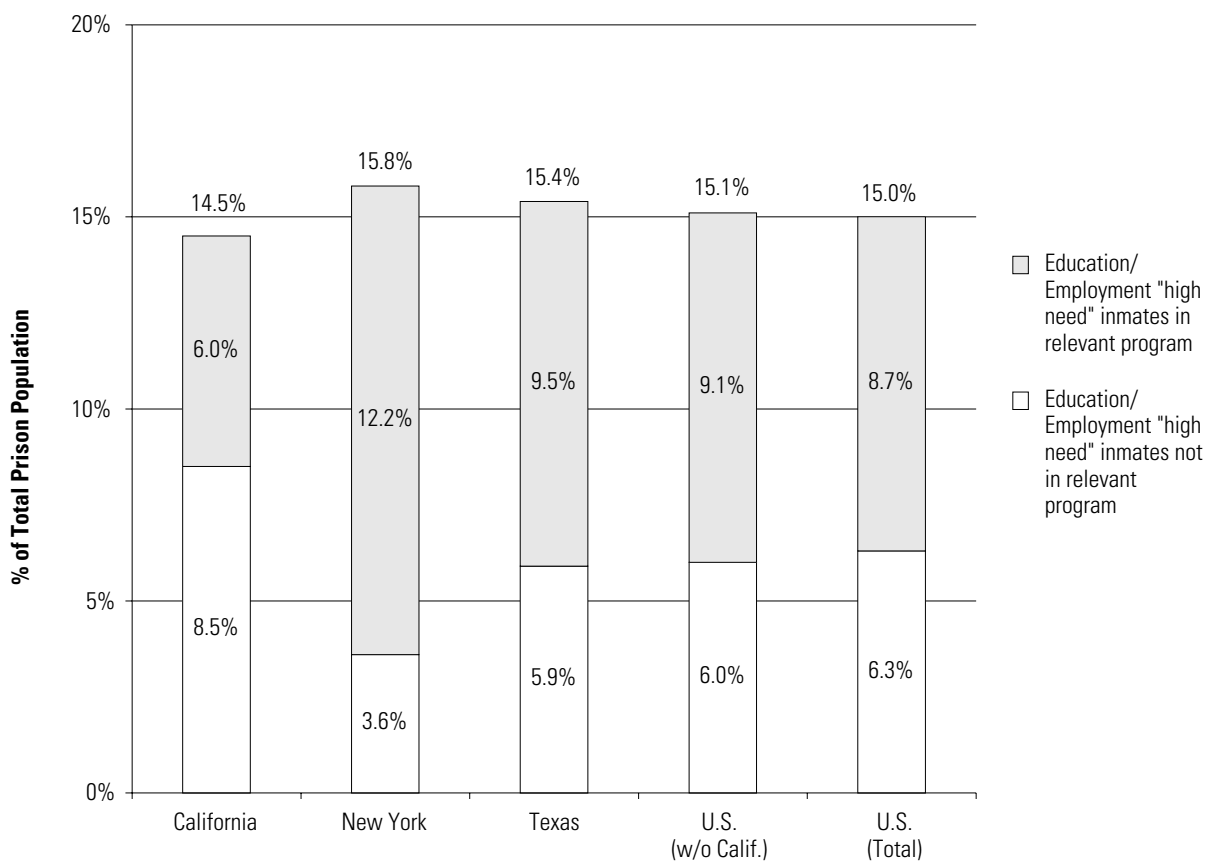
and minimal forms of assistance. Of course, it is possible that education and job training programs have expanded in California's prisons since 1997, when these data were collected, but budget cuts for rehabilitation services and programs since that time suggest that the situation may actually have gotten worse. California prisoners are being effectively incapacitated, but are getting little help in preparing to reenter society.

Figure 19 presents the percent of the total state prison population that reports participating in *any* rehabilitation program since admission to prison. Here too California inmates come up very short: more than half of them (51%) indicate they have not participated in any rehabilitation programming during their prison term, compared to a national average of 31%.

Tough-on-crime politics have encouraged cutbacks in prison programming over the past several decades on the theory that prison ought not to be a particularly pleasant place to be and certainly ought not provide inmates

FIGURE 18

Inmate Need for Job Training and Training Received, California vs. Nation, 1997



Note: "Any" job training or "any" education was defined as including any vocational or job training program other than prison work assignments. These are programs dedicated to training participants for a job (e.g., electronics, plumbing, construction trades, food service, beautician training, computer electronics, secretarial, housekeeping, cooking, or cosmetology). Education programs included basic classes up to 9th grade, high school classes to get a diploma or GED, college-level classes, or English as a Second Language (ESL) classes. These numbers reflect state prisoners only and rely on inmate self-reports of program participation.

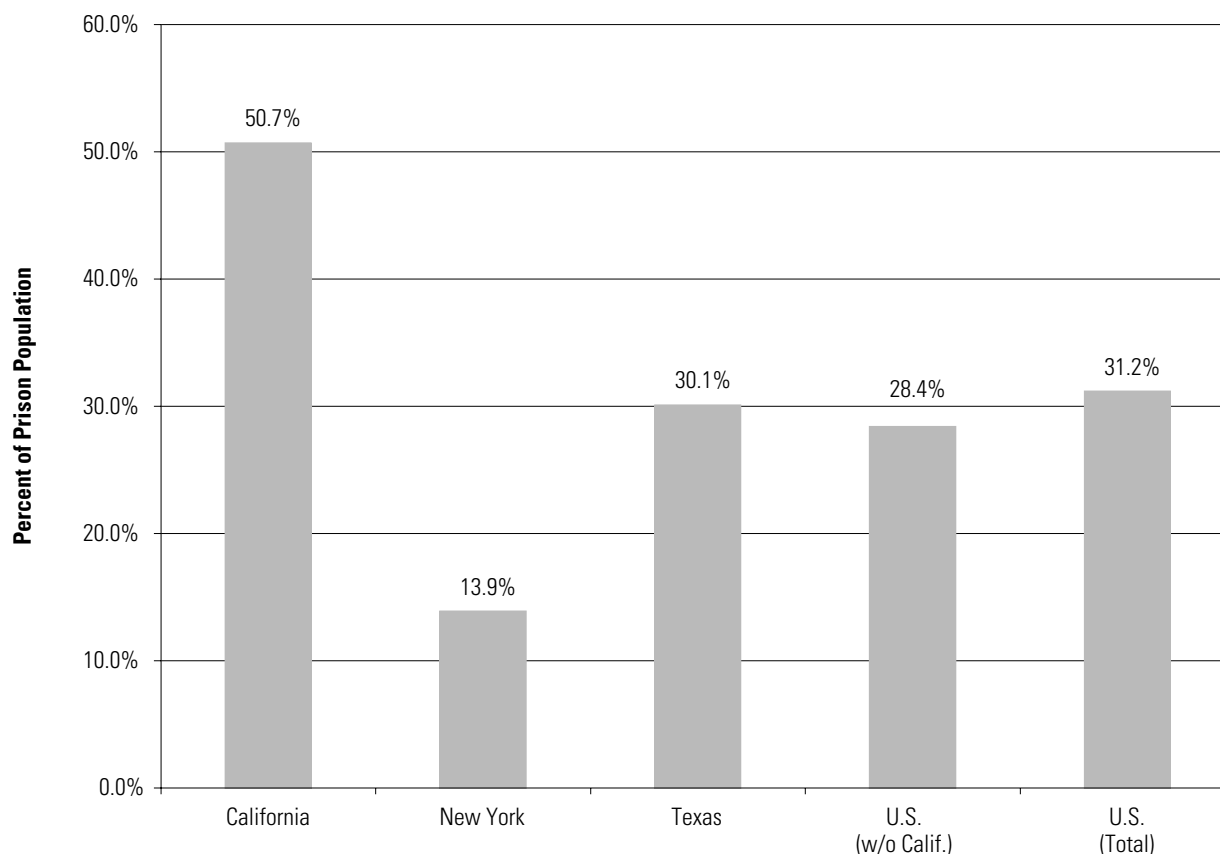
Source: Reanalysis by Ryan Fischer, UCI, of the *1997 Survey of Inmates in State and Federal Correctional Facilities*, Bureau of Justice Statistics, U.S. Department of Justice.

with opportunities that are unavailable for law-abiding individuals. The inaccurate but popular belief that "nothing works" to rehabilitate inmates also contributed to a willingness to cut back on programs that were perceived as a waste of money.¹³⁷

Although the simplicity of these types of attitudes has an undeniable appeal, it is a simplicity that ignores the damaging effects to society that are an almost inevitable result of eliminating the programs. The vast majority of prisoners return from prison, and in California that means more than 300 former inmates are hitting the streets every day. Whether they have a fighting chance at putting together a semblance of a conventional, noncriminal lifestyle depends to a significant degree on whether their prison experience has given them any tools to do so.

FIGURE 19

Percent of State Prisoners Not Participating in Any Substance Abuse, Education, or Job Programs



Note: "Any" programs include the following: *Alcohol Abuse Treatment* includes residential facilities/units, counseling by professionals, and detoxification units. *Alcohol Abuse Programs* include self-help groups, peer counseling, education programs, or other alcohol-abuse programs. *Drug Abuse Treatment* includes residential facilities/units, counseling by professionals, and detoxification units. *Drug Abuse Programs* include self-help groups, peer counseling, education programs, or other drug-abuse programs. *Educational Programs* include basic classes up to 9th grade, high school classes to get a diploma or GED, college-level classes, or ESL classes. *Job Training Programs* include any vocational or job training program other than prison work assignments. These are programs dedicated to training participants for a job (e.g., electronics, plumbing, construction trades, food service, beautician training, computer electronics, secretarial, house-keeping, cooking, or cosmetology). These numbers reflect state prisoners only and rely on inmate self-reports of program participation since their admission.

Source: Reanalysis by Ryan Fischer, UCI, of the *1997 Survey of Inmates in State and Federal Correctional Facilities*, Bureau of Justice Statistics, U.S. Department of Justice.

Clearly, California's lack of program availability and participation is caused by many complex factors: Classification levels that preclude program participation, seriously overcrowded prisons that leave little room for classrooms and workshops, a focus on incarceration rather than rehabilitation, and a lack of incentives for inmates to participate in programs that will not significantly affect their release dates all are related to California's dismal performance in rehabilitation programming. However, a recognition of these factors needs to be the beginning of the discussion about programming, not the end. Since recidivism is tightly linked to the failure to address the high-need inmates who are being ignored in California, weaknesses in rehabilitation programming ultimately amount to weaknesses in protecting the public from repeat offenders.

Demographics of Prisoners and Criminal Records

More than 165,000 people are now in California prisons. Who are these people, and what continuing danger do they pose to the public at large? Some think prisoners are mostly first-time and nonviolent offenders. For example, James Austin and John Irwin argued in 2001 that “most people being sent to prison today are very different than the specter of Willie Horton that fuels the public’s fear of crime. More than half of the persons sent to prison committed crimes that lacked any of the features the public believes compose a serious crime.”¹³⁸ Elsewhere, Austin wrote: “A significant number of prison releases will pose little risk to public safety.”¹³⁹

Other analysts have reached markedly different conclusions, arguing that the vast majority of those in prison and being released are dangerous career criminals. Bennett and his colleagues wrote, for example: “Virtually all convicted criminals who do go to prison are violent offenders, repeat offenders, or violent repeat offenders. It is simply a deadly myth that our prison cells are filled with people who don’t belong there. The widespread circulation of that myth is the result of ideology masquerading as analysis.”¹⁴⁰

The debate over the threat posed by prison inmates is not simply academic. If the public perceives returning prisoners as having many needs and posing little risk, they are more likely to be sympathetic to their circumstances and invest in rehabilitation and work programs. But if the public believes most returning inmates are dangerous career criminals, reentry resources are likely to be invested in law enforcement and surveillance. In one scenario, the state will prioritize the delivery of services to offenders, while in the other it will prioritize public safety.

Because of this, accurately answering the question “Who is in California prisons?” has important policy significance. It is surprising, therefore, how little we know about the demographic background, incarceration offense, and criminal records of those in our prisons. Importantly, we can’t accurately assess the recidivism potential of California prisoners because we have no detailed longitudinal follow-up studies of what happens after they are released.

We do know some very basic demographic information about the inmate population and its criminal history, and we know the way some of these factors have changed over time. Analyzed at the broadest level, this information suggests the following trends about the makeup of California’s prison population:

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- ▶ The number of *female inmates*, though still far smaller than the number of male inmates, is steadily increasing, and now accounts for 6.6% of the total population. California is not unusual in this respect, but the increase in women behind bars, like the increase in older prisoners, means higher costs for providing appropriate medical care and other associated services.
- ▶ The percentage of *racial minorities* behind bars continues to increase, with the most significant increases coming from the Latino population.

The demographic data also suggest some surprising trends about the criminal behavior of California’s inmates:

- ▶ Prison population increases for males in recent years are primarily due to *violent crimes against persons*.
- ▶ Prison population increases for females are primarily due to *crimes against persons and property crimes*.
- ▶ While drug convictions are increasing, they are *not the primary driver* of increased incarceration rates.

Understanding these broad trends in California’s prison population must be an essential part of any decisions that aim to reform the state’s corrections system.

Age, Gender, Race

Age

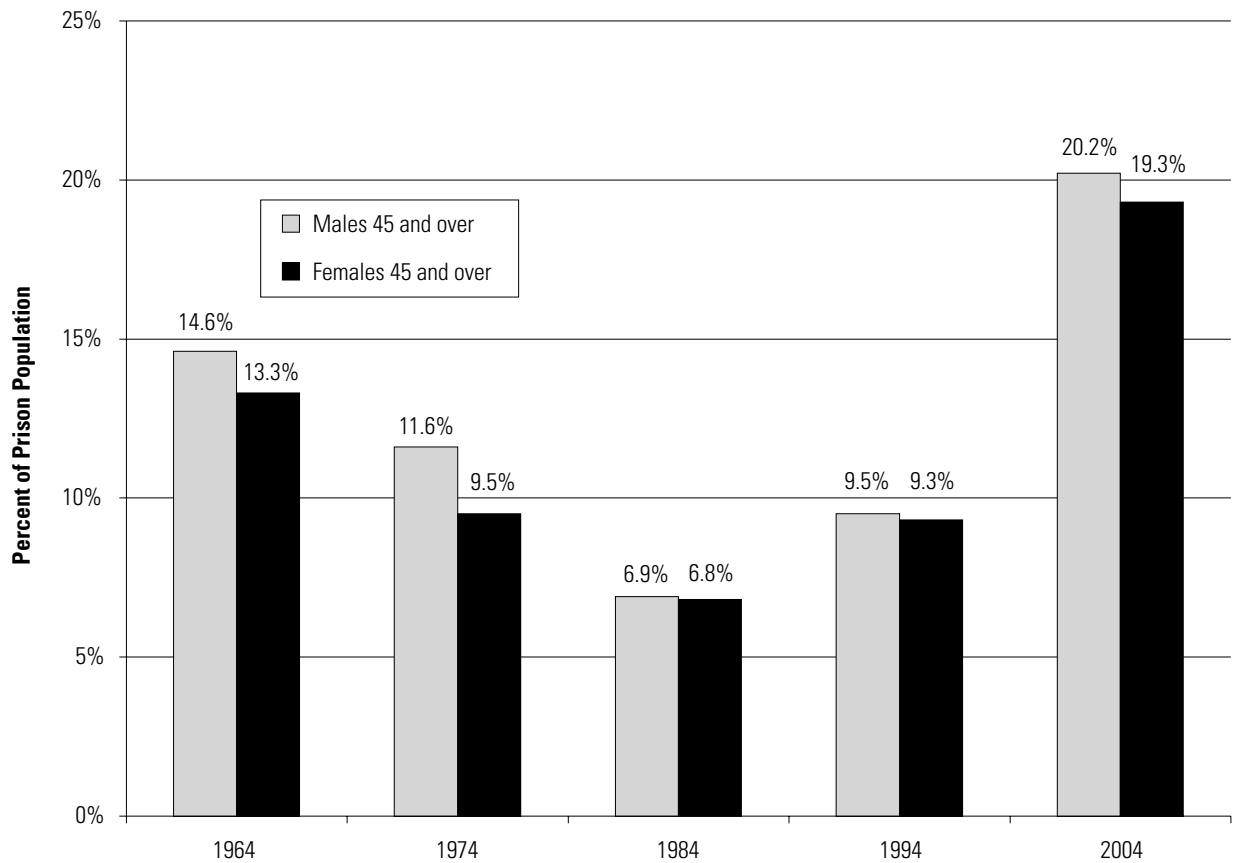
The average age of California’s adult prisoners has been steadily increasing over the last 20 years. Today, the average female prisoner in the state is 37 years old, and the average male is 36 years old.¹⁴¹ In 1984, by contrast, the averages for both men and women were five years younger (30 years for men, 31 for women). The adoption of California’s Three Strikes law, sentence enhancements, and “truth-in sentencing” policies requiring inmates to serve 85% of the prison term imposed mean that a greater percentage of prisoners spend more time behind bars today than in past years and the average age of the prison population had increased as a result.

Not only are there more older inmates in prison, but there are also more inmates growing old behind bars. Since 1984, the percentage of inmates who are older than age 45 has been increasing steadily. Approximately 33,000 inmates imprisoned in California (20% of the total) are age 45 and older, and 8,510 are over 55 years of age.

The increasing age of the population isn’t the whole story, because not only are there more older inmates in prison, but there are also more inmates growing old behind bars. Since 1984, the percentage of inmates who are older than age 45 has been increasing steadily in California (see Figure 20). Currently, approximately 33,000 inmates imprisoned in California (20% of the total) are age 45 and older.

In addition, as of December 31, 2005, there were 8,510 elderly inmates (over 55 years of age) in California prisons, and the Legislative Analyst’s Office predicts that this number will increase to 30,200 by the year 2022, or 16% of the prison population.¹⁴² In a prison setting, that age is considered elderly because prisoners’ risky lifestyles, poor access to health care, and substance-abuse histories typically take a heavy toll on their health. Medically speaking, the

FIGURE 20
Percent of California Prison Population Age 45 Years and Older



Source: *Prisoners and Parolees*, California Department of Corrections and Rehabilitation, various years.

average prisoner appears about 10 years older than an unincarcerated individual of the same age.¹⁴³ On average, the cost of incarcerating offenders older than age 55 is \$69,000 per year, or three times the roughly \$22,000 national average cost to keep younger, healthier offenders in prison.¹⁴⁴

Most of these additional costs are related to health care. Under the 1976 Supreme Court decision *Estelle v. Gamble*, prison administrators *must* provide free health care to all inmates, making prisoners the only U.S. residents who have such a legally recognized right. Failure to provide such care, the court said, would constitute “deliberate indifference to [inmates’] serious health care needs” in violation of the Eighth Amendment. Despite this court-imposed guarantee, though, prisons are seldom equipped to take care of elderly prisoners. Rarely are there specially trained nurses, and California has no institutions dedicated exclusively to the care of elderly inmates. Most anecdotal evidence reveals that elderly prisoners are simply left to fend for themselves.¹⁴⁵

The care that is provided to inmates comes at a tremendous price to taxpayers. For example, one inmate in the Vacaville prison has survived four types of cancer and a stroke. His 12 pills a day cost approximately \$1,800 per month. Inmates who need to be transported to an offsite medical facility for hospitalization, dialysis, or other

medical purposes must be accompanied by two correctional officers, who typically collect overtime pay while carrying out this supervision, even when the patients are unconscious or immobilized.¹⁴⁶ The *Ventura County Star* reported in June 2005 that the cost of such supervision had increased 61% in the past six years, with 87% of that cost increase coming from overtime pay.¹⁴⁷ California also incarcerates several inmates who are quadriplegics, in comas, or have other medical issues so profound that their care costs taxpayers more than \$400,000 per inmate per year.¹⁴⁸ Costs are also incurred from preparing special diets and constructing jail cells to accommodate inmates in wheelchairs.

As the average age of the inmate population continues to creep upward, these costs will move upward as well. By 2022, according to a study by the state Legislative Analyst's Office, caring for California's elderly inmates may well cost the state \$1 billion every year.¹⁴⁹ As is true nationally, 65% of elderly California prisoners are incarcerated for violent offenses. But 35% percent of California's 6,400 elderly prisoners have been sentenced for nonviolent crimes, among whom approximately 50% have been incarcerated for drug-related offenses, 9% for driving under the influence, and about 18% for petty theft and burglary.¹⁵⁰ These numbers, along with the skyrocketing costs of providing medical care, inevitably leads one to ask whether it makes sense to keep so many older inmates behind bars.

As Michael Vitiello and Clark Kelso write, fewer than 5% of all people arrested nationally are above age 55.¹⁵¹ Criminologists also have established that age is negatively correlated with recidivism: The older an offender is at release, the lower the rate of recidivism, if all other factors are the same. Parolees who are age 55 or older at the time of release are reincarcerated just 1% of the time. Ironically, then, the public safety benefits of imprisonment decline just as the cost of keeping older people incarcerated begin to increase. Keeping older inmates behind bars may be an effective way to punish particularly heinous offenses or to send a deterrent message to would-be criminals, but the incapacitative value of keeping most seniors in prison is negligible.

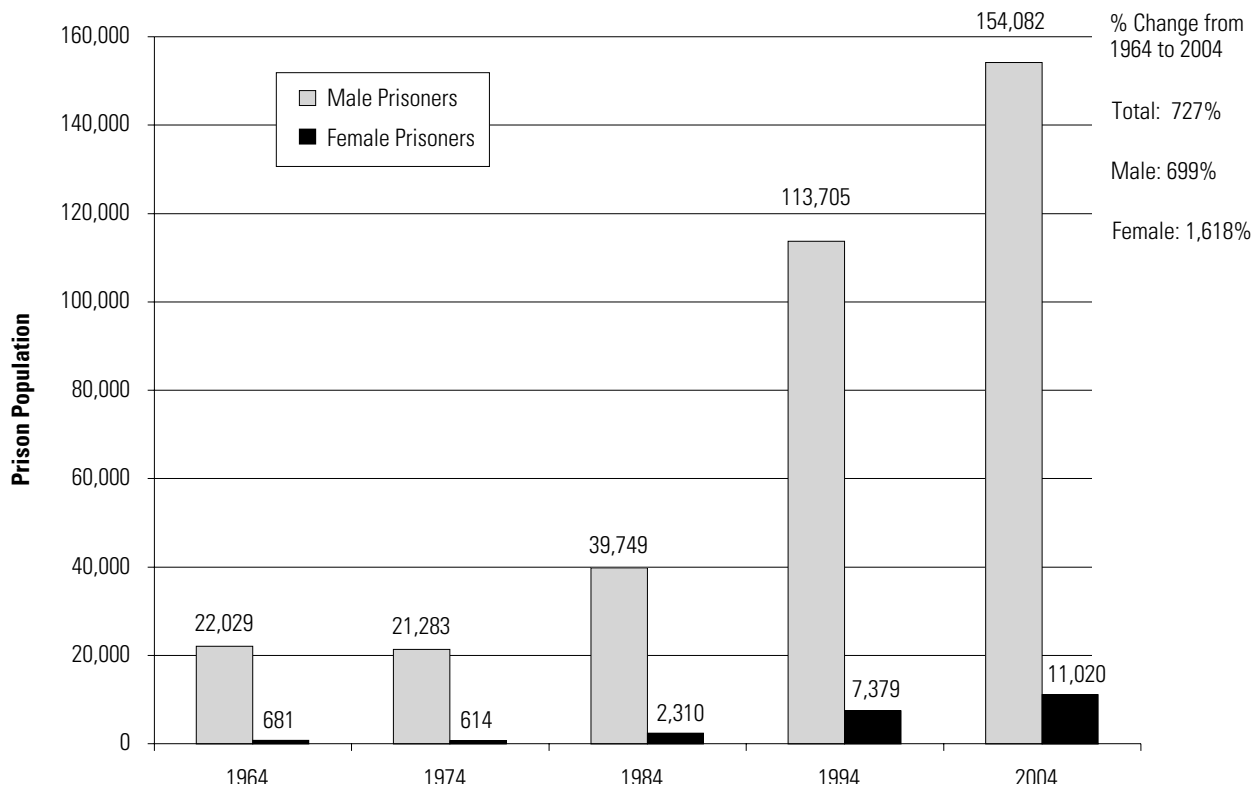
Gender

Prisoners are mostly male, and always have been. By the end of 2004, however, women accounted for 6.6% of California prisoners, up from 3% in 1964 and 1974, and 6% in 1984 and 1994. This increase mirrors a national trend: by 2004, women accounted for 7% of all prisoners.¹⁵² Texas, the federal system, and California currently hold more than a third of all female inmates incarcerated in the U.S. As Figure 21 shows, the total number of California prisoners has grown more than sevenfold (727%) since 1964, and the number of female prisoners more than sixteenfold (1,618%).

The growth in the percentage of women incarcerated is often attributed to the war on drugs. During the decade after passage of mandatory drug laws in 1986, the number of women incarcerated for drug crimes rose precipitously. Mandatory sentencing laws required judges to sentence men and women to the same punishment if they committed the same offense. Extenuating circumstances often couldn't be fully considered. The federal sentencing guidelines, for example, do not permit judges to consider women's role in caring for children, the subordinate roles women play in many crimes, or the fact that women are much less likely than men to commit new crimes after being released.

In California, harsher punishment of drug crimes clearly has contributed to women's increased incarceration, as Figure 28 illustrates. Today, 29% of the state's female inmates are serving time for drug-related offenses. But California also has seen increases in the number of women convicted of crimes against persons and property, so much so that in 2004, 29% of all female prisoners had been convicted of crimes against persons, 36% for

FIGURE 21
Male and Female Prisoners in California, 1964–2004



Source: *California Prisoners and Parolees*, California Department of Corrections and Rehabilitation, various years.

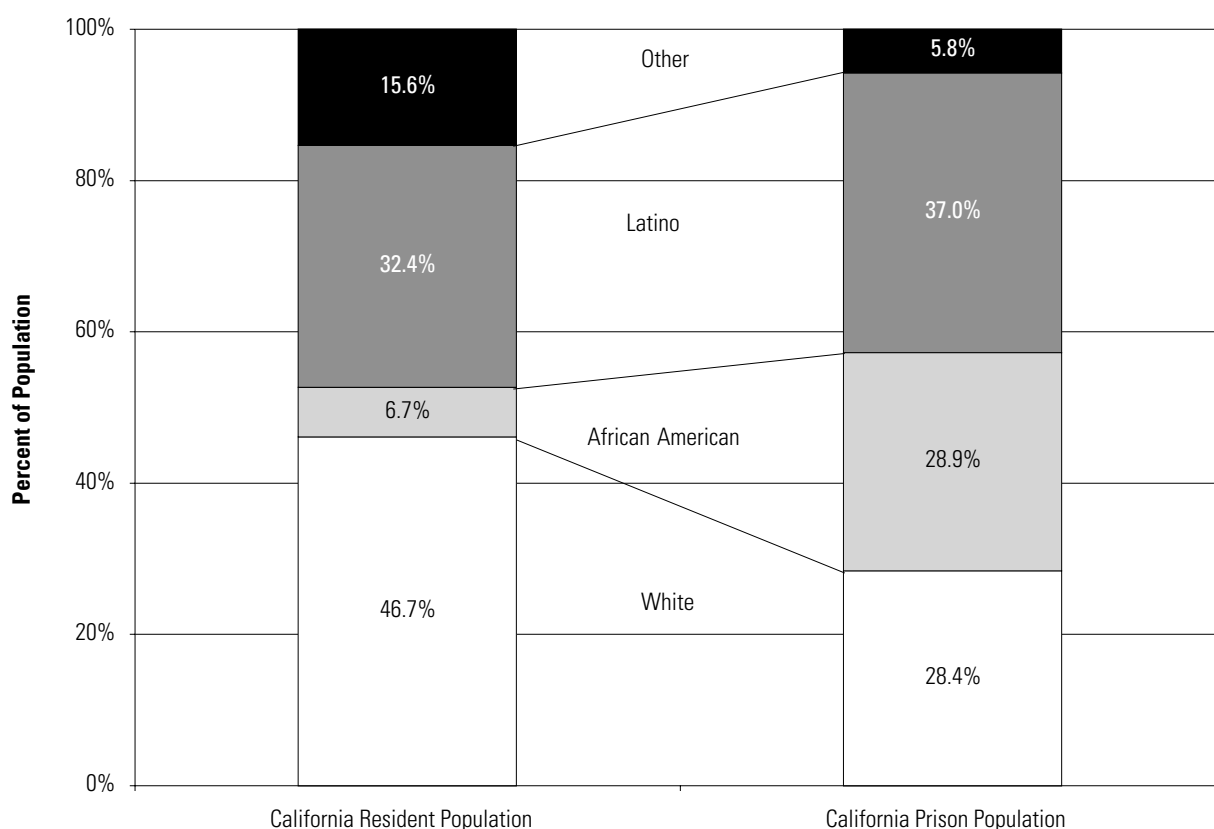
property crimes, and 5% for other offenses (e.g., public order offenses such as prostitution). Thus the increase in women inmates cannot be explained solely by a focus on drug crimes, as discussed more fully below.

Regardless of the crime for which they were convicted, female inmates have different needs than their male counterparts, and a prison system primarily designed for men typically does a poor job of responding to those needs. For example, 64% of women imprisoned in California are mothers, nearly a third have children under the age of six, and half were living with their children in the month prior to their arrest.¹⁵³ Most of these women expect to be reunited with their children at release, and yet prisons often make it very difficult for mothers and children to maintain meaningful connections during the mother's period of incarceration.

In addition, women behind bars typically fit a personal profile that cries out for effective psychological, educational, and vocational counseling: Forty percent of women in state prisons nationally report physical or sexual abuse as minors.¹⁵⁴ More than half of the women in California's prisons do not have a GED or high school diploma, and most have never earned more than \$6.50 an hour in legitimate employment.¹⁵⁵ Despite these unique needs, and the direct impact female prisoners have on their children's development, there are few prison and parole programs that respond adequately to women's situation.

FIGURE 22

California Resident vs. Prison Populations by Race and Ethnicity, 2004



Note: The "other" category includes Asian, Native Americans, Pacific Islanders, and all other races.

Sources: California resident population from <http://www.census.gov/statab/www/states>.

California prison population from *California Prisoners and Parolees 2004*, Department of Corrections and Rehabilitation, 2005.

See <http://www.cdcr.ca.gov/ReportsResearch/OffenderInfoServices/Annual/CalPris/CALPRISd2004.pdf>, Table 11, p. 35 of 112, report p. 23.

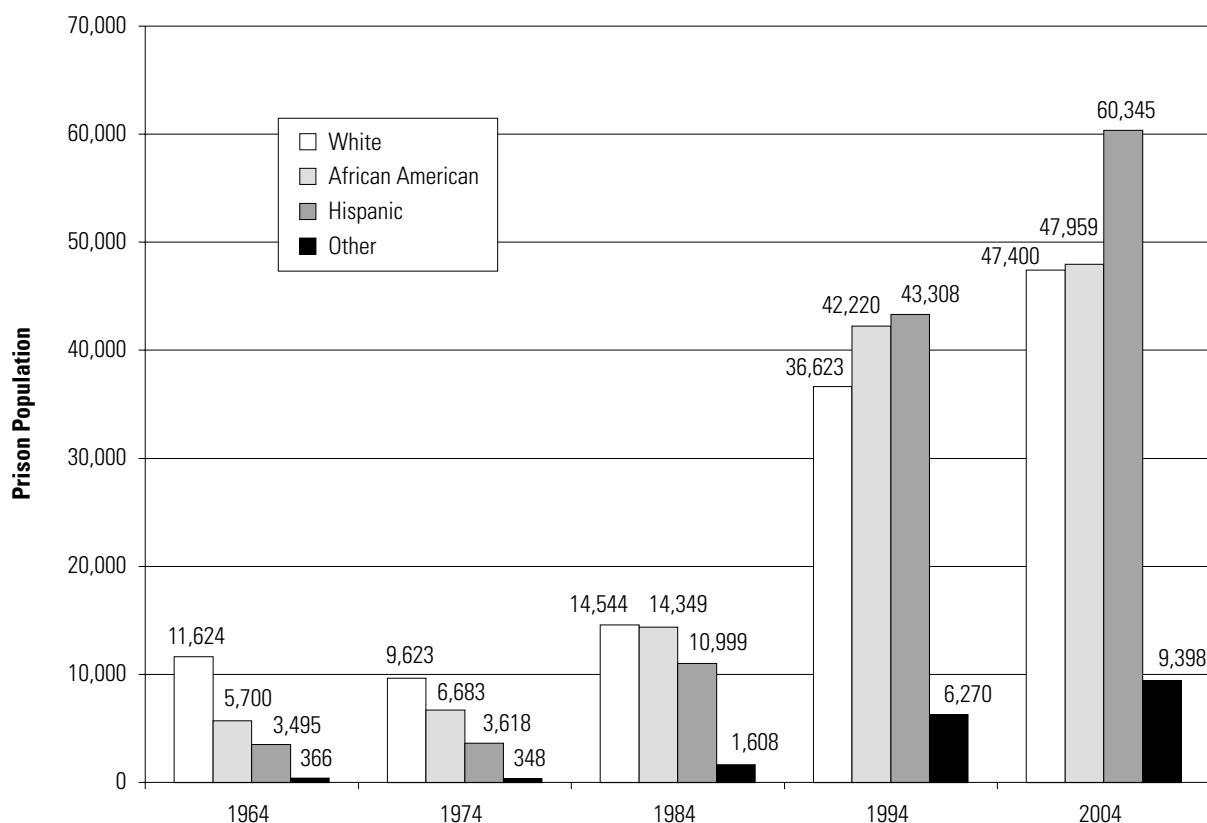
Race

Race is a critical dimension of any discussion of prisons, particularly in California prisons, where racial tensions run high. The prison population overrepresents racial minorities relative to their proportion in the state's resident population (see Figure 22). Racial and ethnic minorities are 53% of the California population but 72% of its prison population. In this regard California mirrors the nation, which over incarcerates minorities compared to their percentage in the general population.¹⁵⁶

The racial composition of California prisons has changed considerably since the mid-1960s. Since 1964, the percentage of the prison population that is black, Latino, or "other" has increased significantly. Whereas whites greatly outnumbered minorities in prison 30 years ago, between 1964 and 1984 blacks and Latinos were incarcerated in higher numbers while the number of white inmates increased only somewhat. As the state prison

FIGURE 23

Total California Prison Population by Race and Ethnicity, 1964–2004



Source: *California Prisoners and Parolees*, California Department of Corrections and Rehabilitation, various years.

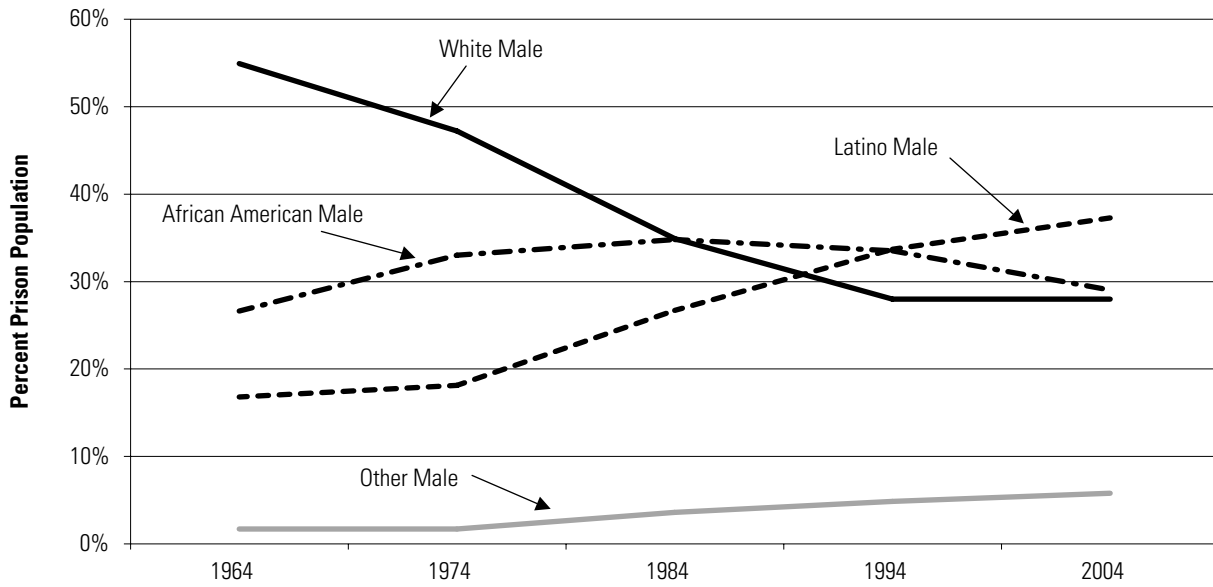
population spiked dramatically from the 1980s through today, minorities have come to outnumber whites behind bars.

The next two charts show the trends of each racial/ethnic group within the prison population since 1964. Latino males and females have increased substantially as a proportion of the overall prison population, whereas the percentage of white males and females has declined and the percentage of African American males and females has remained relatively stable.

Part of the explanation for the dramatic increases in Latinos as a percentage of the total prison population may have to do with a tendency, over time, to make more accurate assessments of inmate ethnicity. Where some Latinos may formerly have been categorized as white, they are more likely today to be accurately categorized on intake to prison. But experts within the corrections system say the increase in Latino inmates is a real phenomenon, not simply an artifact of the way demographic data are collected.

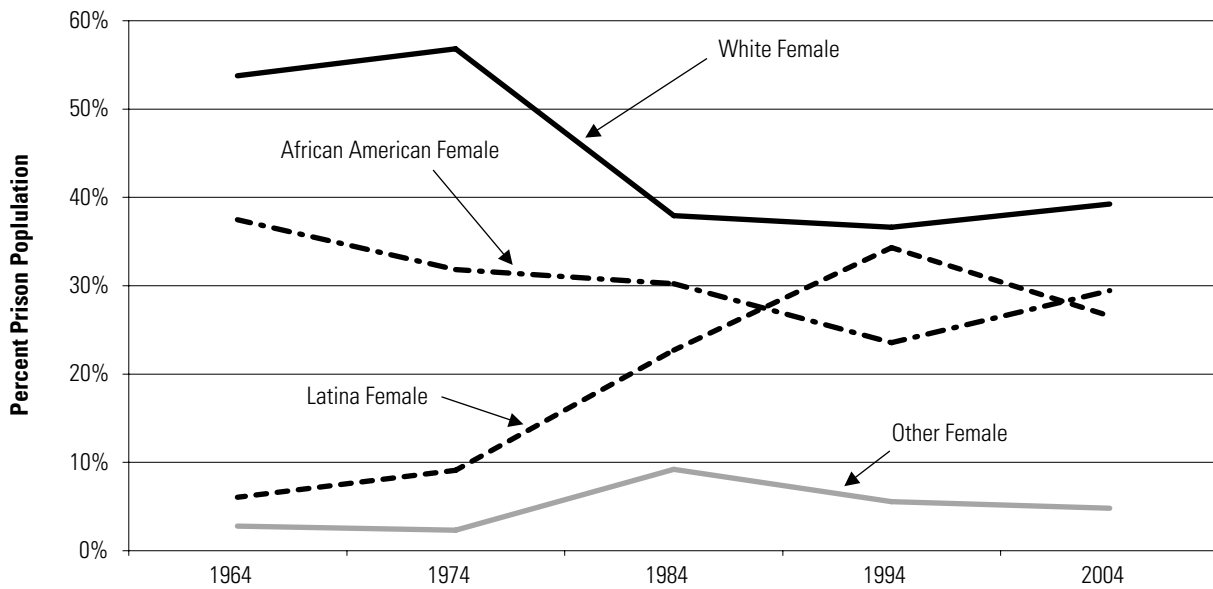
Neither can the spike in Latino inmates simply be attributed to the growth of the Latino population in California generally. It is true that Latinos have made significant state population gains over the last 25 years: in 1970,

FIGURE 24
California Male Prisoners by Race, 1964–2004



Source: *California Prisoners and Parolees*, California Department of Corrections and Rehabilitation, various years.

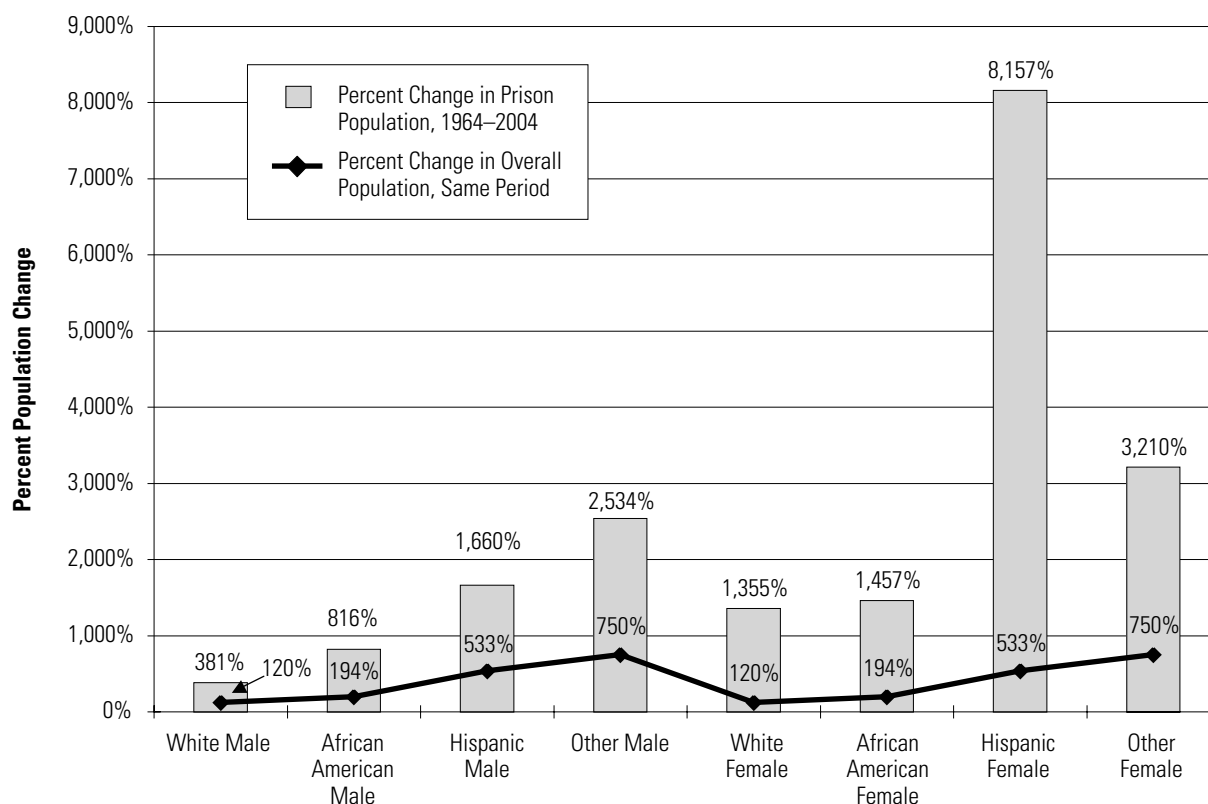
FIGURE 25
California Female Prisoners by Race, 1964–2004



Source: *California Prisoners and Parolees*, California Department of Corrections and Rehabilitation, various years.

FIGURE 26

California Prison and Resident Populations by Race and Gender, 1964–2004



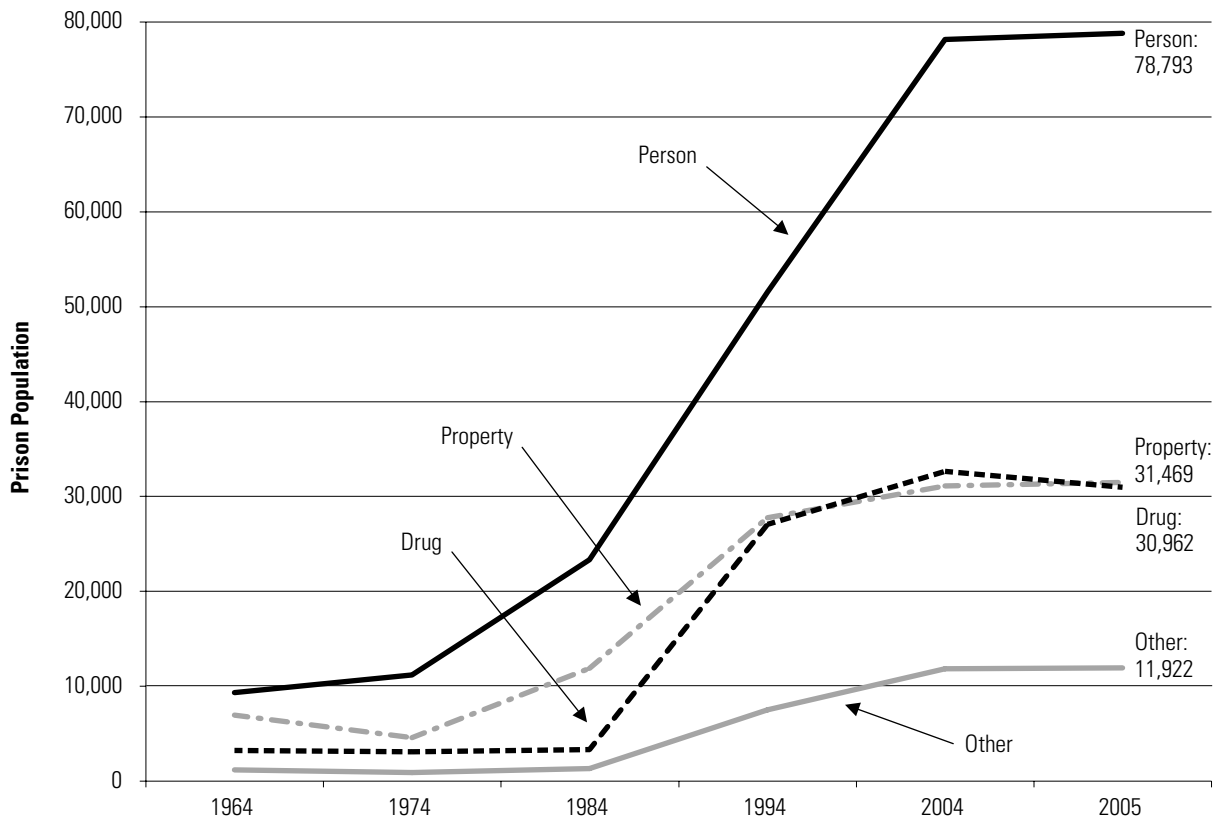
Sources: U.S. Census Bureau, State and County Quick Facts (<http://quickfacts.census.gov/qfd/states/06000.html>), and California Department of Finance (<http://www.dof.ca.gov/HTML/DEMOGRAP/Eth70-90.htm>).

they represented only 12% of the general population, whereas today they make up 32%.¹⁵⁷ But population alone does not account for the increase, as shown in Figure 26, which compares the percent change in prison populations with the percent change in overall California population for various groups, and shows that Latino male and female imprisonment rates are out of proportion to their growth in the resident population. If population increase alone were at work, one would expect to see that the incarceration of Latino men and women rose at the same level, but women’s numbers have increased far more dramatically than men’s.

Between 1964 and 2004, the chart shows, the state’s Latino population (both male and female) went up roughly fivefold. During that same period, the prison population of Latino males went up over 16 times and that of Latino females increased by more than 81 times. The “other” category also showed dramatic increases over this period, with the male prison population classified as “other” increasing 25 times and the female prison population increasing 32 times. In the state’s general population, however, individuals classified as ethnically “other” increased only sevenfold during this period.

The explanation for these extraordinary increases is not clear. They are not simply a function of the way the population data are assessed and they are not simply caused by the growth of the state’s population more

FIGURE 27
Most Serious Conviction Crime for California Male Inmates, 1964–2004



Source: *California Prisoners and Parolees*, California Department of Corrections and Rehabilitation, various years.

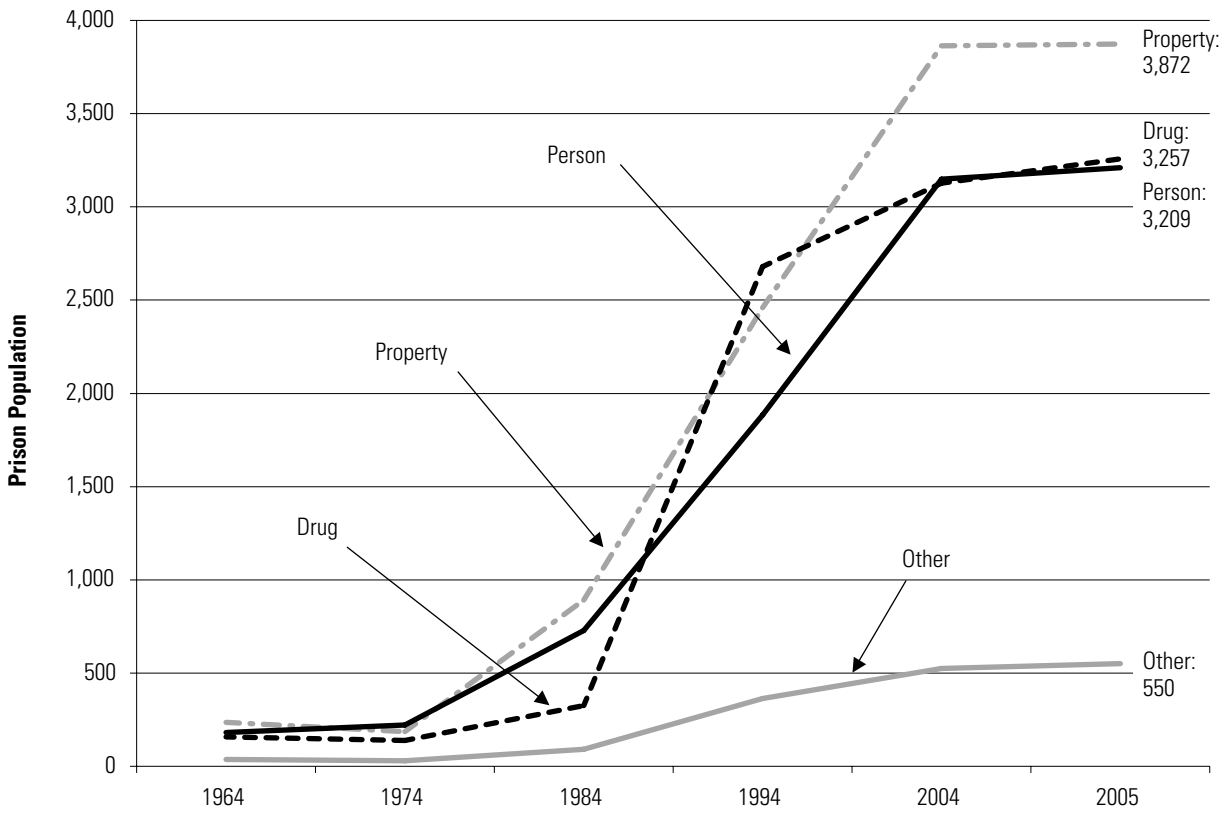
generally, but it is difficult to say with any certainty what is behind the changes. Criminologists have spent considerable time exploring the dynamics contributing to racial disparities in incarceration, but the analysis has rarely looked at Latinos or “others” as a separate group simply because they are not a particularly large category in the available national datasets. Much analysis has been directed instead toward disparities between black and white incarceration rates, with researchers such as Alfred Blumstein concluding that higher rates of offending among blacks were the primary explanation for their disproportionately high levels of incarceration.¹⁵⁸

In the case of Latinos, it is difficult to say whether discrimination, high rates of offending, or some other cause is behind the racial and ethnic disparities shown in the above figures. Given the dramatic nature of the increase in this population and the profound long-term effects that incarceration can have on communities, research should be undertaken to resolve this uncertainty.

Conviction Crimes

It is often said that the increase in California’s prison population has been caused by the war on drugs, which has sent drug offenders to prison more frequently than in the past. Certainly this is partially true. As Figures 27

FIGURE 28
Most Serious Conviction Crime for California Female Inmates, 1964–2004



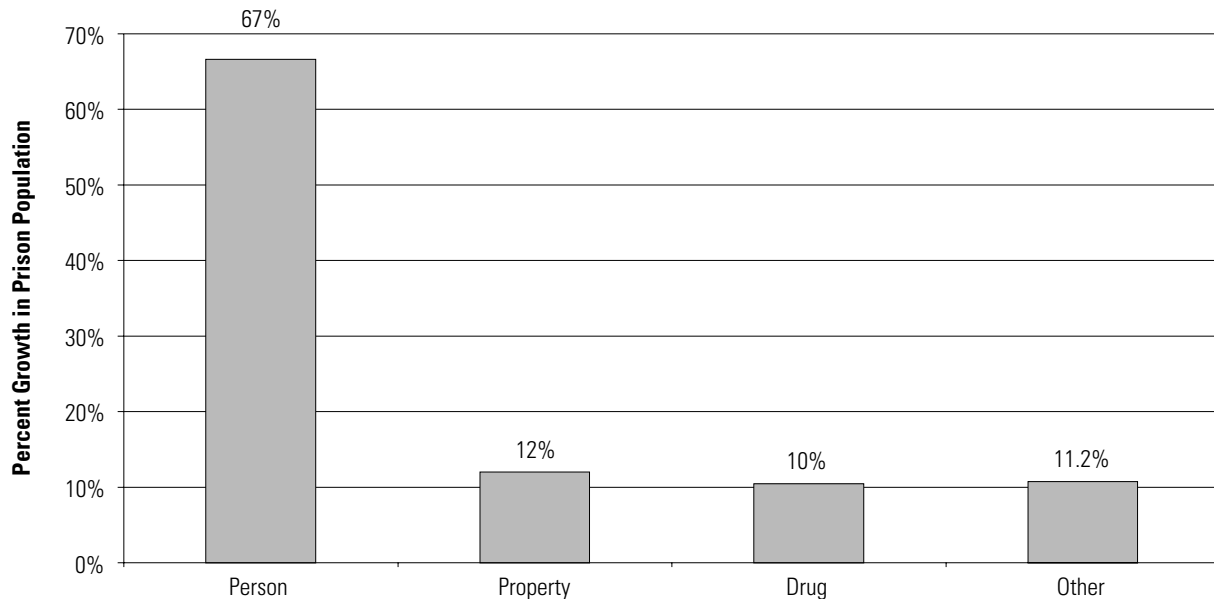
Source: *California Prisoners and Parolees*, California Department of Corrections and Rehabilitation, various years.

and 28 illustrate, drug convictions among California’s male felons increased significantly beginning in the 1980s. Among female felons, the numbers jumped even more dramatically during the same period.

Nonetheless, the swelling ranks of California’s prison population has *not* been caused primarily by increases in drug offenders but by increases in individuals convicted of violent crime against persons, particularly among males. Figure 29 depicts the increase in combined male and female prison populations by conviction crime type, and shows that 66% of the overall increase in the growth of the California prison population since 1994 was caused by violent crimes, whereas only 10.4% was due to drug-related offenses.¹⁵⁹

The analysis looks somewhat different when the prison population is broken down by gender, as shown in the next two figures. The increase in the female prison population over the last decade has been the result of convictions for personal, property, *and* drug crimes, suggesting that the war on drugs has had a more dramatic effect on incarceration rates for women than for men. Among men, on the other hand, 70% of the growth in the prisoner population is the result of crimes against persons.

FIGURE 29
Percent Growth in Prison Population by Conviction Crime, 1994–2005



Source: *California Prisoners and Parolees*, California Department of Corrections and Rehabilitation, various years. This chart combines males and females, and uses the most serious types of conviction crimes.

Prior Criminal Record and Status at Arrest

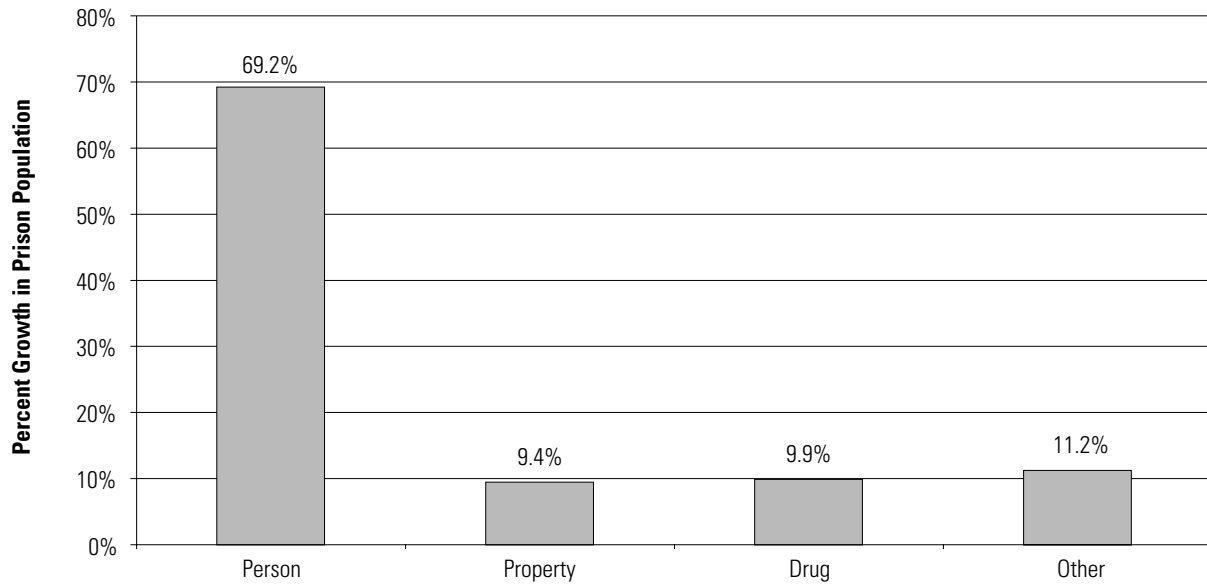
California’s inmates have more extensive criminal records, in general, than their out-of-state counterparts, but they are no more likely to be serving time for a violent offense than individuals in other states. In California, having a lengthy prior record appears to be a function of living in a state where parole revocation is heavily used, and does not appear to indicate an escalation in the seriousness of crimes or the tendency to commit violent crime during an extensive criminal career.

The Bureau of Justice Statistics (BJS) periodically conducts the *Survey of Inmates in State and Federal Correctional Facilities*, which is a nationally representative sample of state and federal inmates. BJS permitted UCI researchers access to the latest survey so that California inmates could be compared with inmates in other states in terms of prior criminal record, status at arrest, and current crime (see Table 4).

The data reveal that 19% of California prisoners are “first termers” who had not been sentenced previously to probation, jail, or prison. This is slightly lower than the 24% national average. Twelve percent of those first termers were committed for a violent crime.

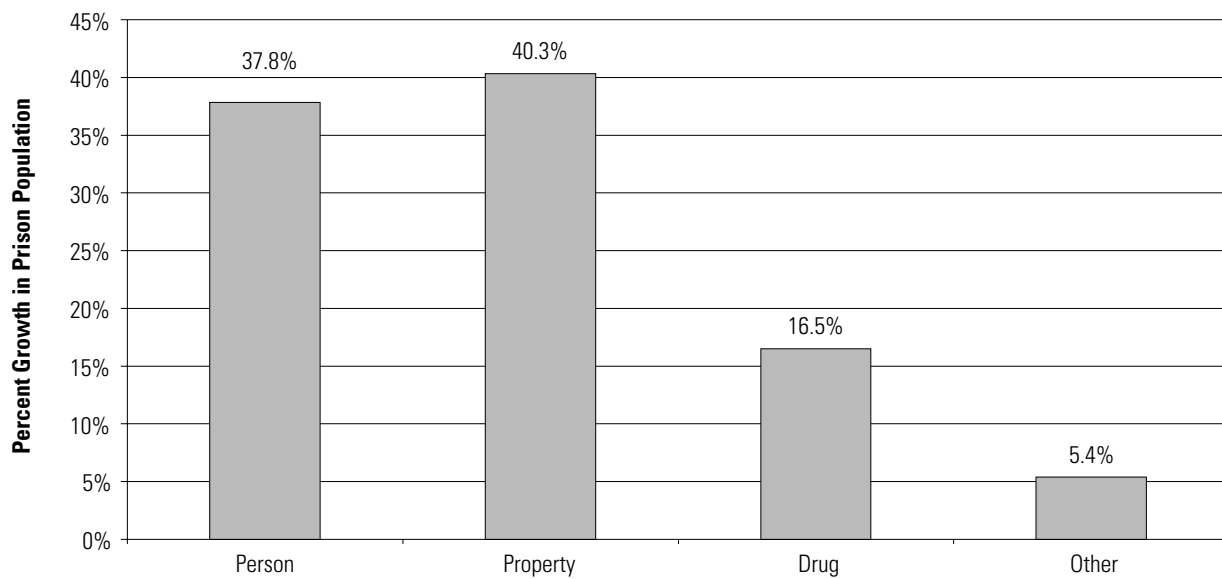
Forty-seven percent of California prisoners are currently, or previously have been, sentenced to prison for a violent crime—and 14% have at least two prison commitments for violent crime. These figures are quite similar to the national average. At the other end of the “seriousness” continuum is the fact that 33% of all California prisoners are “nonviolent” recidivists—with no prior sentences (jail, prison, probation) for any violent crime.

FIGURE 30
Percent Growth in Male Prison Population by Conviction Crime, 1994–2005



Source: *California Prisoners and Parolees*, California Department of Corrections, various years. This chart uses the most serious types of conviction crimes.

FIGURE 31
Percent Growth in Female Prison Population by Conviction Crime, 1994–2005



Source: *California Prisoners and Parolees*, California Department of Corrections and Rehabilitation, various years. This chart uses the most serious types of conviction crimes.

TABLE 4
Criminal History and Current Crime, California vs. U.S. Prisoners

Criminal Record	Percent of Inmates	
	California	All State Prisoners Combined
No previous prison sentence	19	24
Current violent offense	12	15
Current drug offense	3	4
Current other offense	4	5
Violent recidivists	47	47
Current and prior violent prison term	14	17
Current violent prison term only	15	18
Prior violent prison term only	18	12
Nonviolent recidivists	33	29
Number of prior sentences to probation or incarceration		
0	20	24
1	12	17
2	14	16
3 to 5	25	24
6 to 10	17	12
11 or more	12	6
Criminal justice status at time of arrest		
None	41	52
Probation	20	22
Parole	38	24
Escape	0.4	0.7

Note: Percentages may not total 100% because of rounding and a small percentage of cases with missing data (~1.0%). The table does not include federal prisoners. Prior record includes both juvenile and adult sentences.

Source: Reanalysis of the *1997 Survey of Inmates in State and Federal Correctional Facilities*, Bureau of Justice Statistics, by Ryan Fischer, UCI.

Table 4 also reveals that a larger percentage of California prisoners have served six or more prior criminal sentences than the national average (29% of California inmates versus 18% of those in other states). This is clearly related to the figures also showing that 58% of California prisoners (compared to 46% nationally) were on probation or parole when they were arrested for their current crime.

No matter what measure we use, California prisoners have a greater number of prior criminal sentences than inmates in other states, but there is no evidence to suggest they engage in more violence, at least as measured by arrests, convictions, and incarcerations.

These numbers do suggest that California is using resources to send individuals in and out of prison in a way that does not correspond particularly clearly to the seriousness of the risk posed by any given person. A large percentage of Californians who are nonviolent criminals are accumulating very extensive criminal records as a kind of souvenir of the catch-and-release system. Despite their records, they may not be any more dangerous than their counterparts in other states who are left “on the street” and successfully handled through an array of community-based intermediate sanctions. On the other hand, the state’s sentencing system also releases violent offenders who amass lengthy criminal records—individuals who, in a system more carefully tailored to protect public safety, probably should not have been released in the first place. The release decision is a function of the state’s unique sentencing and parole policies, which are covered in the next section.

Going Home: Prison Release and Parole Supervision

Determinate Sentencing and Prison Release

The risk posed by the release of unrehabilitated prisoners was tragically illustrated on October 7, 2005, when Raymond David Bermudez, 29, crashed a stolen tow truck into a crowded Vernon, California, bus stop. The collision killed three and injured eight, orphaning seven children in the process. Mr. Bermudez had been released just three hours earlier from Salinas Valley State Prison, where he had been locked up almost continuously since 1998. Most recently, Bermudez had been serving a 12-month sentence for a parole violation stemming from convictions on drug and assault charges. Vernon Police Lt. James Rodino commented, “We’re now dealing with two families that don’t have parents. That alone is tragic.”

But if the circumstances surrounding this collision are tragic, the unfortunate reality is that they aren’t particularly unusual: Because California plays a continual game of catch-and-release with its prisoners, every day inmates are hitting the streets who pose as much risk to the public as Bermudez did when he left Salinas Valley. California epitomizes revolving-door justice in the United States.

Why can’t California prisons keep inmates locked up if they will pose a high risk if released? The short answer is that California’s Determinate Sentencing Law, passed in 1976, makes it extremely difficult for corrections officials to keep the vast majority of inmates in prison, regardless of their presumed future dangerousness.

Determinate sentencing, in California and elsewhere, has essentially established a system *without* discretionary parole as a mechanism for releasing offenders from prison. Under this determinate system, the sentencing judge imposes a prison term expressed as a number of years of imprisonment, often referred to as a “fixed” term of imprisonment. A judge selects one of three specific terms for a particular crime, with the lower range reserved for cases where there were mitigating circumstances and the higher range for cases where there were aggravating circumstances. If neither mitigating nor aggravating factors exist, the mid-range sentence is the presumptively appropriate term for the judge to assign.

In a nondiscretionary system, offenders serve a statutorily determined portion of the term the judge has assigned and are *automatically* released from prison once that period has elapsed. This term generally can be reduced only through sentence reduction credits (such as “good time” or “earned time”) and, in the absence of sentence reduction credits, offenders must serve a statutorily defined percentage of the term imposed by the court. The “determinacy” in the system refers to the effort to ensure that time served by offenders is primarily determined by the length of the sentence imposed by the judge rather than by the discretionary release decision-making of a parole board.

Why can’t California prisons keep inmates locked up if they will pose a high risk if released? The short answer is that California’s Determinate Sentencing Law, passed in 1976, makes it extremely difficult for corrections officials to keep the vast majority of inmates in prison, regardless of their presumed future dangerousness.

TABLE 5
California Prison Population by Sentence Status and Gender, 2005

Sentence Status	Female		Male		Total	
Determinate sentence	8,384	77.0%	88,132	57.5%	96,516	58.8%
2nd Striker	1,325	12.2%	33,921	22.1%	35,246	21.5%
3rd Striker	74	0.7%	7,644	5.0%	7,718	4.7%
Life <i>with</i> possibility of parole	897	8.2%	19,306	12.6%	20,203	12.3%
Life <i>without</i> possibility of parole	135	1.2%	3,097	2.0%	3,232	2.0%
Death	15	0.1%	619	0.4%	634	0.4%
Other	58	0.5%	427	0.3%	485	0.3%
Total	10,888	100.0%	153,146	100.0%	164,034	100.0%

Source: Special analyses reflecting inmates as of June 30, 2005, Data Analysis Unit, California Department of Corrections and Rehabilitation.

Under California’s current sentencing system, only inmates convicted of very heinous crimes (such as murder, or kidnap for ransom), and those convicted of a third strike, are still given an indeterminate sentence and an opportunity to appear before the Board of Prison Terms to seek parole. As of June 2005, 12.3% of all the adult prisoners are serving life *with* the possibility of parole, 4.7% are third-strike inmates, and 0.4% have death sentences (see Table 5). Just 17.4% of the state’s prison population is serving an indeterminate sentence that could, at least in theory, be terminated through discretionary parole release.

Even for these individuals, though, parole is more of an abstract possibility than a day-to-day reality because California governors generally veto any recommended grant of parole for serious offenders. Meanwhile, the other 82.6% of California’s inmates—136,125 men and women—are serving determinate sentences. The only way for them to get out of prison is to serve the statutorily mandated percentage of the sentence a judge gave them, with some reductions allowed for good-time credits. *Once that time is up, however, they are automatically released, whether they are rehabilitated or incorrigible, and no matter how likely they may be to reoffend.*

Under indeterminate sentencing, at least in theory, punishments were made to fit the criminal rather than the crime. Under the determinate sentencing scheme that is in use today, it is primarily the offense, not the offender, that determines the length of a prison sentence.

Sentencing was not always handled this way. Prior to 1976, nearly all California inmates received indeterminate sentences. A judge would specify a minimum and a maximum length of incarceration, and they were released as a result of a decision made by a parole board, which attempted to evaluate each individual’s degree of rehabilitation. In fact, California was a leader in developing parole-risk prediction instruments that were exported to parole boards across the nation. Indeterminate sentencing coupled with discre-

tionary parole release was well-entrenched throughout the United States, and was considered to be a routine and good correctional practice for most of the twentieth century. Moreover, it was tied to and justified by the belief that the primary purpose of prisons was rehabilitation. In effect, an offender was viewed as an individual who needed “treatment,” and the length of the treatment depended on how well the patient responded to the “cure.” Under indeterminate sentencing, at least in theory, punishments were made to fit the criminal rather than the crime.

California became the second state after Maine to abolish indeterminate sentencing and discretionary parole release for inmates who were not sentenced to life terms. Under the determinate sentencing scheme that is in use today, it is primarily the offense, not the offender, that determines the length of a prison sentence. A number of factors motivated the state's move away from indeterminate sentencing, including:

- ▶ Evidence of race-based disparities in time served by offenders with similar offenses, with minority inmates tending to serve far more time than whites;
- ▶ The perception that the public and local communities had very little input into the sentencing decisions made by appointed parole administrators;
- ▶ The contention that many serious and violent offenders were being released too early because of a naive emphasis on rehabilitation rather than punishment and incapacitation;
- ▶ The belief that inmates had a right to know how long they should expect stay in prison, and should not be subject to the whim of an administrative body in determining a release date.¹⁶⁰

When it passed the legislature, California's Determinate Sentencing Act also explicitly abandoned the long-standing purpose of prison as rehabilitation and instead established punishment as the stated goal.¹⁶¹ "There was no evidence that the state of the sciences enabled anyone to diagnose a criminal's crime-causing problem, treat it, cure it or predict non-repetition," said the act's drafters in a subsequent law review article.¹⁶²

The drafters also hoped the act would help the legislature resist piecemeal changes in sentencing, reduce sentencing appeals, decrease the number of parolees rearrested and returned to prison, and decrease the caseload of parole agents. Former Governor Jerry Brown, who originally signed the determinate sentencing law, recently observed: "Everyone supported [determinate sentencing] but for different reasons. The conservatives liked it because it appeared tough on crime since it could control the lenient policies of judges and parole boards. Liberals liked it because it controlled disparity and discretion."¹⁶³

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Unanticipated Effects of Determinate Sentencing

In practice, California's use of determinate sentencing has had an extraordinary and destructive effect on the operation of the state correctional system, the result of structural consequences that were not anticipated when the measure was passed in the 1970s. Former Governor Brown, despite having lobbied heavily for the law's passage, now regards the policy as an "an abysmal failure . . . [creating] a scandalous merry-go-round of crime [that has] . . . saddled California with parolees who are ill prepared for release."¹⁶⁴

The significance of California's adoption of determinate sentencing cannot be overstated. With the law's passage, the process of determining how long an inmate would serve in prison was taken out of the hands of parole boards and placed in the hands of the legislature—a change that might sound fine in theory but which turned sentencing into one more way for elected representatives to score points with their constituents. From 1984 to 1991, the legislature passed over 1,000 crime bills, virtually none of them reducing sentences and many of them imposing sentence enhancements.¹⁶⁵

The law that was supposed to create uniformity among sentences has not done so. One of the reasons for this failure is the legislature's tendency to draft what legal scholars refer to as "drive-by" sentencing laws— measures that simply enhance existing sentences in response to media coverage of particularly sensational crimes or crime trends.¹⁶⁶ This approach results in sentences being driven up based on media-fueled cycles of anxiety rather than on conscious, decisions about crime policy based on sound evidence.

In practice, California's use of determinate sentencing has had an extraordinary and destructive effect on the operation of the state correctional system, the result of structural consequences that were not anticipated when the measure was passed in the 1970s.

The media-driven add-ons and enhancements to California's sentencing laws have not only ratcheted up penalties and therefore the size of the prison population, but have also greatly complicated sentencing determinations, a development that reduces its transparency and deterrent value. In addition to multiple and complicated sentence enhancements, the legislature has amended the law to maintain somewhere between 10 and 25 groups of offenses in place of the original four. For example, where there was once a single triad for assault with a deadly weapon, there are now seven different triads for various types of assault with different weapons. If judges and

lawyers need to use complicated software to determine sentences, how could the public be expected to understand how the decisions are made. This confusion drains much of the deterrent value from determinate sentencing.

The move to determinate sentencing is also partially credited with the explosion in the size of the prison population, from 20,000 inmates before the bill was passed to 165,000 today, and the resulting overcrowding of prisons to more than twice their intended capacity. Ironically, this prison crowding has forced the introduction of "good-time credits" that allow many inmates to leave prison early despite the original intention of imposing uniform sentences and punishments.

Perhaps most importantly, the elimination of discretionary parole release has undercut the incentives for inmates to try to rehabilitate themselves while incarcerated. Some inmates may recognize the intrinsic value of improving themselves, but far more inmates will participate if they believe it will reduce their prison stay. On the other hand, inmates who know they are going to be released whether or not they make any effort to participate in programs are effectively discouraged from taking any steps toward participation. This elimination of the incentive to engage in rehabilitation programs is unfortunate, because research suggests that benefits accrue to inmates who participate in these programs—regardless of their initial motivation for doing so.

Removing the possibility of discretionary release, therefore, has ultimately undercut one of the most effective mechanisms for encouraging inmate rehabilitation. At the time the determinate sentencing law was passed, of course, this consequence was considered acceptable because of the belief that rehabilitation was essentially futile and that punishment is the only legitimate purpose of incarceration.

Perhaps most importantly, the elimination of discretionary parole release has undercut the incentives for inmates to try to rehabilitate themselves while incarcerated.

Three decades of skyrocketing prison populations and astronomical prison budgets have amply demonstrated the shortcomings of that antirehabilitative perspective.

The elimination of discretionary release has also undercut public safety by removing the ability of state officials to keep violent and dangerous prisoners behind bars. A case in point is Richard Allen

Davis, the parolee who murdered Polly Klaas. While in prison under indeterminate sentencing, Davis had been denied parole six times. But after California moved to determinate sentencing and abolished discretionary parole, Davis had to be released automatically because he had already served the amount of prison time that the new law and its mandatory release provisions demanded. He walked out of prison, a free man. Less than four months later, he kidnapped and brutally murdered Klaas. Abolishing discretionary parole release, in Davis's case, undermined the system's ability to keep an obviously dangerous offender off the street.

Davis is hardly unusual in this respect. It is now relatively common for serious criminals who have completed their sentences to be released to the community directly from California's Secure Housing Unit facilities—shifting from 23 hours a day in windowless, “supermax” solitary confinement to the unstructured and complicated realities of life outside the prison walls. In the words of one critic, this approach is “setting up ex-cons for failure, and putting every citizen in California at risk.”¹⁶⁷

No one would argue for a return to the unfettered discretion that parole boards exercised in the 1960s. The old system led to unwarranted disparities that often reflected the personal philosophies and prejudices of parole board members, rather than the risks posed by offenders. But California effectively threw the baby out with the bath water when it replaced indeterminate sentencing with discretionary parole release, eliminating not just the problematic aspects of the old system but also its most critical strengths.

Under today's determinate system, corrections officials say they sometimes feel it is impossible to elicit cooperation from offenders, who know they will be released whether or not they participate in treatment programs or demonstrate any interest in reform. Prisoners, for their part, end up less well-prepared for reintegration into society under these circumstances. And this is not simply an academic conclusion: Inmates themselves often say that determinate sentencing has resulted in more dangerous conditions behind bars.

The development and implementation of rehabilitation programs by prison management has also been undercut by the move away from indeterminate sentencing. In states that still use indeterminate sentencing, where inmates participate in programs in order to earn favor from parole boards and early release dates, the entire correctional system tends to be more focused on the date of release and what will be required of the inmate in order to be eligible. Programs have to be developed and maintained, inmates have to participate in them at a level to impress paroling authorities, and correctional staff have to remain involved in writing assessment reports to be used in parole decisionmaking. The culture of the entire institution, among staff as well as inmates, is typically more focused on delivering programs and preparing prisoners for release. That's much less true in California because everyone involved in the system knows that programs are essentially an afterthought; they may help to pass the time, but they don't ultimately matter in any substantive way.

California corrections leaders are now trying to put rehabilitation back into prison programming, but it will be very difficult to do so within the confines of the determinate sentencing structure. The incentives for inmates to participate in programs, after all, were essentially disassembled through the elimination of discretionary parole. Inmates are unlikely to be enthusiastic about the reintroduction of opportunities to participate in rehabilitative activities. Many prisoners, after all, have ended up incarcerated because of their failure to function well in the “straight” world; being “rehabilitated” to comply with conventional social mores is not something they necessarily want to experience unless they believe that such rehabilitation will actually benefit them.

The elimination of discretionary release has also undercut public safety by removing the ability of state officials to keep violent and dangerous prisoners behind bars.

When the sentencing system allows for some level of discretion related to release, the benefits of improved behavior are immediately apparent to inmates. In the absence of any hope to affect the amount of time they will serve, they are hardly going to line up to demonstrate that they can become model citizens. If the state's well-intentioned return to rehabilitation is to succeed, a careful reexamination of its approach to sentencing must be part of the overall picture. Inmates will choose rehabilitation only when it makes sense for them to do so.

Discretionary Parole Release

The shift away from indeterminate sentencing in 1976 spelled the end of discretionary parole *release*, but left in place post-prison parole *supervision* for all offenders, establishing an unusual hybrid system whose policy ramifications do not appear to have been fully clear to the individuals who created it. The historic record of the passage of the determinate sentencing law in the California Legislature reveals virtually no serious discussion of parole supervision at all, and interviews with those central to the law's passage indicate that the subject of parole supervision did not arise in the debate over sentencing. The assumption shared by all parties was that the previous post-prison parole system should and would simply remain intact. As an intellectual matter, the decision seemed to make sense. Over the long term, however, operation of the hybrid system has proven to be a significant contributor to California's unusually high recidivism rate.

The vast majority of state prisoners serve a period of parole upon release. Technically, a prisoner could avoid parole if the Board of Prison Terms exercised its power to waive parole, but a waiver of the entire parole period is extremely rare.¹⁶⁸ In the overwhelmingly majority of cases, an inmate is simply released to parole supervision on the expiration of his or her prison term, with the parole term functioning not as a reward for good behavior (as it would in an indeterminate system) but as a period of extended surveillance and scrutiny during which the parolee may be recalled to jail on fairly minimal grounds.

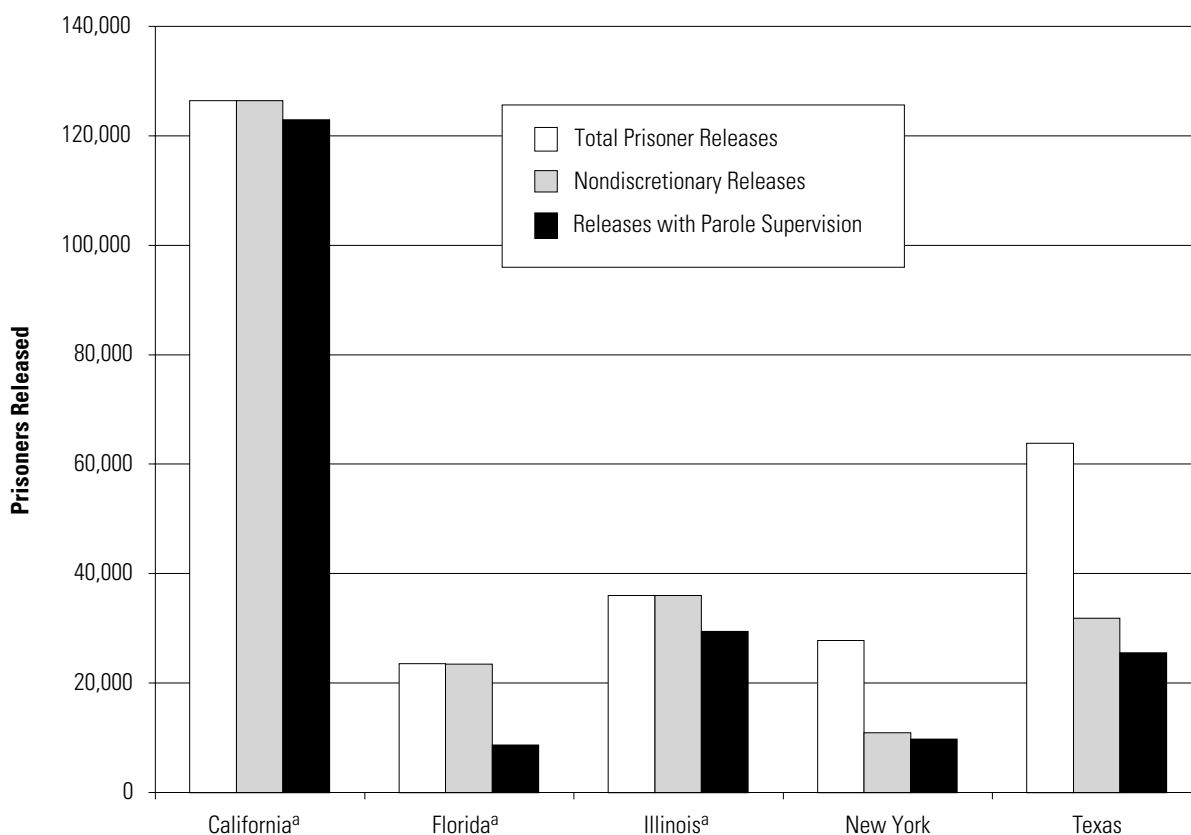
While on parole, a prisoner remains in the legal custody of the Department of Corrections and Rehabilitation. Thus, individuals who have been sentenced to prison are not free from restraints on their liberty until they have completed or are "discharged" from parole. During that period, a parolee is supervised by a parole agent, and must comply with parole conditions. If a parolee violates the conditions, the agent can refer the case to the Board of Prison Terms, which can revoke parole and order a return to custody to serve a parole revocation term. In addition, prisoners who are considered to be sexually violent predators or mentally disordered offenders may be subject to civil commitment proceedings and committed to a state hospital instead of being released from prison.

The length of a person's parole period is determined by statute. Most prisoners—those serving determinate terms for crime occurring on or after January 1, 1979—are subject to a three-year parole period, with a maximum parole period of four years.¹⁶⁹ However, the length of parole terms has been extended in recent years for certain offenders. Certain types of sex offenders, for example, are subject to a five-year parole term as a result of a 2000 amendment to the California Penal Code.

California's nearly universal application of parole supervision stands in sharp contrast to the approach used in most of the rest of the nation. Several other states supervise only certain high-risk prisoners after release. A few states, including Maine and Virginia, have abolished parole supervision altogether. Michigan supervises parolees for only two years, compared to California's three-, four-, or five-year supervision period. Other states, such as New York and Texas, release fewer inmates through a nondiscretionary process but apply parole supervision to

FIGURE 32

Prisoners Released Without Parole Board Review and Parole Supervision, by State, 2004



Note:

a. Indicates determinate sentencing states.

Source: Data compiled from *2005 Directory*, American Correctional Association, Lanham, Maryland.

all inmates who are released. Still others, such as Florida, release all inmates through a nondiscretionary process but apply parole supervision to fewer than half of those individuals. Only one other state in the nation—Illinois—follows the California hybrid, applying both a determinate sentencing system and universal parole supervision for nearly all released inmates. Figure 32 illustrates how unusual the hybrid approach is compared to the techniques applied in other states with large inmate populations.

Because California releases virtually all prisoners subject to the determinate sentencing law, with no opportunity to retain even the most likely reoffenders, and then places all of them on parole supervision, the state's parole officers end up supervising some individuals who pose a far more serious threat to society than the typical parolee in a state with discretionary release. In states that use discretionary release, these highly dangerous individuals aren't simply being put back on the street. In Texas, for example, only 63,790 inmates were released onto parole, with the state deciding to keep more risky individuals incarcerated. In California, on the other hand, parole officers often point out that their high revocation rates are caused by the behavior of parolees who were almost certain to reoffend and should not have been released from prison in the first place.

In its day-to-day operation, the hybrid system of determinate sentencing and nearly universal parole supervision undercuts public safety and inflates California's figures on recidivism. Since California's shift to the hybrid approach, the state's inmates quickly "churn" into and out of the correctional system in a nonstop game of catch-and-release. The imposition of short, determinate sentences for parole violations ensures that offenders will be dumped onto the street whether or not they show a propensity for rehabilitation, and the heavy use of parole supervision ensures that two-thirds of these same individuals will be thrown back into custody after a short time back in the community. It is a combination of correctional styles that unfortunately maximizes both risks to the community and state expenses. It is not an accident that California is virtually alone in its use of this dysfunctional hybrid.

Parole Supervision

When inmates are released from prison to parole, they are given any money they have in their prison trust account and are generally also given \$200 in "gate money." Those who have served less than six consecutive months prior to release are given somewhat less money, calculated at the rate of \$1.10 per day up to a maximum of \$200. Parole agents are also allowed to distribute emergency funds to allow parolees to obtain housing, food, and clothing. These funds are considered loans to the parolee, and are expected to be paid back as soon as employment and personal circumstances allow. Usually such loans are for less than \$50 but can amount to as much as \$500 in unusual circumstances. As modest as this assistance may seem for an individual trying to start over in life, California's amount of gate money is one of the highest in the nation. One-third of the states provide no gate money at all to released inmates.¹⁷⁰

Prior to release, parolees are assigned a parole agent in the parolee's community. A prisoner released on parole is usually paroled to the county of his or her legal residence prior to incarceration. Generally parolees must make face-to-face contact with their parole officer by the first working day following release from custody, and the agent typically will have them sign off on the written description of their conditions of supervision. Parole conditions are similar in most California jurisdictions and include not carrying weapons, reporting changes of address and employment, not committing crimes, and submitting to a search. Special conditions can be imposed on those who are deemed to need additional supervision. For example, sex offenders may be required to participate in therapy, register as sex offenders, and refrain from entering child safety zones. Most parolees have drug-testing conditions that allow them to be randomly tested by parole agents. Parolees with histories of gang-related violence may also be required to refrain from associating with gang members.

Parolees are assigned to one of seven levels of supervision, with the assigned level determining the frequency and level of oversight provided by contact with the parole agent. The possible classifications are: high control, high service, control services, minimum supervision, second striker, and high-risk sex offender. Table 6 describes what the designation means, the percent of active parolees who are within each classification, and the relevant contact levels.

What is striking about California's use of these classification categories is the extent to which they document a form of parole supervision that is unlikely to provide the types of extensive service and surveillance activities that are needed for the highest-risk offenders. Twenty-three percent of California's parolees fall within the minimum supervision category, meaning that they will see a parole officer only twice a year. This sort of parole oversight costs money to provide and takes up parole officers' time, but can't possibly be expected to provide a meaningful check on parolee criminality. Another 43% of parolees fall within the control services classification, meaning that they will see a parole officer twice every three months. This level of supervision is perhaps not

TABLE 6

California Parole Population Caseloads and Supervision Requirements, 2005

California Parolee Classification	# and % of Active Parolees	Selected Parole Contact and Testing Requirements
High Control Parolees who were convicted of violent felonies in Penal Code §667.5(c), must register as sex offenders, are validated gang members, or high-notoriety cases.	13,087 10.8%	<ul style="list-style-type: none"> • 2 face-to-face contacts per month (one must be at residence) • First home visit within 6 days of release • 1 drug test per month, if required • 2 collaterals per quarter
High Service Refers to parolees who have special service needs (severe addiction problems) or behavioral patterns (severe mental illness).	1,825 1.5%	<ul style="list-style-type: none"> • 2 face-to-face contacts per month (one must be at residence) • 1 drug test per month, if required • 2 collaterals per quarter
Control Service (CS) Require active supervision. Refers to parolees who do not meet the criteria for High Control or High Services.	51,743 42.8%	<ul style="list-style-type: none"> • 1 face-to-face in residence every other month • 2 drug tests per quarter • 1 collateral every 90 days • Most CS cases drop to MS automatically at 180 days
Second Striker Parolees with at least two prior convictions for serious or violent offenses. Ideal ratio of 40:1.	8,564 7.0%	<ul style="list-style-type: none"> • 2 face-to-face per month; 4 per quarter in home • 1 drug test per month • 2 collaterals per month
High-Risk Sex Offender (HRSO) Defined by the California Dept of Justice, uses criteria set forth under Penal Code §§290(n)(1), 667.5, and 667.6. Ideal ratio of 40:1.	1,947 1.6%	<ul style="list-style-type: none"> • 2 face-to-face per month; 4 per quarter in home • 1 drug test per month • 2 collaterals per month • Quarterly meeting with person who knows parolee well
Minimum Service (MS) This classification refers to parolees who are on monthly mail-in, and these are counted as "contacts." These individuals need to make only two to three face-to-face or collateral contacts with their parole officer each year.	27,486 22.7%	<ul style="list-style-type: none"> • 1 home visit within 30 days of being assigned to MS • 1 face-to-face or collateral every 4 months • 1 monthly report turned in by 5th of every month • Face-to-face contact 30 days prior to discharge • Drug testing waived
Other Includes deportees or pending deportation (13,508). Also includes enhanced outpatient, mentally disordered, and missing classification.	16,182 13.4%	
Total California Parolees Supervised	120,834	
Parolees-At-Large A parolee who is being supervised by a California parole agent and absconds supervision. A warrant is issued, parole is suspended, and location is unknown.	20,405 16.9%	
Civil Addicts The Narcotic Addict Evaluation Authority determines the suitability for release of individuals committed into the "civil addict" program — a civil commitment to the California Rehabilitation Center for adult offenders whom the court believes would be best served through this alternative to prison.	1,927 1.6%	
Direct Court Releases Parolees who report to parole after being directly released from court (not prison).	151 0.1%	

Source: Information on parolee caseloads and contact standards was obtained from the Division of Adult Parole Operations, CDCR.

quite as remote as that provided in minimum supervision but is still unlikely to give a parolee a particularly strong sense that the state is paying attention to his or her actions.

The classifications in which relatively little supervision is allotted to parolees account for 65% of the entire population on parole. Given that these offenders are placed in low-risk categories in the first place because they are not expected to be likely recidivists, one can't help but wonder whether the effort expended to provide cursory oversight to so many former inmates is an effective use of resources.

This issue is particularly pressing because California loses track of many of its parolees. As shown above, nearly 17% of all California parolees—more than 20,000 people—are “parolees-at-large,” meaning they have absconded supervision and their whereabouts are unknown. This is the highest abscond rate in the nation and is far above the 7% national average.¹⁷¹

If the use of supervision were less universal but more intensely focused on individuals who pose a serious risk of reoffending or absconding, these numbers could be improved. Frank Williams and a colleague studied a large sample of California parolees and developed a statistical instrument capable of classifying California absconders with better than 70% accuracy, but their research has never been used to help parole officials target those most likely to abscond.¹⁷² Such a modification would have the effect of directing resources toward individuals who, statistically, have a more obvious need for supervision.

Parolee Employment and Housing

The level of scrutiny and assistance that parole officers can provide to ex-inmates is important because parolees face serious challenges putting together the elements of a “normal” life once they leave prison. In particular, it is common for parolees to stumble when securing such basics as employment and housing.

“Seeking and maintaining employment” has been a standard parole condition, but there has been surprisingly little research on the job experiences of California inmates after they leave prison. However, data collected by researcher Frank Williams and his colleagues on a representative sample of 4,047 parolees released in 1997 and tracked for 12 months afterward contains relevant information.¹⁷³ Table 7 shows the overall employment experiences of the parolees during their first 12 months in the community. Table 8 shows all the forms of financial support that parolees depended on during their first 12 months out of prison.

As shown in Table 8, Williams found that only 1 in 5 California parolees supported themselves primarily through money earned from employment during their first year after prison release. Low participation in the job market may result partly from a failure to pursue

TABLE 7
Employment Experiences of California Parolees, First Year Out

Unemployable at release and never gainfully employed	7.8%
Unemployable at release but sometimes employed	2.2%
Employable at release but frequently unemployed	49.8%
Supported by employment frequently	40.0%

Source: Special analyses conducted by Frank Williams, October 2005. Each parolee in the sample was tracked for 12 months “street time,” meaning that if parolees were revoked and returned to prison, they would be tracked again at their next parole release until accumulating 12 months of street time.

TABLE 8
Primary Sources of Financial Support for California Parolees, First Year Out

Employment	22.7%
Public assistance	11.7%
P&CSD cash assistance	1.5%
Supported by family and friends	32.1%
Supported by Social Security	0.6%
Unlawful means	13.2%
Unknown financial support	15.2%

Source: Special analyses of California risk assessment data conducted by Frank Williams, October 2005.

legitimate work, but it is also influenced by the host of obstacles that ex-offenders encounter in attempting to secure employment. Employers typically include a box on job application forms requiring prospective employees to disclose criminal convictions, and certain trades are legally prohibited for individuals with criminal records. In California, the existence of a criminal record rules out possible employment in law, real estate, medicine, nursing, physical therapy, and education, and many other less-regulated professions are also inaccessible because of licensing and bonding requirements or simply because of employers' reluctance to hire convicted criminals.

Only 1 in 5 California parolees supported themselves primarily through money earned from employment during their first year after prison release.

Work that is available to parolees is often unskilled, with restricted opportunities to advance or to assume a supervisory role, and it therefore often provides a minimum-wage salary that supports a subsistence-level existence. In California, where the median household income is over \$50,000 and the qualifying household income to purchase a median-price home is nearly \$130,000,¹⁷⁴ the state's \$6.75 per hour minimum wage¹⁷⁵ simply does not go far. Under these circumstances, unfortunately, the potential for material gain through criminal behavior looks more realistic to some parolees than the prospect of escaping poverty through legitimate employment.

As difficult as finding employment may be for ex-offenders, parole officials say that finding housing is an even bigger challenge. Parolees in California are sometimes given two- to four-week vouchers to pay for an inexpensive room in a hotel or local boarding facility. That time passes quickly, and without a stable home base, few services can be delivered effectively.

State prisoners are often incarcerated in facilities far away from their return destination, and have little opportunity to secure housing prior to discharge. Parole conditions can also prevent parolees from living or associating with others who are involved in the criminal justice system. This restriction, in some situations, can effectively eliminate family and friends who would otherwise be willing to provide housing to a parolee. And since ex-inmates are usually unable to amass the funds required to move into an apartment (first and last month's rent, security deposit), the private housing market—which represents 97% of the total housing stock in the U.S.—is usually beyond their means. Even if parolees have the financial wherewithal to secure housing, landlords conducting background checks or requiring credible work histories often pass over applicants with prison records.

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In response to these obstacles, many ex-prisoners attempt to locate suitable public housing, only to encounter still more hurdles: Recent legislation now *requires* public housing agencies and providers to deny housing to certain felons, such as drug and sex offenders. Even if parolees qualify, waiting lists can be as long as two to three years for subsidized housing. As a result, many convicts show up at overcrowded shelters, where waiting lists are also long and limits are placed on the number of days an individual can remain in residence.

Despite the importance of housing for ex-inmates, relatively little information is available about their housing. The Bureau of Justice Statistics reports that 12% of U.S. prisoners were homeless immediately prior to their incarceration.¹⁷⁶ *Time* magazine reported in 2002 that “30% to 50% of big-city parolees are homeless.”¹⁷⁷ And California Department of Corrections and Rehabilitation officials estimate that overall, 10% of the state’s parolees are homeless, but in large urban areas, such as San Francisco and Los Angeles, the rate of homelessness among parolees might be as high as 50%.¹⁷⁸ The Williams and McShane database also collected information on the housing arrangements of California parolees during their first year out, including with whom they lived (see Table 9). These data show that 6.5% of all parolees were mostly homeless for the entire first year after prison release.

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The figures in Table 9 illustrate the significant roles that families and spouses or significant others play in reintegrating parolees into society—with two-thirds of all parolees finding housing in some sort of familial or quasi-familial setting. The figures also put to rest any stereotypical notion that parolees are being released into or being principally supported in state-funded halfway houses or group housing. Fewer than 4% of parolees usually lived in a group home or treatment facility during their first year out; the vast majority returned to live among other members of the broader community.

Along with the minimal supervision provided to parolees noted above, and the likelihood that ex-offenders will be unemployed, these types of unstructured housing arrangements contribute to the reality that many ex-

offenders will be on parole without really being served by parole. Technically speaking, the State of California is supposed to be providing some level of oversight over their actions and delivering some minimal level of assistance to them, but in fact many parolees live dramatically unstructured lives, where their closest day-to-day supervision and their primary social contacts come from a family member, friends, or a significant other.

For some inmates, who are unlikely to reoffend and pose a low safety risk to the community in any case, this type of arrangement may be just fine—except in that case it is not clear why the State of California should bother keeping them on parole. For other, more risky inmates, the abrupt reintegration into wholly unstructured life is likely to spell trouble. In those cases, allocating resources for more intensive parole supervision could help prevent problems before they start.

TABLE 9
Usual Living Arrangements of California Parolees, First Year Out

With Whom?	
Alone	8.5%
With spouse or significant other	23.7%
With other family member	43.5%
With nonfamily member	8.1%
In group housing	3.7%
Other	12.0%
Where?	
Owned home	4.6%
Rented house/condo	15.1%
Apartment	27.8%
Rented room	16.2%
Hotel/motel	1.8%
Group home	1.4%
Treatment facility	2.2%
Homeless	6.5%

Source: Data analyses performed by Frank Williams, October 2005.

Understanding California's Recidivism

We need to understand what it means when California is described as having “the worst recidivism rate” in the nation, and what it doesn’t mean, in order to address the correctional system’s failings. A careful analysis of the statistics on recidivism shows that parolees’ criminal behavior is not what pushes up the state’s numbers. Rather, it is the combination of this criminality with two other factors: a blanket imposition of parole on all ex-prisoners, and California’s unusual reliance on parole revocation as a quick-fix response to parolee problems. Where other states impose lengthy prison sentences for serious offenses committed by former prisoners, California plays a constant game of catch and release with parolees—an approach that undermines correctional effectiveness and misses important opportunities to improve public safety.

California typically wins this dubious distinction because two-thirds of its parolees under supervision return to prison within three years—twice the national average.¹⁷⁹ However, states define the phenomenon of recidivism in a number of different ways: as a new arrest of an ex-inmate, as a new conviction, or as a return to prison or jail. These specific systemic responses must be compared across states, and not the generic label of recidivism, to get any meaningful sense of how states are performing compared to each other.

Another complicating variable is the reality that some populations of ex-inmates have a much higher likelihood of reoffending than others. A state that is home to a disproportionately high share of such likely reoffenders may record a higher recidivism rate even though it operates relatively successful programs for former inmates. Saying that California is “the worst” when it comes to recidivism amounts to applying a label that doesn’t describe the correctional system very clearly and fails to compare it carefully to other state systems.

Ryan Fischer from UC Irvine recently undertook a more nuanced comparison of California’s recidivism to other states with large prison populations, which provides revealing results.¹⁸⁰ His study showed that California’s rate over a three-year period beginning in 1994 could plausibly be set at anywhere between 27% and 70% based on counting as recidivists, respectively, only those resentenced to prison or only those newly arrested (see Table 10). At the end of the three years studied, however, 66% of California parolees had been returned to prison, 27% for a new criminal conviction and 39% for a so-called technical violation (violations of the conditions of parole, discussed more fully below).

A careful analysis of the statistics on recidivism shows that parolees’ criminal behavior is not what pushes up the state's numbers. Rather, it is the combination of this criminality with two other factors: a blanket imposition of parole on all ex-prisoners, and California's unusual reliance on parole revocation as a quick-fix response to parolee problems.

At the end of one three-year study, 66% of California parolees had been returned to prison, 27% for a new criminal conviction and 39% for a so-called technical violation.

TABLE 10
Percent of California Parolees Recidivating Within Three Years of Release

Conviction Offense	Rearrested	Reconvicted	Returned to Jail or Prison			Returned to Prison		
			New Crime	Technical Violation	Total	New Crime	Technical Violation	Total
Violent	63	40	29	35	64	20	42	62
Property	77	56	42	32	74	33	38	71
Drugs	71	51	39	27	66	27	35	62
Public order	63	41	32	34	66	22	41	63
Other	68	44	32	41	73	22	48	70
Total	70	49	37	32	69	27	39	66

Source: Ryan Fischer, *Are California's Recidivism Rates Really the Highest in the Nation? It Depends on What Measure of Recidivism You Use*, UC Irvine Center for Evidence-Based Corrections: Bulletin 1 (September 2005). Based on inmates released in 1994.

Fischer sought to understand how that 66% figure compared to the numbers from Illinois, Texas, North Carolina, New York, and Florida during the same period, when comparable data were available. The study also took into account the likelihood that California's apparently high recidivism rate is influenced by the nature of the offender population it handles. Research has shown that ex-prisoners who are young, male, involved with a gang, and have extensive prior criminal records are more prone to commit new crimes than ex-offenders with fewer such risk characteristics. If these factors aren't accounted for, or "statistically controlled," then cross-state comparisons are misleading.

Fischer compared equivalently "risky" populations across states in assessing the likelihood that individuals from the test states would be arrested or reconvicted within three years of leaving prison. He concluded that California ex-offenders fared moderately better than similar individuals in some states and moderately worse than those in others. As shown in Figure 33, the likelihood of re-arrest in Illinois and Florida is actually higher than it is in California, controlling for relevant variables related to demographics and criminal history. However, prisoners released in North Carolina, Texas, and New York are arrested less often, even after controlling for relevant risk indicators. California's statistics begin to look dramatically different from those in much of the rest of the nation only when considering technical violations.

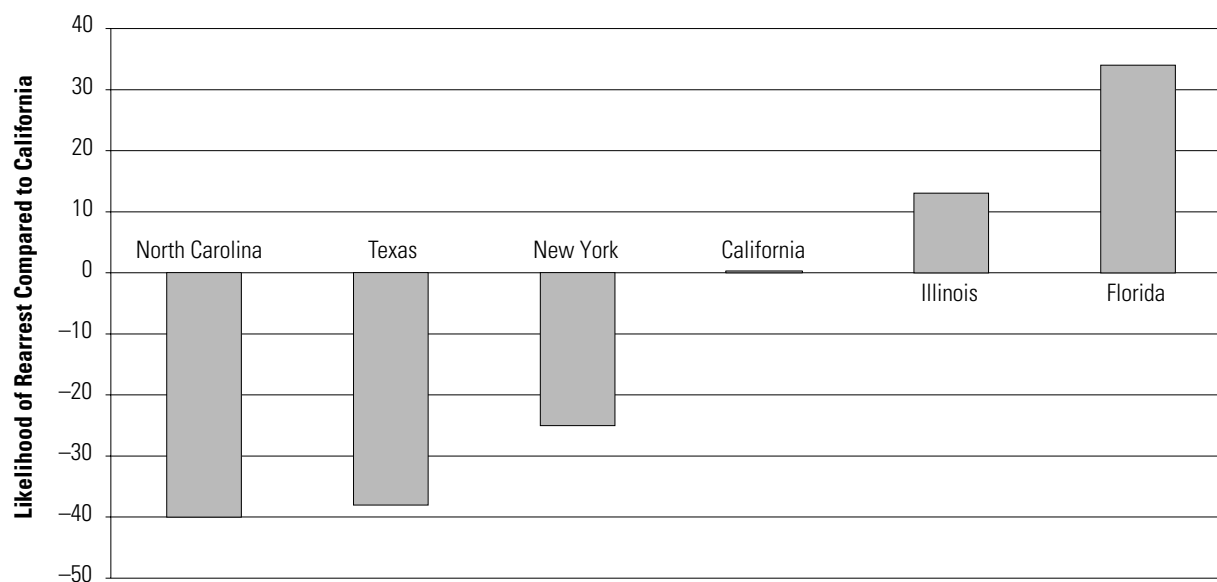
No Mere Technicality

To understand the role of technical violations in California corrections, one must first realize that California uses parole supervision and revocation as tools of crime policy far more than any other state in the nation. As stated earlier, in California virtually *all* released prisoners are subject to parole supervision, typically for a period of three years.

During that time, they are subject to about a dozen parole conditions. When parolees fail to comply with the conditions of their parole, as the majority of them apparently do, parole officers are responsible for reacting to their misbehavior. Diverting a parolee to a halfway house or seeking re-arrest and prosecution could be appropriate in some cases but, as shown in Figure 34, a large number of parolees are returned for "administrative, parole" violations. The number of parole returns to prison is now about 77,000 per year in California, down from its high of 90,000 in 2000. As Figure 34 makes clear, the number of parolees returned to prison for new

FIGURE 33

Likelihood of Parolee Re-arrest Within Three Years of Release, Controlling for Demographics and Criminal Record



Source: Ryan Fischer, *Are California's Recidivism Rates Really the Highest in the Nation? It Depends on What Measure of Recidivism You Use*, UC Irvine Center for Evidence-based Corrections: Bulletin 1 (Sept. 2005). Based on inmates released in 1994.

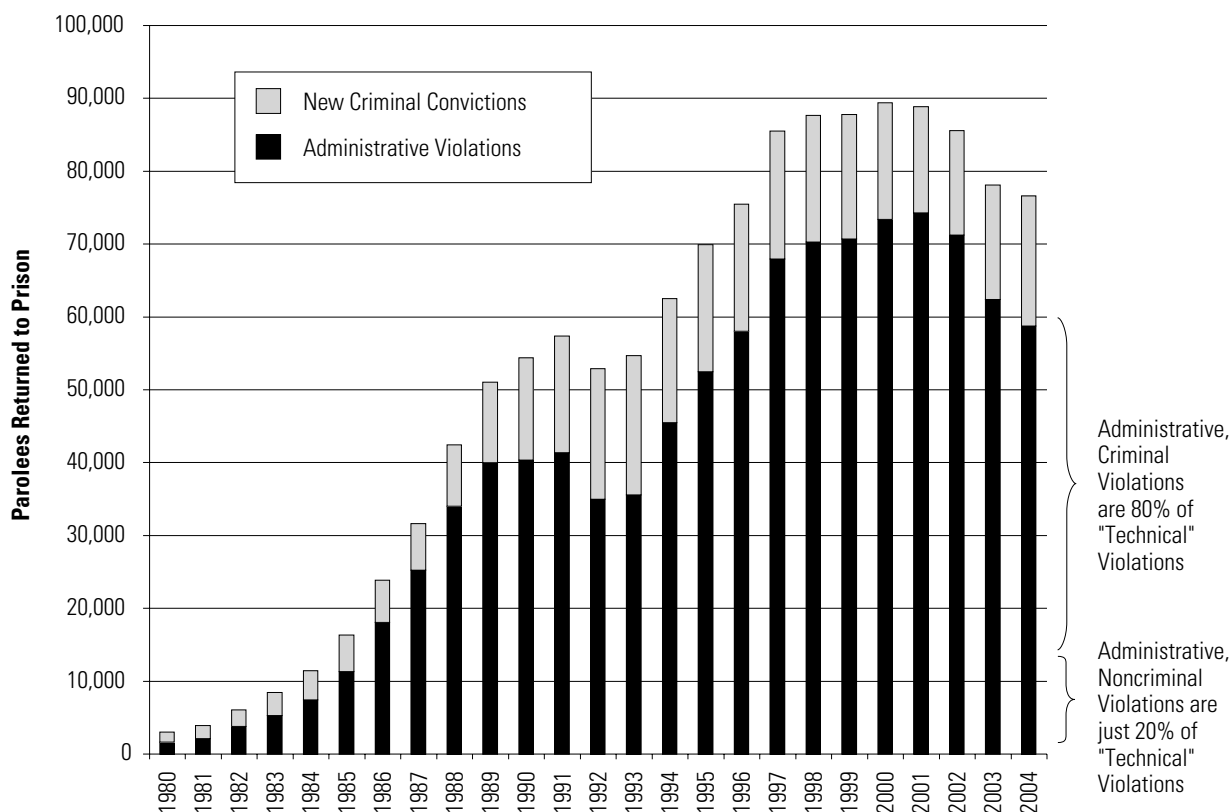
criminal convictions has remained fairly constant for the last decade. The greatest increase in returns to prison since 1990 has been for “administrative, parole”—which corrections officials refer to as technical violations.

It would be quite easy—and equally misguided—to conclude from these extraordinarily high statistics on technical violations that California could reduce recidivism by eliminating enforcement of these “technicalities.” Indeed, movement in this direction generated a firestorm of opposition from many quarters in 2005, and some felt with good reason.¹⁸¹ Although the label for these offenses sounds innocuous—use of the term administrative violation to describe a technical violation makes the process sound almost like a clerical error—in reality California uses technical violations to address a wide range of serious criminal behavior that other jurisdictions would handle through re-arrest and prosecution. In other states, technical violations may involve the failure to take a drug test or to report to a parole officer; in California, by contrast, these may include allegations of rape, robbery, and even murder.

The category of California’s technical violations—“administrative returns”—is split into “administrative criminal returns” and “administrative noncriminal returns.” As Figure 34 shows, 80% of administrative or technical returns are considered criminal, meaning that they are associated with new criminal activity. Unlike a return based on a new criminal conviction, where the alleged crime must be proved beyond a reasonable doubt at trial, an administrative return takes place after a parole hearing before the Hearing and Operations Division of the Bureau of Prisons Terms. The standard of proof in such hearings is civil rather than criminal, so allegations need only be proved by a preponderance of the evidence. This use of administrative returns is hardly limited to responses to technical issues, but is regarded as an appropriate way to secure jail or prison time when parolees have committed new crimes and there is insufficient evidence for prosecution under criminal law standards.

FIGURE 34

Administrative Violations vs. New Criminal Convictions of California Parolees Returned to Prison, 1980–2004



Note: The data for analyzing the percent of administrative violations that are criminal versus noncriminal come from 2001, the last year California collected the data permitting such a calculation.

Source: Data provided by the Division of Adult Parole Operations, CDCR, various years.

Statistically, California’s use of technical violations to respond to alleged crimes means that only 20% of the 90,000 parole violators returned to prison in 2001 (the latest year this information was collected) could be considered purely technical violators of the sort seen in other states. The rest of the violations that are labeled technical or administrative involved allegations of new criminal activity, despite their mild description.

In analyses conducted for the Little Hoover Commission in 2002, Jeremy Travis looked in detail at the crimes handled through the administrative, criminal violation route and found 78 cases classified as homicides, 524 robberies, and 384 rapes and sexual assaults. In each of these cases, the parolee was revoked for a technical violation rather than prosecuted for a new criminal conviction.¹⁸²

Though the technical response to new criminal activity allows law enforcement officials to imprison a parolee quickly while meeting a lower evidentiary burden, it also has a serious drawback from a correctional point of view: Sentences for administrative returns are capped at one year—and most individuals returned this way end up serving considerably less time than that. Travis found that the average revocation time assessed

for administrative criminal returns in 2002 was 8.3 months, and the average time actually served was 5.4 months—only a month longer than the time assessed for administrative, noncriminal returns.¹⁸³

Such sentences might be appropriate sanctions for very minor offenses, but they are quite short terms for the types of serious crimes California addresses through administrative returns. In other words, the technical approach may make for easier crime “fishing,” but it limits law enforcement officials to a frustrating catch-and-release cycle that neither incapacitates serious offenders nor sends a distinct deterrent message to the community.

The use of administrative returns to respond to serious crime has also been challenged for denying the accused the significant legal protections of a complete trial. Travis questions whether California’s procedures amount to “a parallel system of criminal adjudication, with lower burdens of proof and a less adversarial process.”¹⁸⁴ Dealing with serious crime in a technical fashion, in his view, gives short shrift to defendants’ basic legal rights even as it curtails the state’s ability to impose an appropriate sentence for serious offenses.

The Technical Approach Threatens Public Safety

With this understanding of California’s use of technical violations, it makes sense that correctional staff resisted parole reforms that would have diverted technical offenders from prison to some kind of community-based sanctions. After all, four out of five of these parolees were determined to have been involved in criminal activity. While community-based sanctions have been shown to work quite well for less serious technical violators, parole officials believed that the bulk of the violations committed by Californian’s parole population fall into a different category. Because it is reasonable to argue that new criminal acts should be treated seriously, the proposed reform plans were abandoned.

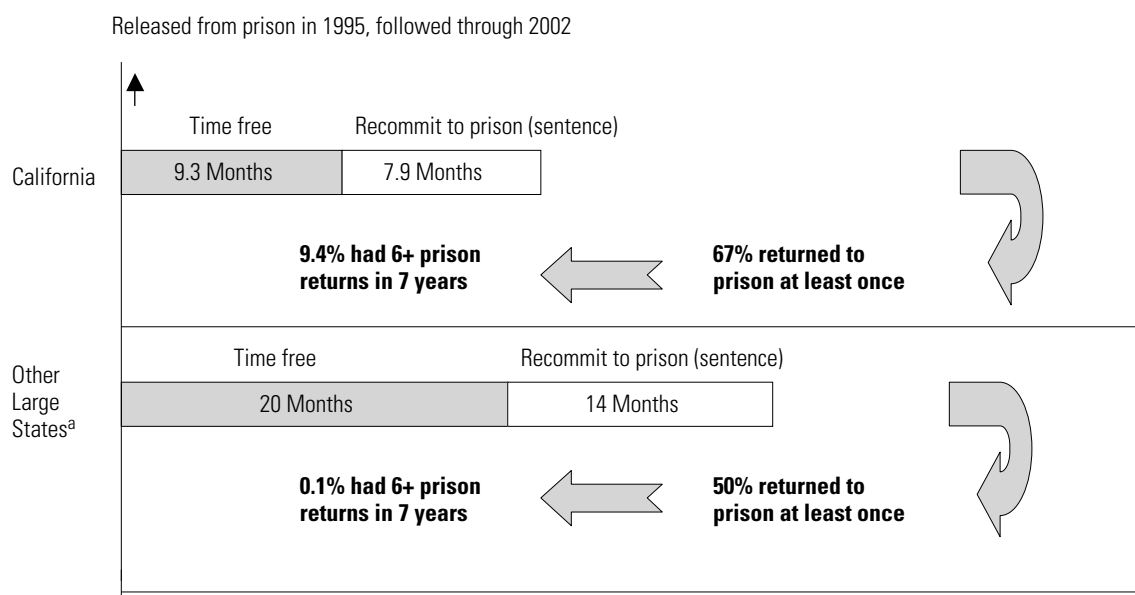
If the reform proposals that fell apart in 2005 were not a smart approach to changing California’s parole system, it is nevertheless true that the state’s heavy use of technical revocation followed by brief stints behind bars is a problem that needs to be solved. As two leading crime analysts, Alfred Blumstein and Allen Beck, illustrated in a recent study, California’s catch-and-release model of crime control is creating a destructive situation by constantly cycling offenders in and out of prison and their home communities in a way that blurs the distinction between the two and combines the worst elements of each.¹⁸⁵

Blumstein and Beck examined the post-release activity of prisoners who had served comparable sentences in New York, Florida, Illinois, and California prisons and tracked them for seven years after leaving prison. They found that nearly 10% of the California prisoners cycled in and out of prison *six or more times* over the seven-year period. They also initially remained in their home communities for less than half the time of their counterparts in other states (9.3 months compared to 20 months), and then spent less time in prison than their counterparts who were reincarcerated. The California subjects were given sentences averaging just 7.9 months and typically served less than half that time. The authors coined the term “churning” to describe this constant, restless cycling between home and prison, and they found that fewer than 0.1% of prisoners from other states had churned in the way that was common in California (Figure 35).

California is much more likely to use incarceration as a casual, short-term remedy for criminal behavior, whereas other states employ incarceration as a decisive and dramatic break with day-to-day life. Where California employs a catch-and-release crime policy that churns inmates back and forth between prison

FIGURE 35

Prisoners' Time Served, Months Free, and Prison Returns, California vs. Other Large States



Note:

a. New York, Illinois, Florida. Analysis based on all 1995 prison releaseses in each state.

Source: Alfred Blumstein and Allen Beck, "Reentry as a Transient State," in Travis and Visher, *Prisoner Reentry and Crime in America*, Cambridge University Press (2005).

and community, other states tend to “catch” fewer individuals in prison and then keep those people behind bars for some time. This is a critical distinction between California and other large states.

This unusual approach is the source of many problems for California. Short prison terms for administrative returns mean that criminals are quickly put back on the street to commit new crimes, harming public safety. Rapid churning into and out of prison also wastes the resources of parole commissions and parole officers, who have to reprocess the same individuals over and over. Churning disrupts the sense of continuity in prison life, making it difficult or pointless for inmates, who know they will be back on the streets in a few months, to begin participating in sorely needed educational, vocational, or substance-abuse programs. And churning encourages the spread of prison-gang culture into the communities where inmates are discharged, while undercutting the deterrent effect of serving prison time.

Despite the good intentions motivating the effort to quickly get offenders off the street through administrative returns, the policy has had a profoundly harmful effect: It has transformed a trip to prison, which should properly be regarded as an extraordinary chapter in an individual’s life, into a trivial and short-lived intrusion on day-to-day criminality. The resulting system virtually blends together parole supervision and technical returns. It provides a high level of surveillance over suspected wrongdoers at the cost of normalizing their encounter with the correctional system. Unfortunately, for some offenders in this system, the threat of a short return to prison is simply not sufficient to prevent further wrongdoing.

Concluding Remarks

The State of the State

Several empirical conclusions stand out as a result of preparing this primer on California's correctional system and analyzing the differences between California and other large states. The picture is more complicated than either critics or supporters of the current correctional system typically acknowledge. For example, advocates of a tough-on-crime perspective might emphasize the following points:

- ▶ Most so-called technical violations of parole involve new criminal behavior.
- ▶ Convictions for violent crime—rather than drug crime—are primarily responsible for the increase in California's prison population in recent years.
- ▶ California inmates, in general, have longer criminal records than their counterparts in other states—though not necessarily as a result of higher levels of serious criminal activity.
- ▶ Forty-seven percent of California prisoners are currently, or have previously been, sentenced to prison for a violent crime—and 14% have two prison commitments for violent crime.

Ultimately, the totality of the facts should inform policy decisions for the state, not political arguments based on a statistic or two that suggests a "tough" or a "reformist" position.

Advocates of reform, on the other hand, might point to the following details:

- ▶ California has created the largest, most expensive correctional system in the nation, and is filled to twice its intended capacity.
- ▶ Staff-to-inmate ratios are unusually low in California, while staff salaries are unusually high.
- ▶ Nearly a quarter of all California inmates are completely idle during their prison stay, never participating in any treatment programs, despite an unusually high need for drug and alcohol counseling.
- ▶ Overrides to housing assignments based on classification scores—implemented primarily to deal with overcrowding—may be preventing inmates from participating in treatment programs that they need.
- ▶ California inmates are less likely than their counterparts in comparable states to receive any sort of educational or vocational training while incarcerated.

The goals of ensuring public safety and running effective, efficient prisons are not ultimately in opposition; most people would agree that one cannot occur without the other.

- ▶ Fully a third of California inmates are nonviolent recidivists who have never served a prior adult sentence for a violent crime. At least statistically, these individuals may not warrant the expensive resources involved in subjecting them to mandatory parole supervision.

Ultimately, the totality of the facts should inform policy decisions for the state, not political arguments based on a statistic or two that suggests a “tough” or a “reformist” position. For that matter, the goals of ensuring public safety and running effective, efficient prisons are not ultimately in opposition; most people would agree that one cannot occur without the other.

Suggestions for Change

Analysis of the broad structures of California’s correctional system also suggests several core areas where policy change is needed if the move toward correction *and rehabilitation* is to make sense. Some of these problems and suggested solutions were highlighted in reports by the Little Hoover Commission in 2003¹⁸⁶ and the Deukmejian Independent Review Panel in 2004.¹⁸⁷ These repeated calls for change in the same areas are not accidental, are not necessarily partisan in their import, and certainly are not intended to be an academic exercise. Other states provide more effective, more intelligent, and less expensive correctional services to their citizens. California’s system can benefit by moving in that direction, even though reform will require breaking through institutional inertia. Correctional officials in the Schwarzenegger administration have made that a top priority.

At the broadest policy level, the following basic changes should be part of the move toward rehabilitation:

- ▶ Restore some level of discretion to sentencing and release decisions so that inmates see the value of responsible behavior and the state can deny early release to inmates considered particularly dangerous. The “presumptive sentencing” model suggested by the Independent Review Panel in 2004 might be one viable approach.¹⁸⁸
- ▶ Prioritize the delivery of programs that will help address inmates’ profound and widespread problems with substance abuse, inadequate education, and lack of job skills. The politically expedient effort to cut or deprioritize such programs because they “coddle criminals” has been extremely short-sighted and ultimately threatens public safety.
- ▶ Employ parole supervision selectively and in a more concentrated way, so that it targets the most likely reoffenders. End or dramatically reduce the imposition of parole on those who are least likely to reoffend, which wastes resources and provides a negligible benefit to public safety.
- ▶ Prosecute serious crime when possible rather than using technical violations as a quick fix. Move away from the catch-and-release approach and inmate churning to the greatest extent possible.
- ▶ Develop program changes on the basis of solid research and empirical evidence that suggest the effectiveness of whatever modifications are implemented. Rigorously designed studies that demonstrate the effectiveness of particular programs in reducing recidivism will increase public support for such programs and, more importantly, improve the odds that the programs will enhance public safety. Requiring rehabilitation programs to collect information on the scope and quality of the services they deliver can also bolster their effectiveness and credibility. California drive-by correctional policy changes, where sentencing, incarceration, and parole policies have been modified because of legislative whims and public anxieties, must come to an end.

Both the Little Hoover Commission and the Deukmejian reports contain detailed proposals for implementing these basic changes, and other variations on these approaches could also be effective. The important thing for policymakers to understand is that the decision to embrace a rehabilitative approach is not simply a game of semantics, but represents a structural change. Those who have studied what it takes to successfully reform public institutions say three things are necessary: resources, commitment, and time—with time being the most important. Frederick Hess, who has written books on educational reform, says it takes a minimum of five years to accomplish observable reform,¹⁸⁹ and RAND puts the time at eight years.¹⁹⁰

California must continue down a path of profound and transformational change. We must enact policies that treat incarceration more like a serious and profound break with ordinary life and less like a temporary administrative detour. Such a change would require everyone involved with the correctional system—particularly the inmates, but also the staff, who have the potential to help or hinder the rehabilitative process—to take more seriously the moral choices of offenders. In such a system, real consequences flow from the choices an individual makes while incarcerated. Rehabilitation is a weighty commitment to make for California's prisons. It can only be implemented in a substantive and meaningful way if the fundamental structures of corrections—the sentencing framework, the level of in-prison programming, and the nature of parole supervision—are configured so they actually reflect that commitment.

We must enact policies that treat incarceration more like a serious and profound break with ordinary life and less like a temporary administrative detour. Such a change would require everyone involved with the correctional system . . . to take more seriously the moral choices of offenders.

Endnotes

1. Paige Harrison and Allen Beck, *Prison and Jail Inmates at Midyear 2004*, Bureau of Justice Statistics, U.S. Department of Justice, April 2005, NCJ 208801. Texas and California vie for first place in surveys of state prison populations, but California is now larger than Texas.
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15. David Pierson and Hector Becerra, “Spread of Jail Violence Feared,” *Los Angeles Times*, February 11, 2006, A1.
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17. California Department of Corrections and Rehabilitation, Adult Operations and Adult Programs, First Quarter 2005.
18. Petersilia, op. cit. at 7.
19. Richard Simpson, *Jailhouse Blues: Hard Times for County Taxpayers: A Study of Rising Costs of Incarceration in California*. California Counties Foundation, Los Angeles, 1991.
20. Connie Stivers Ireland, “Race, Drugs and Politics: Social Construction of a Prison Nation,” University of California, Irvine, doctoral dissertation, 2003.
21. United States Census Bureau, <http://quickfacts.census.gov/qfd/states/06000.html>. Estimated for 2004. Accessed April 2006.
22. Since Californians are 12.9% of the total U.S. prison population, they may disproportionately skew the average U.S. incarceration rate of 432 per 100,000. The rate was recomputed without California, and the U.S. prison incarceration rate dropped 3.4 per 100,000—making California’s prison incarceration rate still close to the national average.

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26. As of the 2000 Census, California had 33,871,648 residents compared to 20,851,820 in Texas. U.S. Census Bureau, <http://quickfacts.census.gov/qfd/>, accessed April 2006.
27. America's use of incarceration is much heavier than that of most other First World nations. See, e.g., Gail Russell Chaddock, "US notches world's highest incarceration rate," *Christian Science Monitor*, August 18, 2003. See <http://www.csmonitor.com/2003/0818/p02s01-usju.html>, accessed April 2006.
28. Petersilia, *op. cit.* at 7.
29. California segregates inmates by race during their stay in state reception centers because of concerns about race-based violence. In an April 2005 decision in *Johnson v. California*, the Supreme Court held that the practice was discriminatory and could therefore be justified only if it was found to be "narrowly tailored" to serve a "compelling state interest." 125 S.Ct. 2410, 2005. The case is on remand to the lower court, where the State of California has the burden of making this factual showing.
30. Berk's classification research was the result of a court order in *Wilson v. Deukmejian*, which concluded that California's classification factors were not tied closely enough to likely inmate behavior. See Richard Berk and Jan de Leeuw, "An Evaluation of California's Inmate Classification System Using a Generalized Regression Discontinuity Design," 1999. Available at <http://preprints.stat.ucla.edu/218/218.pdf>. Accessed April 2006.
31. While states do not use the same exact same prison classification instruments, there have been several national efforts to design such instruments and now most use comparable items, such as age, prior criminal record, prior escape history, and gang affiliation.
32. California prisons are now operating at 200% of designed capacity. A group of experienced California prison wardens told the Corrections Independent Review Panel in 2004 that the capacity of the state's prisons to support full inmate programming in a safe and secure environment is 111,309 inmates, or 145% of design capacity.
33. Richard Berk, personal email, September 15, 2005. As this report was going to press, the Data Analysis Unit of the CDCR produced updated figures on the percent of inmates classified at different security levels and the percent housed according to their initial classification score. As of April 26, 2006, for the 115,489 prisoners having both a classification score and a current housing assignment in the CDCR database, 25% of prisoners have a Level 1 classification score and 65% of Level 1's are housed in Level 1 housing. Thirty-four percent of prisoners have a Level 2 classification score and 68% of Level 2's are housed in Level 2 housing; 22% of prisoners have a Level 3 classification score and 92% of them are housed in Level 3 housing; 18% of prisoners have a Level 4 classification score, and 93% of them are housed in Level 4 housing. For inmates currently housed outside of their initial classification level, they are more often placed in higher rather than lower security placements, although this may be explained by in-prison behavior.
34. California's most dangerous prisons, as judged by inmate-on-inmate violence, are all Level IV facilities: CSP Corcoran, CSP Los Angeles, SCP Sacramento, Pelican Bay, High Desert SP, and Salinas Valley.
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36. Steven Fama et al., *The California State Prisoners Handbook: A Comprehensive Practical Guide to Prison and Parole Law*, The Prison Law Office, San Quentin, California, 2004, p. 85.
37. *Id.* at p. 90.
38. Tim Reiterman and Jennifer Warren, "Prison Jobs Program Just Barely Working," *Los Angeles Times*, July 18, 2004.
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40. The CDCR recently noted that the annual cost of housing a California prisoner has risen to \$34,150, and the annual cost for each parolee is \$4,067. See <http://www.corr.ca.gov/DivisionsBoards/AOAP/FactsFigures.html>, accessed April 2006.
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43. The next section draws heavily on information taken directly from class papers written by Ben Carrasco and Hilary Gaudiani Ley, Stanford Law School students, enrolled in Dr. Petersilia's fall 2005 class on California prison reform.
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46. Informational hearing, Senate Select Committee on California Correctional System, Sacramento, February 2, 2006.
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68. See Memorandum of Understanding for Bargaining Units 3, 5, 6, 8, 17, available at <http://www.dpa.ca.gov/collbarg/contract/bumenu.shtm>.
69. The California Highway Patrol offers Physical Performance Pay, Bilingual Pay, Educational Incentive Pay.
70. CCPOA Agreement, *supra* note 25, at 15.07(A).
71. California Senate Appropriations Committee Hearing, *supra* note 16 at 4.
72. See, for example, CHP Agreement, *supra* note 33, at 48.
73. California Senate Appropriations Committee Hearing, *supra* note 16 at 44 (Statement of Senator Speier).
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75. CCPOA Agreement, *supra* note 25, at 12.07(A)(3)(d).
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91. Peter M. Carlson, "Prison Interventions: Evolving Strategies To Control Security Threat Groups," *Corrections Management Quarterly*, 5(1), 10–22, 2001.
92. *Johnson v. CA*, 543 U.S. 499, 125 S. Ct. 1141, 1141 (2005) citing Brief for Respondents.

93. Gerald G. Gaes, et al., “The Influence of Prison Gang Affiliation on Violence and Other Prison Misconduct,” 2001, 5, available at www.bop.gov/news/research_projects/published_reports/cond_envir/oreprcrim_2br.pdf (accessed April 2006).
94. California Department of Justice, *Organized Crime in California: Annual Report to the California Legislature 22* (2002).
95. *Id.*
96. *Id.*
97. Some gangs have “blood in, blood out” requirements such that you must kill to become a member and cannot leave until you die. Gerald G. Gaes, et al., op. cit.
98. Malcolm W. Klein, *The American Street Gang: Its Nature, Prevalence, and Control*, Oxford University Press, 1997 (noting that when prison gang members leave prison, they usually reconnect with their street gang, which is often the lesser of two evils since, “The strict rules and vicious sanctions that accompany the prison gang are not needed in the streets, and not wanted. Although prison gangsters may brutalize or kill their own members in the joint for code violations, on the street, homies don’t kill one another”).
99. Testimony before Senate Select Committee on Security Housing Units in California Prisons, September 15, 2003. See <http://www.prisons.org/SHU%20Hearing%201.pdf>, accessed April 2006.
100. See State of California Youth and Adult Correctional Agency *Strategic Plan*, Objective 5.2.4, January 2005. Available at <http://www.corr.ca.gov/Communications/docs/StrategicPlanJan2005s.pdf> (accessed April 2006).
101. California Code of Regulations, tit. 15, § 3000 (2006).
102. *Id.*
103. Madrid v. Gomez, 889 F. Supp. 1146, 1240 (N.D. Cal. 1995). “Prison gangs have within their own policy a mandatory ruling that [members] must participate in gang behavior, where the disruptive groups do not have that mandatory ruling. . . . Prison gangs also attempt to control the criminal enterprises of the prison system and attempt to . . . exercise unlawful influence over the other inmates to participate in their behavior.” (Hawkes Transcript 16–2613.)
104. See Johnson, 125 S. Ct. at 1158: “[A]s the largest gangs’ names indicate . . . they are organized along racial lines.”
105. Historically, street gangs and prison gangs were also distinguished by their internal structure and leadership, with prison gangs being organized into more “complex hierarchies with rank differentiation among members and powerful, criminally sophisticated leaders.” Yet experts believe that these differences are no longer true, and that street gangs have become as sophisticated and dangerous as prison gangs. Mark S. Fleisher and Richard H. Rison, “Gang Management in Corrections,” in *Prison and Jail Administration*, in 234, 2000.
106. Senator Gloria Romero, speaking at a Senate hearing on racial segregation in California prisons, February 8, 2005, Sacramento.
107. Peter M. Carlson, “Prison Interventions: Evolving Strategies Control Security Threat Groups,” *Corrections Management Quarterly*, 1 (10–16), 2001.
108. Senate hearings on Security Housing Units in California prisons, op. cit. at 99.
109. Sharon Bernstein and Megan Garvey, “Dorms Fuel Jail Unrest,” February 12, 2006, *Los Angeles Times*.
110. California Code of Regulations, tit. 15, §§ 3378 (c)(3)–(5) (2006).
111. Senate hearings on Security Housing Units in California prisons, op. cit. at 99.
112. California Code of Regulations, tit. 15, § 3378 (c)(2) (2006).
113. California Code of Regulations, tit. 15, §§ 3375.3 (a)(4)(B)1–10 (2006).
114. California Code of Regulations, tit. 15, § 3321(c) (2006) states:
A confidential source’s reliability may be established by one or more of the following criteria:
 - (1) The confidential source has previously provided information which proved to be true.
 - (2) Other confidential source have independently provided the same information.
 - (3) The information provided by the confidential source is self-incriminating.
 - (4) Part of the information provided is corroborated through investigation or by information provided by non-confidential sources.
 - (5) The confidential source is the victim.

115. California Code of Regulations, tit. 15, §§ 3378(c)(8)(A)–(M) (2006).
116. California Department of Corrections and Rehabilitation, Monthly Report of Population, December 31, 2005, <http://www.cdcr.ca.gov/ReportsResearch/OffenderInfoServices/Monthly/TPOP1A/TPOP1Ad0512.pdf> (noting that the SHU populations in California’s prisons were 1,101 inmates Pelican Bay, 1,220 at Corcoran, 596 at California Correctional Institution, and 69 at Valley SP, a prison for women, as of December 31, 2005). The specific number of inmates housed at the SHU in 2005 for prison gang affiliation is not available.
117. Testimony given at hearing on security housing units in California, September 15, 2003, <http://www.prisons.org/SHU%20Hearing%201.pdf> (accessed April 2006).
118. *Id.*
119. California Code of Regulations, tit. 15, § 3378(e) (2006). However, for those inmates housed in the general populations as gang members or associates that time is limited to two years. California Code of Regulations, tit. 15, § 3378(d) (2006).
120. Senator Richard Polanco testimony, *op. cit.* at 99.
121. California Code of Regulations, Tit. 15, § 3378.2 (2006).
122. <http://www.prisons.org/SHU%20Hearing%201.pdf>, accessed April 2006.
123. Geoffrey Hunt et al., “Changes in Prison Culture: Prison Gangs and the Case of the ‘Pepsi Generation,’” *Social Problems* 398 (40), 1993.
124. John M. Hagedorn, “Gang Violence in the Postindustrial Era,” *Crime & Justice* 365 (24), 399–400, 1998.
125. American Correctional Association, *Gangs in Correctional Facilities: A National Assessment*, 53, 1993.
126. Mark S. Fleisher and Scott H. Decker, “An Overview of the Challenge of Prison Gangs,” *Corrections Management Quarterly* 1(8), Winter 2001.
127. See Mike Geniella, “5 Gang Leaders To Be Moved,” *The Santa Rosa Press Democrat*, September 10, 2005, B3.
128. Arizona Department of Corrections, Security Threat Groups (STG) Program Evaluation, (2001), available at <http://www.ncjrs.org/pdffiles1/nij/grants/197045.pdf> (accessed April 2006).
129. Illinois Criminal Justice Information Authority, Outcomes of the Gang Violence Reduction Project, *On Good Authority*, Chicago, 4(3), August 2000. See <http://www.icjia.state.il.us/public/pdf/oga/outcomes.pdf>, accessed April 2006.
130. Senate Select Committee on the California Correctional System, Sacramento, California, March 2, 2006.
131. *Census of State and Federal Correctional Facilities*. Bureau of Justice Statistics, U.S. Department of Justice, Washington, D.C., 2003.
132. These and other California prison and parole programs are described in the recent publication, *Inside California’s Prisons and Beyond: A Snapshot of In-Prison and Reentry Programs*, by Jennifer Sumner and Robert Werth, UCI Center for Evidence-Based Corrections, University of California, Irvine, 2006. Available at <http://ucicorrections.seweb.uci.edu/>.
133. James P Lynch and William J. Sabol, *Prisoner Reentry in Perspective*. Washington, D.C.: Urban Institute, 2001.
134. Tim Reiterman and Jennifer Warren, “Prison Jobs Program Just Barely Working,” *Los Angeles Times*, July 18, 2004.
135. Mason Stockstill, “Prison Would Lose Dairy Program Under Proposal,” *Inland Valley Daily Bulletin*, June 21, 2005.
136. See Little Hoover Commission, *Back to the Community: Safe & Sound Parole Policies*, Nov. 2003 (noting that “the local [CCPOA] chapter demanded the wardens shut down the programs, outraged that a community college would provide state-funded education to inmates. A memo to union members urged a boycott of all prison-backed fundraisers, blood drives, picnics and other functions until the program was cancelled.”
137. The idea that “nothing works” in rehabilitation originated with a 1974 article by Robert Martinson et al. Subsequent research, along with admissions by Martinson about the methodology behind that original paper, has suggested that Martinson’s conclusions were far from accurate. For discussion, see Petersilia *op. cit.* at 7.
138. Austin James and John Irwin, *It’s About Time: America’s Imprisonment Binge*, Belmont, CA: Wadsworth, 2001.
139. Austin James, “Prisoner Reentry: Current Trends, Practices, and Issues,” *Crime & Delinquency* 47, 314–334, 2001.

140. William J. Bennett, John J. DiIulio, and John P. Walters, *Body Count: Moral Poverty . . . And How to Win America's War Against Crime and Drugs*. New York: Simon & Schuster, 1996.
141. Prison Census Data, California Department of Corrections and Rehabilitation, Data Analysis Unit, Sacramento, 2005.
142. California Legislative Analyst's Office, Analysis of the 2003–2004 Budget Bill, http://www.lao.ca.gov/analysis_2003/crim_justice/cj_04_5240_anl03.htm#_Toc32742721 (last visited December 2005).
143. *Id.*
144. *Id.*
145. *Id.*
146. See, e.g., Mark Gladstone, "California Spending Millions to Guard Comatose Inmates," *San Jose Mercury News*, April 19, 2005.
147. "Cost of Guards for Ill Inmates Soaring, Paper Finds," *Ventura County Star*, January 24, 2005.
148. Legislative Analysts Office. 2003. Elderly Inmates, Judiciary and Criminal Justice Committee, Sacramento, California. And see Sandra Kobrin, "Dying On Our Dime," *Los Angeles Times Magazine*, June 26, 2005.
149. *Id.*
150. "California's Aging Prisoner: Demographics, Costs, and Recommendations Before the Senate Subcommittee on Aging and Long Term Care," February 25, 2003 (statement of Professor Jonathan Turley).
151. Michael Vitiello and Clark Kelso, "A Proposal for a Wholesale Reform of California's Sentencing Practice and Policy," *Loyola of Los Angeles Law Review*, 38:101, October 2004.
152. Harrison and Beck, *Prison and Jail Inmates at Midyear 2004*, Bureau of Justice Statistics Bulletin, NCJ 209901, Washington, D.C., April 2005.
153. Little Hoover Commission, *Breaking the Barriers for Women on Parole*, Report #177, Sacramento, California, December 2004.
154. *Id.*
155. *Id.*
156. Thomas Bonczar, *Prevalence of Imprisonment in the U.S. Population, 1974–2001*, Bureau of Justice Statistics, Special Report, NCJ 19796, August 2003.
157. U.S. Census, State and County Quick Facts, <http://quickfacts.census.gov/qfd/states/06000.html>, accessed April 2006.
158. Alfred Blumstein, "Racial Disproportionality of U.S. Prison Populations Revisited," *University of Colorado Law Review* 64: 743–60, 1993, whose conclusions did not apply to drug crimes and some property crimes.
159. Interestingly, when these numbers are compared with a national analysis of the same issue by Blumstein and Beck they conclude that: "Between 1995 and 2001, the increasing number of violent offenders accounted for 63% of the total growth of the State prison population; 15% of the total growth was attributable to the increasing number of drug offenders." Alfred Blumstein and Allen J. Beck, "Population Growth in the U.S. Prisons: 1980–1996." In *Prisons: A Review of Research*, edited by M. Tonry and J. Petersilia, 17–62. Chicago: University of Chicago Press, 1999.
160. Robert E. Holmes, *Sentencing in California*, California Research Bureau Reports, 1992 CRB-92-001, at <http://www.library.ca.gov/html/statseg2a.cfm>.
161. In passing California's Determinate Sentencing Law, the legislature wrote: "The Legislature finds and declares that the purpose of imprisonment for crime is punishment. This purpose is best served by terms proportionate to the seriousness of the offense with the provision for uniformity in the sentences of offenders." California Penal Code 1170(a)(1).
162. Vitiello and Kelso, op. cit. at 152.
163. Former Governor Jerry Brown, Governor Tackles Prison Reform, The California Report radio show, December 20, 2004. (Contact <http://www.californiareport.org/> for archive.)
164. Jennifer Warren, "Jerry Brown Calls Sentence Law a Failure," *Los Angeles Times*, February 18, 2003 .

165. Richard Simpson, *Jailhouse Blues: Hard Times for County Tax Payers: A Study of Rising Costs of Incarceration in California*. Sacramento: California Counties Foundation, 1991.
166. Vitiello and Kelso, *op. cit.* at 152.
167. Joan Ryan, "Prisoners' Isolation Leads to Desperation; Safer Cells Mean Dangerous Streets," *San Francisco Chronicle*, January 27, 2004 (noting that "hundreds of these [Secure Housing Unit] inmates every year are released directly from the SHU back into society to live among the rest of us").
168. Steven Fama et al., *The California State Prisoners Handbook: A Comprehensive Practical Guide to Prison and Parole Law*. San Quentin: The Prison Law Office, 2004, p. 349.
169. *Id.*, *op. cit.* at p. 350.
170. Petersilia, *op. cit.* at 7.
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185. Alfred Blumstein and Allen J. Beck, "Reentry as a Transient State Between Liberty and Recommitment," in Jeremy Travis and Christy Visser, Eds., *Prisoner Reentry and Crime in America*. Cambridge, Massachusetts: Cambridge University Press, 2005.
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188. See *id.* at 128–130.
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