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California's 'Cruel and Unusual' Prisons. Despite court orders and ballot initiatives, Golden State prisons remain criminally overcrowded.

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In 2011, the U.S. Supreme Court ruled that California's treatment of its state prison population violated the Eighth Amendment's ban on "cruel and unusual punishment," and ordered the state to reduce prison overcrowding. But even with liberal Democrats running the state, it has taken court orders and direct voter referendums to ameliorate the problem. Why? Part of the blame lies with the close ties between the party and organized labor.

California's three-strikes law mandates that certain repeat offenders receive harsh sentences, whether or not a judge deems the penalty warranted. Enacted in 1994, the law was championed by Democrats looking for any opportunity to prove they were tough on crime. Law-and-order Republicans were only too willing to join in supporting firm sentencing mandates.

The three-strikes law is one reason that by 2006 state prisons had reached double their capacity. As California's prison population rose, conditions rapidly deteriorated, resulting in gymnasiums filled with cots, prisoners sleeping in stairwells, and a near-total lack of mental health services.

When a referendum to overturn three strikes made it onto the ballot in 2004, the California Correctional Peace Officer's Association (CCPOA) launched a campaign to defeat the measure. As expected, then-Gov. Arnold Schwarzenegger (R) and GOP lawmakers came out against the proposition—as did current Gov. Jerry Brown (D), who at the time was mayor of Oakland and gearing up for what would turn out to be a successful run for state attorney general.

Brown's unwillingness to deal decisively with the prison debacle has a lot to do with his union ties: When he ran for governor in 2010, the CCPOA contributed more than \$2 million to his campaign. After the Supreme Court ordered California to reduce its prison population, he signed the Public Safety Realignment Act, a law that requires nonviolent and other lower level offenders to be offloaded to county jails. Such jails may in fact be more appropriate places than state prisons for less dangerous inmates to reside, and many counties have touted their successes with supervised parole. But predictably, since 2011, the county jail population has ballooned by 16 percent, sending county officials scrambling to figure out how to meet the needs of a new crop of long-term inmates. In addition, thousands of pre-trial inmates had to be released to free up space in jails for the convicted felons. The overcrowding problem wasn't solved—it was just shifted from state prisons to county jails.

In 2013, Brown proclaimed that the "prison emergency is over in California" and promised continued financial support for county jails working to handle the influx of new inmates. But the state's prisons are still operating at roughly 140 percent of capacity, and after five years of decline, California's prison population ticked up in 2013. One reason the state has found it so difficult to reduce its prison population is that the three-strikes law mandates harsh sentences for many drug offenders.

"Drug policy is the major driver of mass incarceration, both in California and nationwide," says Lynne Lyman, California state director of the Drug Policy Alliance. She points to the massive increase in the state and federal prison population following the 1980s ramp-up of the war on drugs. In California prisons alone, there are more than 11,000 inmates incarcerated for drug-related crimes, accounting for almost 9 percent of the total prison population. More than half of those were sentenced under the three-strikes law.

Despite this, Brown has resisted reform. In late 2013, he vetoed legislation that would have changed the state's sentencing structure by allowing prosecutors to charge certain drug crimes as misdemeanors instead of felonies. But in a rebuke to their governor, California voters in November

approved, by a 17-point margin, a referendum titled Proposition 47. Among other things, the initiative automatically downgrades most drug possession charges from felonies to misdemeanors.

Prop. 47's success is a victory for drug policy reform in California. But until lawmakers get behind a more thorough and sustained dismantling of draconian sentencing guidelines, America's incarceration problem isn't going away.