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Sentencing in California:

Moving Toward a Smarter, More Cost-Effective Approach



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Executive Summary

Californians have a collective interest in living in a safe and healthy environment. The state's criminal justice system is responsible for reducing crime and intervening when crime occurs, including apprehending and sentencing the perpetrator, in order to promote safe communities. In recent decades, however, harsh, one-size-fits-all sentencing laws contributed to the creation of a bloated and costly correctional system that generally fails to serve the interests of Californians.

California has adopted significant criminal justice reforms over the past several years. In 2014, voters approved Proposition 47, which reclassified several drug and property crimes as misdemeanors. In addition, in 2011 state policymakers "realigned" to the state's 58 counties responsibility for supervising many people convicted of nonserious, nonviolent, and nonsexual felonies. Despite these positive steps, California's sentencing laws continue to overly rely on incarceration as the consequence for committing a felony or a misdemeanor, rather than promoting community-based interventions that could provide better avenues for rehabilitation. To be sure, California counties have adopted many alternative sentencing options following the 2011 realignment of responsibility for people convicted of low-level felonies. However, these approaches are not the norm across the state, and state sentencing laws continue to emphasize incarceration.

QUICK TAKE

California must develop a sentencing system that is proportionate, practical, and takes into account the diverse situations in which crimes occur.

Research casts serious doubt on the effectiveness of mass incarceration as a means of promoting public safety. Given the high social and financial costs of incarceration, California could revise its sentencing laws to more fully embrace alternative interventions intended to hold accountable people who commit a crime, correct problematic behaviors, and help communities and survivors of crime heal. Moreover, while incarceration will continue to be warranted for many offenses – including violent crimes – the question for state policymakers is whether sentence lengths are appropriate and reflect an efficient use of public resources. As one step forward, policymakers could establish a sentencing commission to examine the impact of sentence length on targeted populations, with the goal of ensuring that sentences are proportionate to the seriousness of the crime as well as to the risk that the person will reoffend. Policymakers also could amend the state's sentencing laws to generally scale back sentence lengths.

In sum, significantly divesting from incarceration as a sentencing tool – and moving toward alternative sentencing options – could both increase public safety and be more cost-effective.

How Does Sentencing Work in California?

California law identifies three types of “crimes and public offenses” each having a certain range of potential consequences:¹

- **Felonies** are the most serious offenses – such as homicide or robbery – and are punishable by incarceration in a local jail or in a state prison, depending on the circumstances; supervision by a probation officer in the community; or incarceration followed by probation.² In some cases, adults convicted of homicide can be sentenced to death.³ Due to the passage of Assembly Bill 109 in 2011 (criminal justice “realignment”), many nonviolent, nonserious, nonsexual felony crimes are punishable by incarceration in local jails rather than in state prisons. This transfer of key criminal justice responsibilities to the counties significantly reduced the state prison population, although not the overall cost of the state correctional system.⁴
- **Misdemeanors** are moderately serious offenses – such as possession of drugs for personal use or petty theft – and are punishable by incarceration in a local jail for a maximum of one year, supervision by a probation officer in the community, a fine, or some combination of the three.⁵ Due to voter approval of Proposition 47 in November 2014, various nonviolent drug and property crimes were reclassified from felonies or “wobblers” (crimes that could be treated as either a misdemeanor or felony for sentencing purposes) to misdemeanors, reducing the potential sentence for these crimes to a maximum of one year in local jails. As a result, both state prison and local jail populations have declined.⁶
- **Infractions** are minor offenses – such as seatbelt violations or littering – and are punishable by a fine.⁷

California’s criminal justice system uses three types of sentences for people who are convicted of crimes: probation, indeterminate sentencing, and determinate sentencing.

People Sentenced to Probation Are Supervised in the Community

In 1903, California developed a sentence of “probation,” through which the court suspends the sentence of incarceration and orders the person to be supervised in the community by a probation officer.⁸ The court may do this in cases where it believes the individual can be safely supervised in the community or where it would be “in the interest of justice” to do so.⁹ The court may also place conditions on probation, such as requiring that the individual attend therapy or perform community service. If the person violates such conditions, the court may revoke probation and impose a sentence of incarceration instead. Probation can also be granted in combination with a period of incarceration, a sentencing approach known as “probation and jail.”

Eligibility for probation has been narrowed several times.¹⁰ However, probation remains a common sentence in California. In fact, in 2014, of the 217,688 felony convictions in California, more than half (56 percent) resulted in a sentence combining probation and jail.¹¹

KEY TERMS

PROBATION: A sentence in which a person is supervised in the community, either in lieu of or in combination with a period of incarceration.

INDETERMINATE SENTENCE: A minimum term of imprisonment with no prescribed maximum. After serving the minimum term a person remains incarcerated until a parole board determines the person should be released.

DETERMINATE SENTENCE: A fixed term of imprisonment with a defined release date.

Indeterminate and Determinate Sentencing Establish a Period of Incarceration

Individuals who are not eligible for probation and who are sentenced to a period of incarceration are assigned a sentence according to one of two schemes: indeterminate or determinate sentencing. Broadly speaking, indeterminate sentencing focuses on the *individual* who committed the crime, whereas determinate sentencing focuses on the *nature of the crime* itself.

California Used Indeterminate Sentencing From 1917 Through the Mid-1970s

From 1917 to 1976, California used indeterminate sentencing, under which judges sentenced individuals to incarceration for a range of time – for example, five years to life for robbery – and individuals were released at some point after serving at least the minimum term, when a parole board determined that they had sufficiently rehabilitated.¹² Under indeterminate sentencing, the parole board was originally developed in California as a means of relieving prison overcrowding. However, indeterminate sentencing failed to eliminate overcrowding, and the public became disillusioned with a system that often seemed arbitrary and with rehabilitative efforts that did not appear to produce measureable results. Today, only certain serious crimes, such as first-degree murder, remain subject to indeterminate life sentences (or capital punishment).

In 1976, the Legislature Moved California Toward a Focus on Determinate Sentencing

In response to the concerns with indeterminate sentencing, the Legislature enacted the determinate sentencing law (DSL) in 1976 – ushering in the state’s current sentencing structure – with the goal of increasing transparency and uniformity in sentencing.¹³ The DSL also aimed to reduce prison overcrowding by providing for shorter base sentences and restricting sentencing “enhancements,” which are sentence extensions made by the judge based on the particular circumstances of the case.

Under the DSL, a judge must impose one of three specified terms for each criminal law violation, and the individual must serve a minimum portion of the term imposed.¹⁴ For example, California’s Penal Code specifies terms of two, three, or five years of incarceration for second-degree robbery.¹⁵ The DSL also allowed for some enhancements that increased the length of the base sentence, including for specific conduct during the crime, such as the use of a gun.¹⁶ Sentenced individuals’ release dates are calculated automatically and do not depend on a showing of rehabilitation. Upon release, the individual is typically supervised in the community by a parole or probation officer. Incarcerated individuals receive credits for time spent in custody prior to sentencing and can earn credits for good behavior or for working while serving their sentence, thereby reducing the length of their incarceration.

With the move toward determinate sentencing, the overall purpose of sentencing shifted. The focus was less on the rehabilitation of the incarcerated person and more on a “do the crime, do the time” philosophy that focused primarily on punishment.

State Policymakers Increased Sentence Lengths, Which Contributed to a Rising State Prison Population

While the DSL originally provided limited periods of incarceration and constrained the ability of the courts to lengthen sentences, legislators began to enact many new sentencing laws and enhancements in response to public and political pressure.¹⁷ These new laws typically sought to increase sentence lengths and were often fueled by specific high-profile crimes without concern for the potential financial or societal consequences. Laws like these add complexity to the system and have resulted in disproportionate sentences. For example:

- **In 1994, the Legislature approved the “Three Strikes and You’re Out” law in response to the kidnapping and murder of 12-year-old Polly Klaas, thereby increasing prison terms for certain felony crimes.**¹⁸ Individuals with

one prior conviction for a violent or serious felony who are convicted of *any* new felony – a “second-strike” offense – receive a prison term that is twice what it would otherwise be under state law. Individuals with at least two prior “strike” convictions who are convicted of a new violent or serious felony – a “third-strike” offense – receive a life sentence with a minimum term of 25 years.¹⁹ California’s prisons housed 34,353 second strikers and 8,064 third strikers as of June 30, 2013 – almost one-third (31.9 percent) of the total population incarcerated by the state.²⁰ A study of California’s three-strikes law showed that it had no demonstrable impact on violent crime levels.²¹ The law has been widely criticized as overly broad and – before it was amended in 2012 – resulted in life prison sentences for minor crimes, including petty theft and simple drug possession.²²

- In 1997, the Legislature passed the “Use a Gun and You’re Done” law that significantly increased sentencing enhancements for possessing a gun at the time of committing a specified felony, such as robbery, homicide, or certain sex crimes.**²³ Under the law, if someone uses a gun while committing one of the identified crimes, their sentence is extended by 10 years, 20 years, or 25 years-to-life, depending on how the gun was used. Often the enhancement for gun use is longer than the sentence for the crime itself. For example, in the case of second-degree robbery, a person could serve a maximum of five years for the robbery and an extra 10 years for brandishing a gun during the robbery, even if the gun was unloaded or otherwise inoperable. Someone convicted of first-degree murder would be sentenced to at least 50 years-to-life if a gun was used, whereas if the murder was carried out using another method – such as strangulation – the sentence would be half the length (25 years-to-life). A judge has no discretion in applying this enhancement; if a gun was used, a judge must apply it.

Shortly after the DSL was enacted, the number of adults incarcerated by the state rose substantially and quickly outstripped the “design capacity” of the state’s prisons (Figure 1).²⁴ Moreover, for about 30 years after enactment of the DSL California’s incarcerated population continued to grow.²⁵ These trends were largely due to changes in drug law enforcement, an increased share of felony convictions resulting in prison sentences, and sentencing enhancements – such as the three-strikes law – that greatly extended sentence lengths.²⁶

California’s Prisons Remain Overcrowded Despite Recent Reforms

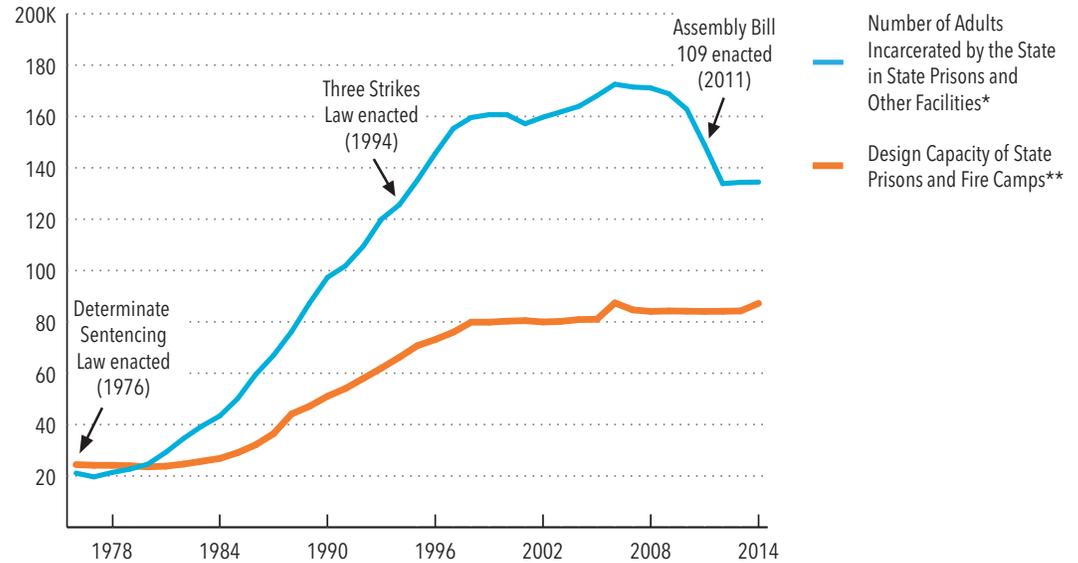
In recent years, California has enacted a series of policy changes – including to the state’s sentencing laws – intended to reduce the number of adults incarcerated in state prisons and boost investment in rehabilitation.²⁷ These reforms were largely prompted by a 2009 federal court order requiring the state to reduce – although not eliminate – prison overcrowding.²⁸ The most significant change was criminal justice “realignment,” which was set in motion by Assembly Bill 109 of 2011. This bill transferred to the state’s 58 counties responsibility for supervising many people convicted of nonserious, nonviolent, and nonsexual felonies.²⁹ In addition, state officials have implemented a number of postsentencing measures intended to reduce the prison population.³⁰ These include creating new options for people to be released before the end of their sentence. Most recently, voter approval of Proposition 47 in November 2014 reclassified several drug and property crimes as misdemeanors, thereby excluding prison as a sentencing option for these crimes.³¹

These sentencing law changes diverted thousands of people from the state prison system. Consequently, the prison population has fallen below the court-ordered level. However, it is not yet clear that the state can maintain the requisite reductions over the long term.³² Furthermore, even if the state can maintain the prison population at the reduced level, state prisons would still be extremely overcrowded.

FIGURE 1

California Incarcerates More Adults Than State Prisons and Fire Camps Were Designed to Hold

Incarceration Level Has Exceeded System Capacity Since 1980



* Figures include adults housed in state prisons, fire camps, private prisons, state hospitals, and other facilities as of December 31 each year.

** Reflects the number of adults these facilities were designed to house as of June 30 each year.

Source: California Department of Corrections and Rehabilitation



Shifting the Focus to Alternative Sentencing Options and Shorter Prison Sentences

California’s sentencing laws overly rely on incarceration as the consequence for committing a felony or a misdemeanor rather than promoting community-based interventions that could provide better avenues for rehabilitation.³³ Governor Jerry Brown highlighted this imbalance in his 2015 inaugural address, in which he questioned the use of lengthy sentences and endorsed finding “less expensive, more compassionate and more effective ways to deal with crime.”³⁴ To be sure, California counties have adopted many alternative sentencing options following

the 2011 realignment of responsibility for people convicted of low-level felonies. These alternatives include electronic monitoring, community-based treatment programs, and day reporting centers.³⁵ However, these approaches are not the norm across the state, and state sentencing laws continue to emphasize incarceration.

Research casts serious doubt on the effectiveness of mass incarceration as a means of promoting public safety.³⁶ Given the high social and financial costs of incarceration, California could revise its sentencing laws to more fully embrace alternative interventions intended to hold accountable people who commit a crime, correct problematic behaviors, and help communities and survivors of crime heal. Moreover, while incarceration will continue to be warranted for many offenses – including violent crimes – the question for state policymakers is whether sentence lengths are appropriate and reflect an efficient use of public resources. As one step

forward, policymakers could establish a sentencing commission to examine the impact of sentence length on targeted populations, with the goal of ensuring that sentences are proportionate to the seriousness of the crime as well as to the risk that the person will reoffend. Policymakers also could amend the state's determinate sentencing scheme to generally scale back sentence lengths.

Policymakers Should Diversify the Sentencing Toolkit With Alternative Sentencing Options

When criminal justice intervention is warranted, there are a number of graduated sanctions available that do not involve a prolonged period of incarceration and that show promising public safety outcomes. The experiences of counties in implementing these alternatives since the 2011 realignment provides a foundation for creating a comprehensive state framework to help expand and deepen the impact of community-based sentencing options.

Initial Contact Diversion, Problem-Solving Courts, and Deferred Case Resolution

These are interventions in which a person charged with a crime agrees to fulfill certain requirements, such as participation in a work, educational, or rehabilitative program in the community. Upon completion of the requirements, the criminal charges are dismissed. If a person fails to complete the requirements, the more traditional intervention process can be invoked and the person may face incarceration. These alternative approaches allow for less restrictive interventions to be pursued first, giving the defendant a chance to avoid the lifetime harm of a criminal record.

- **Initial contact diversion** programs allow a police officer to refer a person to a drug treatment program in lieu of taking them into custody.³⁷
- **Problem-solving courts** provide judicial supervision combined with rehabilitative services to individuals in a collaborative court

process that focuses on addressing underlying problems such as addiction.³⁸

- **Deferred case resolution** is a mechanism available through the traditional court process, by which a prosecutor defers the filing of charges or the court delays entering a judgment to allow an individual the opportunity to fulfill certain requirements in lieu of incarceration.³⁹

Programs that result in the dismissal of criminal charges usually target specific populations with complex needs that state prisons are not equipped to address, such as untreated problematic drug use or untreated mental health issues.⁴⁰ California operates a range of diversion programs for less serious first-time offenses as well as problem-solving courts to address more complex issues such as problematic drug use, drunk driving, veteran-specific issues, mental illness, homelessness, and truancy and other youth-specific issues. These approaches promote targeted accountability by crafting interventions that require individuals to address their problematic behaviors and also provide an opportunity for the criminal justice system to address the broader needs of the community. When compared to incarceration, these types of alternative interventions have been shown to lead to improved public safety outcomes.⁴¹

Electronic Monitoring, Community-Based Supervision, and Graduated Sanctions and Rewards

These are community-based sentences that are carried out locally – typically by the probation department – and that require a person to meet certain terms and conditions for a specified period of time. Individuals are subject to varying levels of supervision, depending on their risk of reoffending. Specifically:

- **Electronic monitoring** tracks individuals' location in real time to ensure that they are complying with curfews or geographic restrictions. Electronic monitoring is often used to enforce a sentence of home detention, by which a person serves out a sentence in a

specific residence rather than in a prison or jail.⁴²

- **Community-based supervision** is most often used for people who commit low-level drug or property crimes and are deemed at low risk to reoffend. A probation officer monitors a person through regular meetings and follow-ups in order to ensure that the individual is abiding by the terms of the sentence, such as obeying all laws, maintaining sobriety, or attending rehabilitative programs.⁴³
- **Graduated sanctions and rewards** can be used to ensure compliance and punish noncompliance with the terms of the sentence. Strategies include increasing or decreasing the level of oversight, altering the terms and conditions of supervision, or verbally reprimanding or congratulating the supervised person.⁴⁴

Research supports the use of community-based supervision combined with both graduated sanctions that are applied quickly and targeted rehabilitative services for people across a broad spectrum of risk to reoffend.⁴⁵ This approach ensures accountability through the swift imposition of sanctions, targets treatment to address problematic behavior, and is less disruptive to communities compared to incarceration because it allows for family ties and other relationships to be maintained and restored rather than curtailed or severed.

Flash Incarceration, Split Sentences, and Local Incarceration Paired With a Work-Release Program

These are alternatives to *state* incarceration in situations when some period of incarceration is deemed necessary.⁴⁶ Graduated lengths of incarceration can be used to ensure an effective allocation of jail resources. For example:

- **Flash incarceration** allows probation officers to impose up to 10 days of incarceration in jail for more serious violations of the terms of

community supervision, such as failure to enroll in a court-ordered program.⁴⁷

- **Split sentences** assign part of a low-level felony sentence as incarceration in jail and the other part as community supervision. Since 2014, California law has required a split sentence for people convicted of nonviolent, nonserious, nonsexual offenses, unless the court finds that a such a sentence would not be in the interest of justice.⁴⁸
- **Local incarceration paired with a work-release program** allows incarcerated people to participate in community service in exchange for a reduced jail sentence. For example, working an eight-hour day could reduce a jail sentence by one day. State law provides a maximum one-year sentence in jail for misdemeanors and sentences of varying lengths for nonviolent, nonserious, nonsexual felonies.⁴⁹

Compared to a prison term, incarceration in a local jail provides a greater opportunity for individuals to maintain ties with family as well as with other community supports. In addition, rehabilitative treatment providers can engage people who are incarcerated locally in programming that could continue in the community after individuals are released from jail.⁵⁰ Shorter periods of incarceration in jail paired with community-based interventions allow courts to hold people accountable for their actions while permitting law enforcement to work with individuals in the community in which they will continue to live upon exiting the justice system.

Sentencing Should Focus on Appropriate Sanctions and Treatments While Considering How to Repair the Harm Caused to Crime Victims

All of the sentencing options described above should involve matching an individual's action with the appropriate sanction and treatment based on (1) the seriousness of the criminal conduct and (2) the person's risk of reoffending.⁵¹ In addition, all of these

sentencing options can include restorative justice practices that focus on repairing the harm caused to the crime victim.⁵² Research shows that many survivors of crime are repeatedly subject to victimization, that a majority of them do not receive help in dealing with the resulting trauma, and that being subject to violence is a risk factor for future criminal behavior.⁵³ In fact, people who work in the criminal justice system generally recognize that most people who commit crime have been previously victimized themselves.⁵⁴ Including, as part of sentencing, access to trauma recovery services – for both survivors and people who commit crimes – could help to break cycles of violence and heal communities.

Policymakers Can Help to Expand and Deepen the Impact of Alternative Sentencing Options Across California

California counties have been implementing sentencing alternatives – such as those discussed above – and related risk- and needs-based practices. However, the state could take a more systematic approach to implementing these various methods, with an emphasis on expanding and deepening their impact. For example, California could increase the use of risk and needs assessments during sentencing, use community-based sentencing options for a broader set of crimes, and expand eligibility for diversion programs so that alternatives to incarceration are used whenever possible.

Policymakers Should Reevaluate the Length of Prison Sentences

Incarceration will continue to be warranted for a range of offenses, including violent crimes. The question for policymakers is whether sentence lengths are appropriate and reflect an efficient use of public resources, particularly in light of the fact that “longer prison terms have been a key driver of prison populations and costs,” according to one national study.⁵⁵ State corrections spending remains stubbornly

high in California despite recent criminal justice reforms and the substantial drop in the number of people involved with the state correctional system.⁵⁶ Cutting the length of prison terms would further reduce the number of incarcerated adults and thereby allow the state to close prisons and other correctional facilities, generating substantial ongoing savings that could be redirected to other public services and systems.⁵⁷ To achieve this outcome – a smaller state prison system – policymakers would have to reduce the length of imprisonment for a broad range of crimes, not simply for nonviolent offenses.⁵⁸ Experts note that reducing prison lengths of stay has little to no impact on either crime rates or recidivism.⁵⁹

Of course, the effects of *violent* crime can be devastating and lethal. As a result, prolonged incapacitation of people who have committed such crimes is often necessary. However, even under California’s current sentencing laws, the majority of people serving prison terms for violent crimes will eventually return to their communities. In addition, there is wide variation in the types of violent crimes, in the motives of the people who commit these crimes, and in the circumstances under which these crimes occur. As a result, blanket sentencing schemes that increase sentence lengths are both ineffective and an inefficient use of public resources.

As a key step toward improving the state’s sentencing policies, policymakers could create a sentencing commission to evaluate the impact of sentence length on targeted populations. The goal would be to modify sentences in order to ensure that they are proportionate to the seriousness of the crime as well as to the risk that an individual will reoffend. In addition, policymakers could amend the state’s determinate sentencing scheme to scale back sentence lengths generally. Reforms such as these would bring about a more flexible approach to sentencing that accounts for the particular crime as well as the characteristics of the person who committed it.

Diversifying Sentences Could Both Increase Public Safety and Be More Cost-Effective

California's criminal justice system should balance the use of sentencing options based on their demonstrated public safety benefits and the efficient use of public resources. This section discusses research on various sentencing options, including state incarceration, to weigh the benefits against the related costs. This review suggests that while people who have committed violent crimes may need to be incarcerated for a period of time to protect the public, significantly divesting from incarceration as a sentencing tool – and moving toward alternative sentencing options – could both increase public safety and be more cost-effective.

A Heavy Reliance on State Incarceration Does Not Appear to Promote Public Safety

Incarceration is thought to reduce crime in two ways: incapacitation and deterrence. As an added means of crime reduction, California's corrections system aims to promote rehabilitation both while individuals are incarcerated and after they have been released to state parole.⁶⁰

Research casts doubt on the efficacy of prolonged incarceration as a crime-fighting tool.⁶¹ Studies show that heavy reliance on incarceration is not necessary for public safety, and that, in fact, states can experience lower crime rates when they incarcerate *less*.⁶² For example, during periods when California, New Jersey, and New York were significantly *decreasing* their prison populations relative to nationwide trends, these states saw greater *reductions* in violent crime than did the rest of the country.⁶³

In addition, there is reason to doubt the deterrent effect of incarceration. Many people are under the influence of alcohol or other drugs when they commit the crimes for which they are incarcerated.⁶⁴ Furthermore, many incarcerated people have significant mental health issues that likely influenced the behavior that resulted in their incarceration.⁶⁵

KEY TERMS

INCAPACITATION: Incarcerating individuals removes them from society and physically prevents them from committing more crime in the community during their sentence.⁶⁶ The longer individuals are incarcerated, the less opportunity they have to commit new crimes in the community. Incapacitation is only effective as a crime-reduction tool if an individual would have reoffended in the community absent incarceration.

DETERRENCE: Incarceration sends a message to society about the consequences of violating the law, with the aim of discouraging others from committing a crime. In addition, the experience of incarceration may dissuade the person who is incarcerated from committing another crime in the future for fear of facing incarceration again. For incarceration to have a deterrent effect, individuals must think rationally about the possible punishment for their actions and weigh that punishment against the potential benefits of the crime before committing it.⁶⁷

REHABILITATION: The California Department of Corrections and Rehabilitation (CDCR) defines rehabilitation as "chang[ing] the criminal mindset, so offenders leave prison prepared to be healthy, productive members of society."⁶⁸ One measurable outcome of successful rehabilitation is reduced recidivism, which the CDCR defines as "relaps[ing] into crime resulting in a return to prison."⁶⁹ To this end, the CDCR provides various educational, vocational, and health treatment programs to certain eligible people in its prisons and in the community under the supervision of parole agents in order to reduce the likelihood that they will reoffend.

Evidence that many people’s judgments are impaired – either through drug use or untreated mental illness – when committing crimes runs counter to a basic premise of incarceration’s deterrent effect: that people are able to rationally assess the costs and benefits of their criminal behavior at that moment. Even for individuals who do not have mental health or drug use issues, they are often unaware of specific sentencing outcomes, thereby diminishing the deterrent effect.⁷⁰

When a deterrent effect is apparent in sentencing, studies show that this effect depends more on the certainty of being caught than on the severity of the punishment.⁷¹ However, for violent crime the certainty of punishment is typically lacking. California’s rate of “clearance” for violent crimes – that is, the number of cases considered “solved” by law enforcement as a percentage of all crimes reported – has been in the range of 40 percent to 47 percent over the last 10 years.⁷² In other words, many violent crimes in California do not result in an arrest – even when reported to the police – let alone a conviction and subsequent incarceration, a fact that potentially reduces the deterrent effect of the possible sentence.

Finally, state imprisonment currently may not work well to rehabilitate people and help prevent reoffending. In California, more than half (54 percent) of adults returned to prison within three years from release, according to the CDCR’s most recent recidivism study.⁷³ Almost half of the adults who reoffended within three years did so within the first six months of release. Moreover, longer periods of incarceration in state facilities – which are often located far from individuals’ homes – can break community and familial ties that have been linked with decreased recidivism.⁷⁴

Incarceration Is Expensive

At most, about one-quarter of the drop in violent crime can be attributed to increases in incarceration.⁷⁵ Yet, this reduction has come at a high price, considering that California annually spends more

than \$10 billion on the state corrections system. This includes the cost of staffing and operating 34 state prisons, which outnumber the combined campuses of the California State University (CSU) and the University of California (UC).⁷⁶

Staffing adult prisons is expensive because many custodial and security positions must be filled 24 hours a day, 365 days a year.⁷⁷ Each of these round-the-clock positions needs approximately three to five staff to fill it.⁷⁸ If an employee is unavailable – due to an illness, for example – the position must still be filled, either by a relief officer who is specifically retained on a full-time basis to fill empty positions as needed, or by an officer working overtime.⁷⁹ In 2012-13, the state spent about \$279 million on correctional officer overtime, almost two-thirds of which was related to staff absences.⁸⁰

In addition, partly due to a federal court order to improve prison medical care as well as an aging prison population with greater health care needs, per capita spending for adults in state prisons has more than doubled in recent years, rising from \$25,307 in 2000-01 to \$63,848 in 2015-16.⁸¹

Incarceration Presents a Health Risk

In addition to being costly, incarceration raises significant health and safety concerns for incarcerated individuals as well as for their families. Incarceration causes significant harm to an individual’s physical and mental health. Researchers have observed hypervigilance, social withdrawal, and post-traumatic stress among incarcerated people.⁸² There are also higher rates of contagious diseases – such as tuberculosis and hepatitis – in correctional facilities.⁸³ Elderly people in prison are more susceptible to chronic diseases, infirmities, and physical disabilities.⁸⁴ Older incarcerated adults also tend to require more intensive medical care and accommodations that are difficult to provide within existing state prison facilities.⁸⁵ Finally, incarceration often results in extreme familial instability, which has been linked to poor health outcomes among the children of incarcerated parents.⁸⁶

Community-Based Interventions Can Be Cheaper and Result in Better Outcomes Than Incarceration

Community-based interventions that work in conjunction with or as alternatives to incarceration can be less expensive and result in better outcomes. (These interventions are discussed in the previous section: “Shifting the Focus to Alternative Sentencing Options and Shorter Prison Sentences.”) In particular, problem-solving courts demonstrate significantly lower recidivism rates among participants, compared to nonparticipants.⁸⁷ For example, a study of problem-solving courts focusing on problematic drug use in California found that arrest rates for participants declined by 85 percent within two years, compared to the two years prior to participation.⁸⁸ Orange County drug court and mental health court graduates have about a 29 percent recidivism rate for any crime, significantly lower than the 74 percent rate for the drug court control group, according to a 2013 report.⁸⁹ These alternative sentencing options are much less expensive than incarceration because of reduced operating costs. For example, San Francisco’s drug courts estimated savings of \$48 million over 13 years from lower case-processing costs and reduced recidivism.⁹⁰ Orange County collaborative courts, which serve a range of populations, have saved an estimated \$75 million from reduced use of the jail between 1995 and 2013.⁹¹

Moreover, the benefits of community-based sentences, such as electronic monitoring and intensive supervision, often outweigh the costs of these approaches as a result of reduced crime.⁹² While the cost of community-based approaches varies depending on the intensity of the supervision as well as on each individual’s treatment needs, on average supervision costs amount to about \$1,500 per person, per year.⁹³

When incarceration is necessary, shorter periods of local incarceration may be preferable to state incarceration. In 2011, the cost of incarceration in jail averaged \$113.87 per person, per day – or about \$41,563 per year – which is significantly less than the

cost of state prison and has the advantage of being closer to the incarcerated person’s home.⁹⁴ This allows family and other social supports to be maintained and thereby decreases the likelihood that individuals will reoffend.⁹⁵ Moreover, shorter periods of incarceration that are swift and certain – such as flash incarceration – have been shown to deter reoffending.⁹⁶

Conclusion: Moving California Toward More Effective Sentencing Policies

Research shows that investing in a broader range of sentencing options that target the underlying causes of criminal behavior and work within the affected community can hold accountable people who commit a crime, reduce reoffending, and strengthen communities. In addition, prioritizing community-based sentencing options and reducing lengths of stay when incarceration is necessary can save the state money through decreased operational costs and reduced crime. In order to ensure that such reforms are successful, California would need to strengthen its investment in community-based corrections infrastructure, including day reporting centers, drug and mental health treatment programs, problem-solving court systems, and services for survivors of crime.

FOR MORE INFORMATION

For a historical overview of California’s sentencing laws, see Kara Dansky, “Understanding California Sentencing,” *University of San Francisco Law Review* 43 (Summer 2008), pp. 45-86. For a detailed review of the application of current sentencing laws, see J. Richard Couzens and Tricia A. Bigelow, *Felony Sentencing After Realignment* (Revised August 2015).

ENDNOTES

- 1 California Penal Code, Section 16.
- 2 California Penal Code, Section 17(a).
- 3 California Penal Code, Section 190.2.
- 4 Scott Graves, *Corrections Spending Through the State Budget Since 2007-08: Still High Despite Recent Reforms* (California Budget & Policy Center: November 2015).
- 5 California Penal Code, Section 19.2. There are some offenses that can be charged either as a misdemeanor or a felony depending on the circumstances.
- 6 Marcus Lofstrom and Brandon Martin, *Public Safety Realignment: Impacts So Far* (Public Policy Institute of California: September 2015).
- 7 California Penal Code, Sections 19.6 and 19.8(b). There are some offenses that can be charged either as an infraction or a misdemeanor depending on the circumstances.
- 8 See California Penal Code, Section 1203(a); David H. Melnick, "Probation in California: Penal Code Section 1203" *California Law Review* 50 (1962), pp. 651-671; and Legislative Analyst's Office, *Achieving Better Outcomes for Adult Probation* (May 29, 2009).
- 9 Criteria affecting eligibility for probation are found in California Rules of Court, Rules 4.413 and 4.414.
- 10 For example, people with prior convictions for certain serious and/or violent crimes are not eligible for probation. Individuals who commit offenses using deadly weapons are presumptively ineligible for probation and may only be granted probation if it would be in the interest of justice to do so. See California Penal Code, Sections 1203(e) and (k).
- 11 Criminal Justice Statistics Center, *Crime in California 2014* (Department of Justice: 2015), Table 40, p. 53.
- 12 Information in this paragraph on indeterminate sentencing is from Kara Dansky, "Understanding California Sentencing," *University of San Francisco Law Review* 43 (Summer 2008), pp. 58-66; Albert J. Lipson and Mark A. Peterson, *California Justice Under Determinate Sentencing: A Review and Agenda for Research* (Rand: June 1980), pp.1-2; and Paula A. Johnson, "Senate Bill 42 – The End of the Indeterminate Sentence," *Santa Clara Law Review* 17 (1977), pp. 133-134. According to Dansky, prior to 1917, California used a criminal code based on definitions contained in the common law of England. Judges had unguided discretion to impose a sentence within a particular range specified for the crime, and the sentenced individual was required to complete the full sentence imposed.
- 13 Information in this paragraph on determinate sentencing is from Kara Dansky, "Understanding California Sentencing," *University of San Francisco Law Review* 43 (Summer 2008), pp. 67-68, and Paula A. Johnson, "Senate Bill 42 – The End of the Indeterminate Sentence," *Santa Clara Law Review* 17 (1977), pp. 145-146.
- 14 Information in this paragraph on determinate sentencing is from Albert J. Lipson and Mark A. Peterson, *California Justice Under Determinate Sentencing: A Review and Agenda for Research* (Rand: June 1980), pp. 2-3, and Kara Dansky, "Understanding California Sentencing," *University of San Francisco Law Review* 43 (Summer 2008), pp. 67-71.
- 15 California Penal Code, Section 213(a)(2).
- 16 Originally, the total sentence including the enhancements could not exceed double the base term except for a violent crime or when certain other conditions were met. Albert J. Lipson and Mark A. Peterson, *California Justice Under Determinate Sentencing: A Review and Agenda for Research* (Rand: June 1980), p. 6.
- 17 Albert J. Lipson and Mark A. Peterson, *California Justice Under Determinate Sentencing: A Review and Agenda for Research* (Rand: June 1980), pp. 6 and 15, and Kara Dansky, "Understanding California Sentencing," *University of San Francisco Law Review* 43 (Summer 2008), pp. 68-69.
- 18 Mike Males, Daniel Macallair, and Khaled Taqi-Eddin, *Striking Out: The Failure of California's "Three Strikes and You're Out" Law* (Justice Policy Institute: March 1999), p. 2. The three-strikes law was signed by Governor Pete Wilson in March 1994 and subsequently reaffirmed by the voters through passage of Proposition 184 in November 1994. Proposition 184, a citizens' initiative, was essentially identical to the law approved by state policymakers.
- 19 The requirement that the third strike be a violent or serious felony – as opposed to any felony – was added in 2012 with the passage of Proposition 36, which also allowed people serving third-strike sentences for nonviolent or nonserious felonies to apply for resentencing as second strikers. J. Richard Couzens and Tricia A. Bigelow, *The Amendment of the Three Strikes Sentencing Law* (Barrister Press: February 2015), p. 5.
- 20 California Department of Corrections and Rehabilitation, Office of Research, *Second and Third Striker Felons in the Adult Institution Population* (June 30, 2013), Table 1. This is the most recent CDCR report on the three-strikes prison population as of December 10, 2015.
- 21 Mike Males, *Striking Out: California's "Three Strikes And You're Out" Law Has Not Reduced Violent Crime. A 2011 Update* (Center on Juvenile and Criminal Justice: April 2011).
- 22 A requirement that the third strike be a violent or serious felony was added in 2012 with the passage of Proposition 36. Proposition 36 also allowed people serving third strike sentences for nonviolent or nonserious felonies to apply for resentencing as second strikers. J. Richard Couzens and Tricia A. Bigelow, *The Amendment of the Three Strikes Sentencing Law* (Barrister Press: February 2015), p. 5; and Stanford Law School Three Strikes Project and NAACP Legal Defense and Education Fund, *Progress Report: Three Strikes Reform (Proposition 36) – 1,000 Prisoners Released* (September 2013), p. 4.

- 23 California Penal Code, Section 12022.53. Information in this paragraph on the “Use a Gun and You’re Done” law is from Little Hoover Commission, *Sensible Sentencing for a Safer California* (February 2014), pp. 9-10.
- 24 “Design capacity” refers to the number of people the facilities were designed to hold based on one person per cell, single bunks in dormitories, and no beds in spaces not designed for housing. See Corrections Independent Review Panel, *Reforming Corrections* (California Performance Review: June 2004).
- 25 In 2006, California began using private prisons to house incarcerated adults in order to address overcrowding in state prisons. Kara Dansky, “Understanding California Sentencing,” *University of San Francisco Law Review* 43 (Summer 2008), p. 69, and Randall G. Shelden and Selena Teji, *Collateral Consequences of Interstate Transfer of Prisoners* (Center on Juvenile and Criminal Justice: July 2012), p. 2.
- 26 Legislative Analyst’s Office, *A Primer: Three Strikes – The Impact After More Than a Decade* (October 2005), pp. 4-7, and Franklin E. Zimring and Gordon Hawkins, “The Growth of Imprisonment in California,” *British Journal of Criminology* 34 (1994), pp. 84-89.
- 27 For a summary of the major changes, see Scott Graves, *Corrections Spending Through the State Budget Since 2007-08: Still High Despite Recent Reforms* (California Budget & Policy Center: November 2015), pp. 1-2, and Legislative Analyst’s Office, *The 2014-15 Budget: Administration’s Response to Prison Overcrowding Order* (February 28, 2014), p. 2.
- 28 In August 2009, a panel of federal judges ruled that overcrowding was the main reason that California was failing to provide prisoners with health care that met US constitutional standards. This three-judge panel ordered the state to reduce the prison population to 137.5 percent of the system’s design capacity, a decision that was upheld by the US Supreme Court in 2011. The court subsequently extended the state’s deadline for complying with this order to February 28, 2016. For an overview of the three-judge panel’s order, see Legislative Analyst’s Office, *The 2014-15 Budget: Administration’s Response to Prison Overcrowding Order* (February 28, 2014), pp. 2-3.
- 29 State policymakers also provided counties with an ongoing source of revenues to pay for their new responsibilities under realignment. For a detailed overview of the 2011 realignment – which also included health and human services programs – see Scott Graves, *Finishing the Job: Moving Realignment Toward Completion in 2012* (California Budget & Policy Center: June 2012).
- 30 US Supreme Court, *Brown v. Plata*, 563 US ___ (2011), downloaded from <http://www.supremecourt.gov/opinions/10pdf/09-1233.pdf> on August 28, 2014. (As shown in the citation, the page number for this case is left blank because the US Supreme Court has not yet printed the bound volume of the *United States Reports*.) Also see related court documents, “Order Granting in Part and Denying in Part Defendants’ Request for Extension of December 31, 2013 Deadline” (available at <http://www.cdcr.ca.gov/News/docs/3jp-Feb-2014/Three-Judge-Court-order-2-20-2014.pdf>); and “Defendant’s December 2014 Status Report in Response to February 10, 2014 Order” (available at <http://www.cdcr.ca.gov/News/docs/3JP-Dec-2014/December-2014-Status-Report.pdf>).
- 31 In addition, Proposition 47 directs any state savings that result from the measure to drug and mental health treatment, victim services, and K-12 truancy prevention. Selena Teji, *Proposition 47: Should California Reduce Penalties For Drug and Property Crimes and Invest in Treatment?* (California Budget & Policy Center: September 2014), pp. 1-3.
- 32 California Department of Corrections and Rehabilitation, *Spring 2015 Population Projections* (May 2015).
- 33 California Penal Code, Sections 16, 18, 19, and 19.6.
- 34 Edmund G. Brown Jr., *Governor Brown Sworn In, Delivers Inaugural Address* (Office of Governor Edmund G. Brown Jr.: January 5, 2015), available at <http://gov.ca.gov/news.php?id=18828>.
- 35 California Penal Code, Section 17.5(a)(8).
- 36 Steven Raphael and Michael A. Stoll, *Do Prisons Make Us Safer? The Benefits and Costs of the Prison Boom* (Russell Sage Foundation: 2009).
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- 39 Robert Soo Song, “Deferred Entry of Judgment for Criminal Defendants,” *Los Angeles Lawyer* 29 (November 2006).
- 40 Robert V. Wolf, *California’s Collaborative Justice Courts: Building a Problem-Solving Judiciary* (Judicial Council of California, Administrative Office of the Courts: 2005), pp. 2 and 5; Robert Soo Song, “Deferred Entry of Judgment for Criminal Defendants,” *Los Angeles Lawyer* 29 (November 2006); Selena Teji, *Proposition 47: Should California Reduce Penalties for Drug and Property Crimes and Invest in Treatment?* (California Budget and Policy Center: September 2014), p. 3.
- 41 Robert V. Wolf, *California’s Collaborative Justice Courts: Building a Problem-Solving Judiciary* (Judicial Council of California, Administrative Office of the Courts: 2005), pp. 2 and 5, and Holly A. Wilson and Robert D. Hoge, “The Effect of Youth Diversion Programs on Recidivism: A Meta-Analytic Review,” *Criminal Justice and Behavior* 40 (May 2013).
- 42 Brandon Martin and Ryken Grattet, *Alternatives to Incarceration in California* (Public Policy Institute of California: April 2015), p. 3.
- 43 Chief Probation Officers of California, “Graduated Sanctions: Strategies for Responding to Violations of Probation Supervision” *CPOC Issue Brief 1* (Spring 2014).
- 44 Chief Probation Officers of California, “Graduated Sanctions: Strategies for Responding to Violations of Probation Supervision” *CPOC Issue Brief 1* (Spring 2014) and Peggy Burke, *Filling in the Gaps: Increasing the Available Range of Responses to Violations* (US Department of Justice: 2001).

- 45 Brandon Martin and Ryken Grattet, *Alternatives to Incarceration in California* (Public Policy Institute of California: April 2015), p. 6, and Angela Hawken and Mark Kleiman, *Managing Drug Involved Probationers With Swift and Certain Sanctions: Evaluating Hawaii's HOPE* (National Institute of Justice: 2009).
- 46 Brandon Martin and Ryken Grattet, *Alternatives to Incarceration in California* (Public Policy Institute of California: April 2015), pp. 3-4.
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- 48 California Penal Code, Section 1170(h)(5); and California Rules of Court, Rule 4.415.
- 49 California Penal Code, Sections 19.2 and 1170(h).
- 50 Selena Teji, *Proposition 47: Should California Reduce Penalties for Drug and Property Crimes and Invest in Treatment?* (California Budget and Policy Center: September 2014), p. 4.
- 51 Pamela M. Casey, Roger K. Warren, and Jennifer K. Elek, *Using Offender Risk and Needs Assessment Information at Sentencing: Guidance for Courts From a National Working Group* (National Center for State Courts: 2011).
- 52 California Community Justice Project, *Restorative Conferencing* (Judicial Council of California, Administrative Office of the Courts: 2006).
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- 55 The Pew Center on the States, *Time Served: The High Cost, Low Return of Longer Prison Terms* (June 2012), pp. 1-2.
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- 57 Scott Graves, *Corrections Spending Through the State Budget Since 2007-08: Still High Despite Recent Reforms* (California Budget & Policy Center: November 2015), p. 7.
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- 60 In 2004, an independent review panel appointed by Governor Arnold Schwarzenegger found that California's correctional system was defective in almost every way. The panel recommended 239 changes beginning with a reorganization to create the California Department of Corrections and Rehabilitation, which went into effect on July 1, 2005. See http://cpr.ca.gov/Review_Panel/ for more information. This reorganization reinstated the correctional system's responsibility to rehabilitate rather than just to punish. See Office of Public and Employee Communications, *Successes and Challenges: The CDCR Story* (California Department of Corrections and Rehabilitation: no date), pp. 1 and 3.
- 61 Anthony N. Doob and Cheryl Marie Webster, "Sentence Severity and Crime: Accepting the Null Hypothesis," *Crime and Justice* 30 (2003), pp. 143-195; Jamie Fellner, *Old Behind Bars: The Aging Prison Population in the United States* (Human Rights Watch: January 2012), p. 92; and Mike Males, Daniel Macallair, and Megan Doyle Corcoran, *Testing Incapacitation Theory: Youth Crime and Incarceration in California* (Center on Juvenile and Criminal Justice: July 2006), p. 13.
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- 67 Jamie Fellner, *Old Behind Bars: The Aging Prison Population in the United States* (Human Rights Watch: January 2012), p. 92; and Valerie Wright, *Deterrence in Criminal Justice: Evaluating Certainty vs. Severity of Punishment* (The Sentencing Project: November 2010), p. 2.
- 68 California Department of Corrections and Rehabilitation, *Frequently Asked Questions (FAQs)*, accessed on April 14, 2015 at <http://www.cdcr.ca.gov/rehabilitation/faqs.html#rehabilitation>.
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- 71 Andrew von Hirsch, et al., *Criminal Deterrence and Sentence Severity: An Analysis of Recent Research* (Hart Publishing: 1999) and Daniel S. Nagin and Greg Pogarsky, "Integrating Celerity, Impulsivity, and Extralegal Sanction Threats into a Model of General Deterrence: Theory and Evidence," *Criminology* 39 (2001), pp. 865-892.
- 72 According to the Department of Justice, "an offense is 'cleared by arrest' or solved for crime reporting purposes when at least one person is arrested, charged with the commission of an offense, and turned over to a court for prosecution. Although no physical arrest is made, a clearance by arrest can be claimed when an offender is a person under 18 years of age and is cited to appear in juvenile court or before other juvenile authorities. An offense can also be 'cleared exceptionally' for crime reporting purposes when an investigation has definitely established the identity of an offender; enough information exists to support an arrest; and the exact location of an offender is known but, for some reason, law enforcement cannot take the offender into custody." See <http://oag.ca.gov/sites/all/files/agweb/pdfs/cjsc/prof10/glossary.pdf> for more information. Criminal Justice Statistics Center, CJCSC Statistics: Crimes and Clearances database (Department of Justice), accessed on April 14, 2015 at <https://oag.ca.gov/crime/cjsc/stats/crimes-clearances>.
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- 75 Joel A. Devine, Joseph F. Sheley, and M. Dwayne Smith, "Macroeconomic and Social-Control Policy Influences on Crime Rate Changes, 1948-1985," *American Sociological Review* 53 (1988), pp. 407-420; Thomas B. Marvell and Carlisle E. Moody, "The Impact of Prison Growth on Homicide," *Homicide Studies* 1 (1997), pp. 205-233; William Spelman, "The Limited Importance of Prison Expansion" in Alfred Blumstein and Joel Wallman (Eds.), *The Crime Drop in America* (Cambridge University Press: 2005), pp. 97-129; and Zsolt Besci, "Economics and Crime in the States," *Federal Reserve Bank of Atlanta Economic Review* Q1 (1999), pp. 38-56.
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- 77 Legislative Analyst's Office, *The 2014-15 Budget: Governor's Criminal Justice Proposals* (February 19, 2014), pp. 23-24.
- 78 Barbara Krauth, *Staff-Inmate Ratios: Why It's So Hard to Get to the Bottom Line* (September 1988, reprinted September 2006), p. 6, and Legislative Analyst's Office, *The 2014-15 Budget: Governor's Criminal Justice Proposals* (February 19, 2014), p. 23.
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- 80 Legislative Analyst's Office, *The 2014-15 Budget: Governor's Criminal Justice Proposals* (February 19, 2014), p. 25.
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- 84 Jamie Fellner, *Old Behind Bars: The Aging Prison Population in the United States* (Human Rights Watch: 2012), p. 73.
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