The effects of more than a decade of criminal justice reform in California

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• How have these reforms impacted correctional populations?
• Have these reform narrowed racial disparities in incarceration or interactions with the police?
• Has there been a measurable impact of these reforms on public safety?
• What are we learning from RIPA and how is this impacting policing policy?
California sentencing primer

- **Determinate vs indeterminate sentences:** Fixed length vs open-ended with a life maximum
- **Sentencing Triad:** A set of three sentence lengths (for example, 2, 3, or 4 years) that set the base penalties for a determinate sentence.
- **Case enhancement:** Additional time added to a sentence due to aspects of someone’s criminal history (e.g. prior prison terms, prior serious/violent convictions).
- **Conduct enhancement:** Additional time added to a sentence due to exacerbating characteristics of the offense.
- **Strike offenses:** Specific offenses deemed serious/violent that may lead to a doubled determinate sentence or an indeterminate sentence of 25 to life.
- **Concurrent sentences:** Sentences for separate convictions that are served at the same time
- **Consecutive sentences:** Sentences for separate convictions that are served one after the other
FIGURE 2: Timeline of enhancement policy changes

1976
Determinate Sentencing Act

1986
Prop 8 adds 5 years for prior serious/violent felony — nickel prior

1988
STEP Act creates gang enhancements

1994
Three Strikes enacted

1998
“10-20-Life” gun law enacted

2000
Prop 21 makes gang enhancements harsher

2011
Realignment Act

2012
Prop 36 Three Strikes Amendment

2014
Prop 47 reclassifies certain felonies as misdemeanors

2016
Prop 57 makes certain non-violent felonies eligible for parole after serving base sentence, regardless of enhancements

2017
SB 180 eliminates the 3 year prior drug enhancement

2018
SB 1393 allows judicial discretion in the striking of nickel priors

2017
SB 620 allows judges to strike certain firearm enhancements

2019
SB 136, with the exception of prior sexually violent offenses, eliminates the 1 year enhancement for a prior prison or jail sentence

2021
AB 333 updates gang enhancements

2021
SB 81 updates PC § 1385 to guide judge discretion in dismissing enhancements

2021
SB 483 makes the 3 year (SB 180) and 1 year (SB 136) enhancement repeal retroactive

Note: Blue shaded bubbles indicate implementation of harsher and more punitive policies, while orange indicates laws that made major structural changes, and green shaded bubbles indicate policies that were made to lessen the severity of the blue bubbles. The years in each box are the date of passage.
FIGURE 1
Parolee returns to California state prisons stood out before realignment

Parolees returned to custody during 2010 divided by parole population at beginning of year


NOTE: The bars represent parolee admissions to prison in 2010 as a share of the parole population at the beginning of the year.
Figure 1: Weekly Admissions to California State Prisons, October 2010 through May 2013
Figure 2: Weekly Releases from California State Prisons, October 2010 through May 2013
Figure 3. Prisons in California are no longer housing inmates for short stays.

SOURCE: Authors’ calculations based on CDCR individual administrative data.
FIGURE 2: Timeline of enhancement policy changes

1976 Determine Sentencing Act
1986 PC § 1385 amended to eliminate judicial discretion to strike nickel priors
1994 Three Strikes enacted
2000 Prop 21 makes gang enhancements harsher
2012 Prop 36 Three Strikes Amendment
2016 Prop 57 makes certain non-violent felonies eligible for parole after serving base sentence, regardless of enhancements
2018 SB 1393 allows judicial discretion in the striking of nickel priors
2021 AB 333 updates gang enhancements
2021 SB 81 updates PC § 1385 to guide judge discretion in dismissing enhancements
2017 SB 180 eliminates the 3 year prior drug enhancement
2017 SB 620 allows judges to strike certain firearm enhancements
2019 SB 136, with the exception of prior sexually violent offenses, eliminates the 1 year enhancement for a prior prison or jail sentence
2021 SB 483 makes the 3 year (SB 180) and 1 year (SB 136) enhancement repeal retroactive

Note: Blue shaded bubbles indicate implementation of harsher and more punitive policies, while orange indicates laws that made major structural changes, and green shaded bubbles indicate policies that were made to lessen the severity of the blue bubbles. The years in each box are the date of passage.
Provisions of proposition 47

• Passed by 60 percent of California voters
• Reclassified various drug offenses from felonies or wobblers (crimes that can be charged as felonies or misdemeanors) to misdemeanors.
• Requires misdemeanor sentencing for petty theft, receiving stolen property, and forgery/writing a bad check (offenses with amounts less than $950).
• Allows for resentencing and reclassification for prior convictions
Pre and Post Proposition 47 Trends in Monthly Arrest by Offense Type

Arrests for Person Offenses

Arrests for Property Offenses

Arrests for Drug Offenses

Arrests for Other Offenses
Note: Blue shaded bubbles indicate implementation of harsher and more punitive policies, while orange indicates laws that made major structural changes, and green shaded bubbles indicate policies that were made to lessen the severity of the blue bubbles. The years in each box are the date of passage.
Changes in the number of admissions with specific types of enhancements during the year prior and the year of relevant reform legislation

<table>
<thead>
<tr>
<th>Enhancement subject to reform</th>
<th>Year before implementation</th>
<th>Year of implementation</th>
<th>Change</th>
<th>Percent change</th>
<th>Count in 2022</th>
</tr>
</thead>
<tbody>
<tr>
<td>Three-year drug enhancement (SB 180)&lt;sup&gt;a&lt;/sup&gt;</td>
<td></td>
<td></td>
<td>-233</td>
<td>-82%</td>
<td>0</td>
</tr>
<tr>
<td>Firearms (SB 620)&lt;sup&gt;a&lt;/sup&gt;</td>
<td>2,188</td>
<td>2,113</td>
<td>-75</td>
<td>-3%</td>
<td>1,511</td>
</tr>
<tr>
<td>Nickel prior (SB 1393)&lt;sup&gt;b&lt;/sup&gt;</td>
<td>2,109</td>
<td>1,541</td>
<td>-568</td>
<td>-27%</td>
<td>572</td>
</tr>
<tr>
<td>One-year prior prison term (SB 136)&lt;sup&gt;c&lt;/sup&gt;</td>
<td>2,627</td>
<td>81</td>
<td>-2,627</td>
<td>96%</td>
<td>&lt;15</td>
</tr>
<tr>
<td>Gang enhancements (AB 333)</td>
<td>450</td>
<td>305</td>
<td>-185</td>
<td>37%</td>
<td>410</td>
</tr>
</tbody>
</table>
California prison incarceration rate: 1925 through 2022
Figure 1. Total Institution Population Trends and Projections, June 30, 2013 through June 30, 2027

2.2 Adult Institution Population Projections, Comparisons, and Population Trends by Gender
Impacts on inter-racial disparities

• Incarceration
• Arrests
• Bookings, pretrial detention, sentence length
Prison Inmates per 100,000 by Race and Ethnicity for California and the Remainder of the United States, 2000 through 2021

A. California

B. Rest of the United States
Why is the Black Incarceration Rate So High in California despite these reforms?

• Must be some combination of relatively higher admissions rates and longer sentence. We suspect enhancements are a key driver.

• Black people constitute 24.6 percent of state prison inmates without strike enhancements, 32.6 percent of people with doubled sentences, and 45.1 percent of people serving Third-Strike indeterminate sentences.
  • Comparable figures for white inmates: 19.8, 18.7 and 22.4 percent.
  • Comparable figures for Hispanic inmates: 48.4, 43.5, and 27.4 percent.

• Black people constitute 18.8 percent of prisoners without any form of enhancements, but 32.5 percent of people with at least one form of sentence enhancement.
  • Comparable figures for white inmates: 25.8 and 17.2 percent.
  • Comparable figures for Hispanic inmates: 48.8 and 43.9
FIGURE 6: Distribution of sentence lengths for admissions since 2015 with and without enhancements included

Note: the value of the 75th percentile and average sentence length are the same for the "Enhancements Removed" graph above. Hence, they are overlapping and only one is visible.
FIGURE 7: Distribution of sentence lengths for the currently incarcerated population as of July 2022 with and without enhancements included.
Arrest Rate-Age Profiles by Race: The Year Before and After the Implementation of Proposition 47
Arrest Rate-Age Profiles by Race: The Year Before and After the Implementation of Proposition 47
Changes in Case Outcomes Pre-post Prop 47 Observed in Racial Disparities Study Conducted in Conjunction with the San Francisco District Attorney (MacDonald and Raphael 2020)

- Narrowing of bookings rates disparities
- Narrowing of disparities in average pre-trial detention days
- Narrowing of sentencing disparities
- Lesser weight placed on criminal history, pre-trial detention, and status at time of arrest on case outcomes.
Figure 3.3: Racial/Ethnic Disparities in Booking Rates Before and After the Passage of Proposition 47, With and Without Controlling for Arrest Charges, Criminal Justice Status, and San Francisco and Statewide Criminal History
Figure 3.5: Racial/Ethnic Disparities in Average Jail Detention Days, Before and After the Passage of Proposition 47, With and Without Controlling for Arrest Charges, Criminal Justice Status, and San Francisco and Statewide Criminal History
Sources of Disparities in Sentence Length Pre and Post Prop 47

Overall differences
Due to arrest charges
Due to status at arrest
Due to pre-trial detention
Due to criminal history
Unexplained differential
Long-term violent and property crime trends
Comparison of California Violent Crime Rates to Synthetic Comparison Matched Through 2010
Comparison of California Property Crime Rates to Synthetic Comparison Matched Through 2010

[Graphs showing property crime rates including and excluding LA, with comparisons to synthetic data.]

- Property Crime Rate Including LA
- Property Crime Rate Excluding LA
- Difference between actual and synthetic data
Overview of the Racial Identity and Profiling Act (RIPA) Data Collection Effort

- Collect uniform information on citizen demographics and stop characteristics for all stops made California Law Enforcement Officers.
- Analyze stop data with an eye on documenting and understanding the causes of race/ethnicity disparities and other disparities in stop outcomes.
- Provide a forum to discuss and generate policy proposals, research pertaining to policing, learn from agencies, provide an opportunity for the public to participate and weight in.
  - Similar in spirit to the impact of the relatively new Committee on the Revision of the Penal Code
Timing

• Wave 1: agencies with 1,000+ officer began data collection on July 1, 2018
  • collected data on 1.8 million stops in second half of 2018
• Wave 2: agencies with 667 to 999 officers began data collection on January 1, 2019
  • Collected data on nearly 4 million stops in calendar year 2019
  • Collected data on roughly 3 million stops in calendar year 2020
• Wave 3: agencies with 334 to 666 officers began data collection on January 1, 2021.
  • Collected data on roughly 3.2 million stops in calendar year 2021
• Wave 4: all remaining agencies began data collection on January 1, 2022.
Types of data elements collected

- Personal characteristics of those stopped
  - Race/ethnicity
  - Gender
  - Age
  - LGBTQ status
  - English fluency
  - Disability

- Stop-level characteristics
  - Reason for stop
  - Actions taken (ranging from request to exit vehicle to use of lethal force)
  - Reason for search
  - Contraband discovery
  - Enforcement outcomes
<table>
<thead>
<tr>
<th>RACE/ETHNICITY</th>
<th>% OF CALIFORNIA POPULATION (2020)</th>
<th>% OF ALL STOPS</th>
<th>% OF STOPS MADE BY LOCAL LAW ENFORCEMENT AGENCIES</th>
<th>% OF STOPS MADE BY CALIFORNIA HIGHWAY PATROL</th>
</tr>
</thead>
<tbody>
<tr>
<td>White</td>
<td>35</td>
<td>30.7</td>
<td>27.7</td>
<td>33.1</td>
</tr>
<tr>
<td>Black</td>
<td>6</td>
<td>15.0</td>
<td>19.6</td>
<td>11.3</td>
</tr>
<tr>
<td>Hispanic</td>
<td>36</td>
<td>42.4</td>
<td>42.8</td>
<td>42.0</td>
</tr>
<tr>
<td>Asian</td>
<td>14</td>
<td>5.8</td>
<td>5.0</td>
<td>6.5</td>
</tr>
<tr>
<td>Other</td>
<td>9</td>
<td>6.1</td>
<td>4.8</td>
<td>7.1</td>
</tr>
</tbody>
</table>

Note: The “other” category includes a Middle Eastern/South Asian grouping (4.79 percent of all stops), Native Americans (0.30 percent of all stops), and a multiracial category (1% of all stops). Population figures are from the 2023 RIPA Report, based on 2020 ACS data. The remaining columns are author tabulations from the 2021 Racial Identity and Profiling Act data. Columns may not sum to 100 due to rounding.
FIGURE 1: Percent of all stops made by local law enforcement agencies and the California Highway Patrol where the person is searched, ordered to exit the vehicle, detained (curbside or in the back of patrol vehicle), or handcuffed during the stop.

Note: Author tabulations from the 2021 Racial Identity and Profiling Act data.
FIGURE 3: Percent of stops made by local law enforcement agencies where the person is searched, ordered to exit the vehicle, detained (curbside or in the back of patrol vehicle), or handcuffed during the stop by race/ethnicity and reason for the stop.

Note: Author tabulations from the 2021 Racial Identity and Profiling Act data.
FIGURE 4: Percent of all stops made by local law enforcement agencies and the California Highway Patrol, resulting in no more than a warning, a citation, an arrest, or some other outcome by race/ethnicity.

Note: Author tabulations from the 2021 Racial Identity and Profiling Act data. Totals across outcomes may sum to more than 100 percent within group since multiple outcomes are possible.
FIGURE 6: Percent of all stops made by local law enforcement agencies resulting in no more than a warning, a citation, an arrest, or some other outcome by race/ethnicity and reason for the stop.

Note: Totals may sum to more than 100 percent within group since multiple outcomes are possible.
Some data quality issues that have arisen and a critique

- Inspector general reports of LAPD and LASD have pointed out inconsistencies between RIPA and other data sources (body-warn cameras, data from CAD systems).
- CJIS researchers have found inconsistencies in use-of-force totals tabulated from RIPA data and from Use of Force Incident Reporting System.
- Some data transmission issues.
- Data quality checks, internal and external quality comparisons, are an ongoing evolving effort.
- The PORAC report
Some concluding thoughts

• Why did these reforms happen?
• Are we on the cusp of a pendulum swing in the other direction?
• Key challenges.
Research discussed in this presentation

- Bird, Mia; Gill, Omair; Lacoe, Johanna; Pickard, Molly; Raphael, Steven and Alissa Skogg (2022), *Three Strikes in California*, California Policy Lab Report, University of California, Berkeley.

- Bird, Mia; Gill, Omair; Lacoe, Johanna; Pickard, Molly; Raphael, Steven and Alissa Skogg (2022), *Sentence Enhancements in California*, California Policy Lab Report, University of California, Berkeley.


- Lofstrom, Magnus; Raphael, Steven and Rykent Gratett (2014), *California’s Public Safety Realignment and Recidivism*, Public Policy Institute of California, San Francisco, CA.
