



**THE
SENTENCING
PROJECT**

RESEARCH AND ADVOCACY FOR REFORM

**Testimony of Nicole D. Porter
Senior Director of Advocacy
The Sentencing Project**

**California Task Force to Study and
Develop Reparation Proposals for
African Americans**

Criminal Justice Panel

March 30, 2022

Established in 1986, The Sentencing Project works for a fair and effective U.S. criminal justice system by promoting reforms in sentencing policy and challenging racial injustice in the criminal legal system. I am Nicole D. Porter, Senior Director of Advocacy for The Sentencing Project. I have had extensive engagement in public policy research on criminal justice issues for many years, with a focus on sentencing, incarceration, and racial disparity. I have authored numerous journal articles and public commentary on these issues, and I have previously been invited to testify before state legislative bodies in several states on challenging racial injustice including Maryland, Virginia and Texas.

Behind each statistic are persons directly impacted by the intersection of race and justice in the United States. Behind each percentage point is a Black man disappeared behind the walls. Behind each number is a Black child who will visit their mother in a prison visitation room. Behind each data set is a neighborhood like the million-dollar blocks in Los Angeles and Oakland where incarceration is almost a normative experience.

The U.S. prison population declined 11% in 10 years after reaching an all-time high in 2009. This modest reduction follows a nearly 700% increase in the prison population between 1972 and 2009. As of year end 2019, 1.4 million people were in U.S. prisons; an imprisonment rate unmatched worldwide. At the recent pace of decarceration, it will take nearly six decades to cut the U.S. prison population in half. California is among nine states that have reduced their prison population by 30% or more since their peak.¹

The persistence of extremely punitive sentencing laws and policies, not increases in crime rates, sustain the nation's high rate of incarceration. California is uniquely positioned to address the harms of mass incarceration by continuing sentencing reforms, decommissioning prisons and directing public monies to community reinvestment and social services targeted to reduce contact with the criminal legal system in the first place.

CALIFORNIA IMPRISONS BLACK RESIDENTS AT EXTREME RATES

Black Americans are incarcerated in state prisons across the country at nearly five times the rate of whites. Racial disparities in California's criminal legal system go beyond differences in criminal offending and stem from implicit bias in police arrests, rates of conviction, and sentencing. In California, the Black/white disparity of 9.3-to-1 is one of the highest in the nation. While racial disparities in arrests have decreased they still persist statewide. Racial disparities in California arrests peaked in 1992 when the African American arrest rate—the number of arrests per 100,000 African Americans—was 3.6 times greater than the white arrest rate. Although these disparities have narrowed, in 2016 the African American arrest rate was still 3.0 times the white arrest rate.²

Black people comprise 6% of California's population but 29% of the prison population.³

CALIFORNIA'S EFFORT TO ADDRESS SYSTEMIC RACISM IN THE LEGAL SYSTEM

¹ See Ghandnoosh, N. (2021) [Can We Wait 60 Years to Cut the Prison Population in Half?](#) The Sentencing Project. . Other states include: Alaska, New Jersey, New York, Connecticut, Alabama, Rhode Island, Vermont, Hawaii, and California

² Loftus, M. et. al. [Racial Disparities in California Arrests](#). Public Policy Institute of California (2019).

³ Nellis, A (2021) [The Color of Justice: Racial and Ethnic Disparity in State Prisons](#). The Sentencing Project.

Officials have worked to address racial injustice in the state’s criminal legal system. California’s 2020 Racial Justice Act prohibits prosecutors from seeking, obtaining, or imposing a criminal conviction or sentence on the basis of race, ethnicity, or national origin. The law gives defendants an opportunity to challenge a range of discriminatory trial practices, including racial bias in jury selection. Evidence that a judge, attorney, law enforcement officer, expert witness, or juror “used racially discriminatory language “or otherwise “exhibited bias or animus towards the defendant” at trial could establish a violation of the Racial Justice Act. The RJA also allows defendants to prove that their convictions or sentences were racially motivated by presenting evidence that other people of color were more frequently charged with more serious offenses or received more severe sentences than white people.

CHANGING POLICIES TO REPAIR MASS INCARCERATION’S HARMS

Sustaining California’s decarceration trends requires a commitment to transformative change to sentencing policies and practices aligned with challenging racial disparities in the criminal justice system. In addition to the state’s Racial Justice Act, the California Assembly adopted several legal reforms in 2021 to address the state’s sentencing policies.⁴

- Assembly Bill 333 restricts the use of sentence enhancements for alleged gang crimes and codifies practices defining “patterns of criminal gang activity” used to lengthen prison terms.
- Senate Bill 73 repealed mandatory prison and jail sentences for qualifying drug offenses involving heroin, cocaine, opioids, and other substances. SB 73 also allows a court to grant probation for offenses that were previously ineligible or presumptively ineligible for probation.
- Senate Bill 81 will help scale back the impact of more than 150 sentencing enhancements triggered by certain factors, including prior convictions and gun possession during a crime. The measure dismisses these enhancements, including those that resulted in decades-long sentences and discriminatory racial impacts.
- Senate Bill 483 allows the retroactive repeal of sentence enhancements for prior prison or county jail felony terms and requires officials to identify persons in custody eligible for a “second look” sentencing review hearing.

Last year’s legislative changes built on years of policy reforms. Previously, California approved ballot initiatives to curb the state’s notoriously broad “three strikes and you’re out” law and reclassified several property and drug offenses allowing for the resentencing and release of a substantial number of incarcerated persons.⁵ Addressing these sentencing policies helps account for high rates of disparity in the California prison system. California’s three strikes law was identified as widening disparities because of the greater likelihood of prior convictions among African Americans. Californians voted to repeal parts of the law in 2012 to limit the allowability of previous convictions as “strikes.”⁶

⁴ Porter, N. (2021) *Successes in Criminal Legal Reforms, 2021* The Sentencing Project.

⁵ Chen, E. (2008). The liberation hypothesis and racial and ethnic disparities in the application of California’s Three Strikes Law. *Journal of Ethnicity in Criminal Justice*, 6(2), 83-102.

⁶ Ibid.

CALIFORNIA'S PRISON DOWNSIZING TRENDS

While prison population growth has slowed or even reversed in most states in the past 10 years due to sentencing reforms and early release mechanisms, California has not decommissioned prisons at the pace of other states experiencing population reductions. Although California is among states with a comparatively high rate of decarceration, state officials announced unexecuted prison closures while opening new prisons and converting older prisons for new correctional uses. The California Rehabilitation Center with a design capacity of over 2,490 was scheduled to close in FY 2015-2016 due to age and high operation costs, but subsequent plans called for the prison to remain open indefinitely.⁷

Last year, officials announced the closure of two of the state's 35 adult prisons. Deuel Vocational Institute (DVI), California's sixth oldest prison, closed in 2021.⁸ Officials also announced deactivation of the California Correctional Center (CCC) in Susanville by June 30, 2022. According to the California Department of Corrections and Rehabilitation (CDCR), the closure of CCC is estimated to achieve a full-year, annual savings of \$122 million.⁹

California also plans to decommission its youth prisons in 2023, under a state law passed last year and a budget directive issued by Governor Gavin Newsom. Officials designated more than \$200 million a year to help local governments absorb the cost of housing and caring for the hundreds of young people who previously would have ended up in state run correctional facilities.¹⁰

Prison Repurposing Projects

Prison closures offer a challenge to officials and the communities that are impacted, particularly in rural areas with limited employment opportunities. In recent years, entrepreneurs, elected officials and community leaders in a handful of states have reimagined sites that once incarcerated prisoners for new uses.¹¹

- In New York, a closed medium security prison was repurposed as a movie studio.
- Tennessee developers repurposed a shuttered maximum security prison as a whisky distillery and event venue.
- Texas officials are converting a closed minimum security development as part of a public park system and the closed facility will be repurposed for office and community space.
- At least four states – Missouri, Ohio, Pennsylvania, and West Virginia – have converted closed prisons into tourist destinations open to visitors and host special events.

Other new purposes for closed prisons include a small farm incubator, homeless shelter, museum and special events venue.

⁷ Staff (2020), *Effectively Managing State Prison Infrastructure 2020-2021*, California Legislative Analyst's Office.

⁸ Staff (2022), Status Page - [Deuel Vocational Institution](#), accessed March 23, 2022

⁹ Bahouth, B. [Susanville Attempts to Forestall the Closure of the California Correctional Center](#) Sierra Nevada Ally, August 18, 2021.

¹⁰ Rainey, J. [California plans to close troubled youth prisons after 80 years. But what comes next?](#) LA Times, February 15, 2021.

¹¹ Porter, N (2016). [Repurposing Prisons: New Beginnings for Closed Prisons](#). The Sentencing Project.

COMMUNITY REINVESTMENT AND REPARATIVE JUSTICE

Prison closures offer an opportunity for state officials and community leaders to reimagine spending on public safety priorities. The effort to decarcerate, downsize California's prison system and prioritize resources to services and social supports that prevent criminal legal system contact must be considered as part of an intentional strategy to repair the harms of mass incarceration.

Community reinvestment acknowledges the collateral impacts of mass incarceration on many urban neighborhoods. These impacts can perpetuate cycles of crime and incarceration. Billions of dollars are spent each year to imprison large numbers of people from low-income urban neighborhoods. A justice reinvestment approach would redirect some portion of the funds states now spend on prisons to rebuild the social capital and local infrastructure – quality schools, community centers, and healthcare facilities – in high incarceration neighborhoods.

To further reduce California's prison population requires a substantial commitment to develop and sustain the capacity of key players to do the work. This ambitious work necessitates support to sustain demand at the local and state level for substantial sentencing reform and smart investments in local communities. Imagine for example, state reparative justice initiatives that support short term and long term investments to include:

- **Early Childhood Education** - Research has demonstrated the opportunity for prevention with at-risk pregnant teens or with at-risk children in early childhood. A strong program in this category is the Nurse Family Partnership (NFP), a home visitation program that trains and supervises registered nurses as home visitors. The initiative attempts to identify young, first-time mothers early in their pregnancy. The sequence of approximately 20 home visits begins in the prenatal period and continues over the first two years of a child's life and then decreases in frequency. A 15-year review of the Prenatal/Early Infancy Project in Elmira, New York found that nurse home visits significantly reduced child abuse and neglect in participating families, as well as arrest rates for children and their mothers. The NFP has been successfully evaluated in several sites and has been replicated in over 200 counties and many foreign countries.¹²
- **Health Interventions for Youth** - A primary measure of the juvenile justice system is its effectiveness in protecting youth who come before it and reducing the likelihood of their committing future offenses. Research shows that programs prioritizing family interactions are the most successful, probably because they focus on providing skills to the adults who are in the best position to impact the child's behavior. Examples for youth on probation include Functional Family Therapy (FFT) and Multi-Systemic Therapy (MST). FFT works with youth ages 11-18 who have been engaged with delinquency, substance abuse, or violence. The program focuses on altering interactions between family members, and seeks to improve the functioning of the family unit by strengthening problem-solving skills, enhancing emotional connections among family members, and addressing the ability of parents to provide structure, guidance, and boundaries for their children.¹³

¹² Greenwood, Peter W. and Turner, Susan "Juvenile Crime and Juvenile Justice," Crime and Public Policy. 2011. Oxford University Press. New York, NY. Pg. 88-129.

¹³ Henggeler, S. W., Melton, G. B., Brondino, M. J., Scherer, D. G., & Hanley, J. H. (1997). "Multisystemic therapy with violent and chronic juvenile offenders and their families: The role of treatment fidelity in successful dissemination." *Journal of Consulting and Clinical Psychology*, 65, 821-33.

- **Community Supports** - Research has demonstrated that a community-level approach can be effective at preventing crime in urban neighborhoods. Addressing the community-level perspective also acknowledges that federal, state, and local government policies not directly concerned with crime may nonetheless bear indirectly on crime rates through their impact on neighborhood structures.¹⁴

CONCLUSION

I am grateful for this opportunity to submit testimony to explore a reparatory justice framework in California. The Sentencing Project strongly supports efforts to center racial justice and reparations for communities harmed by mass incarceration in all laws, policies and practices developed to reform California's criminal legal system. The policy remedies you are considering have implications for other jurisdictions across the country. The features of the recommendation that I have mentioned would go far in aligning California's public policies to advance racial justice.

¹⁴ Coleman, James S. 1988. "Social Capital in the Creation of Human Capital." *American Journal of Sociology* 94: S95-120.