PARADISE LOST Crime in the Golden State 2011-2021

By Steven Smith

CRIME SCENE DO NOT CROSS

Paradise Lost: Crime in the Golden State 2011-2021 Steven Smith

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Executive Summary

2021 marks the end of a ten-year period of dramatic criminal justice reform in California, aimed at reducing incarceration as well as addressing the overrepresentation of minorities prosecuted and incarcerated.

Beginning with AB 109 in 2011, there has been a reduction in the average prison population from a high of nearly 175,000 inmates to 107,000 today.

With that decrease have come changes in victimization and reported crimes.

Some crimes that have increased:

- Homicides: In 2011, there were 1,794 homicides and by 2021 that number had risen to 2,361, which is an increase of 31.6 percent.
- Aggravated Assaults: In 2011, there were 91,483 reported aggravated assaults. In 2021 there were 123,122, an increase of 34.6 percent.
- Drug Use: In 2001, the year Prop. 36 took effect in California, there were 1,226 fatal drug overdoses, and by 2020 there were 8,908 according to U.S. Centers for Disease Control data. According to a CDC estimate, there were nearly 10,000 overdoses in 2021, an increase of approximately 715 percent over the 2000 figures.¹ While some argue that these are "victimless" crimes, tell that to the loved ones left behind or those who became crime victims at the hands of those seeking seeking money to fuel their drug habits.

Some reported crimes have decreased:

- Burglaries: In 2011, there were 230,334 reported burglaries and by 2021 the number had dropped to 136,275. A possible reason for this drop is that entering a retail business with the intent to shoplift is no longer defined as a burglary.
- Larcenies: In 2011, reported larcenies (thefts) were at 597,302 and by 2021 the number had fallen to 541,368. However, retail associations are reporting record losses. There may be two reasons for this, declining reporting and higher value thefts. Larcenies actually fell to their lowest level in ten years in 2020 (527,748), which could possibly be explained by retail closures due to the COVID-19 pandemic.

The cost of incarceration has not decreased despite the drop in the inmate population due in large part to the increasing cost of prison health care, which is over double the per capita health care spending of ordinary Californians. California's prisoners also enjoy a greater than 50 percent reduction in the mortality rate of average Americans.²

Racial overrepresentations in the criminal justice system persist.

CRIMES THAT HAVE INCREASED			
2011	2021	INCREASE	
1,794 HOMICIDES	2,361 HOMICIDES	↑ 31.6%	
91,483 REPORTED AGGRAVATED ASSAULTS	123,122 REPORTED AGGRAVATED ASSAULTS	↑ 34.6%	
4,180 FATAL DRUG OVERDOSES	NEARLY 10,000 FATAL DRUG OVERDOSES	↑ 715%	

SOME REPORTED CRIMES HAVE DECREASED

2011 230,334 REPORTED BURGLARIES	2021 136,275 REPORTED BURGLARIES	A possible reason for this drop is entering a retail business with the intent to shoplift is no longer defined as a burglary.
2011 597,302 REPORTED LARCENIES (thefts)	2021 541,368 REPORTED LARCENIES (thefts)	There may be two reasons for this, declining reporting and higher value thefts.

Introduction

I write this report after a thirty-year career in the criminal justice system in a variety of assignments that began in 1988. I served as a municipal police officer, sheriff's deputy, and district attorney's investigator in California, as well as an international police officer for the United Nations and Organization for Security and Cooperation in Europe, working primarily in the Balkans. It is through the prism of that experience as well as fifteen years studying and teaching in higher education that I report the following.

The last ten years have seen a decline in public safety in California. From the passage of Assembly Bill 109 in 2011, to voter passage of Propositions 47 and 57, to the last vote of the last session of the legislature in 2021, more Californians are dead, have been sexually assaulted, are the victims of traumatic injury, and more property has been stolen than if all of the legislative and public policy effort of the last ten years had not occurred.

In 2011, Californians were the safest we had been in thirty years. By every metric, crime was decreasing. Most dramatically it was decreasing in the most marginalized communities - which meant that the poor and persons of color were the most positively impacted.

What was wrong is that our prisons were overcrowded and rehabilitation programs were either not available to inmates or were not being accessed by them. In the words of then-Oakland Mayor Jerry Brown, when I was present for his testimony before the Little Hoover Commission in 2003, released prisoners were "raping and pillaging" Oakland. Oakland was not alone.

C The last ten years have seen a decline in public safety in California.

But rather than increasing prison capacity and improving rehabilitation opportunities, California decided to release prisoners who were unfit for release;

effectively decriminalize thefts and drugs; reduce the ability of prosecutors to charge enhancements for participation in criminal street gangs and the possession, use, and injuries caused by firearms; and enable the most anti-social amongst us to use those drugs to sexually assault victims. Further, they allowed the criminal exploitation of juveniles by making these crimes, for all intents and purposes, exempt from prosecution.

Prop. 47 looked good on paper - but it was a policy Trojan Horse filled with misconceptions and danger. It is impossible to separate violence, drug use, and thefts. Reducing the sanctions for theft

simply makes it easier for drug addicts to obtain the money they need to buy drugs. Effectively decriminalizing drugs – without meaningful and effective treatment – leaves addicts in the grip of overpowering addiction and the pharmacological violence they commit against innocent and unsuspecting victims and to each other. Preventing law enforcement from engaging with and taking down drug distribution networks ensures both a high level of systemic violence between competing distributors, and a never-ending delivery system that constantly seeks new users for their product.

Prop. 57 was similarly misconceived and misapplied. Almost no one in prison is there as the result of a conviction in a jury trial. They are there because they plead guilty – mostly to reduced charges and a reduced sentence. This means that their commitment offense, the crime which appears on their prison record, is not fully reflective of the facts of their crime. In short, without considerable research into the facts of a case, inmates are being released from prison by people who are ignorant of the facts. Prop. 57 went further, eliminating multiple counts, multiple victims, and the use of weapons from consideration in many cases during parole hearings. An inmate eligible for elderly parole – even for murder – need only be age 50 and have served twenty years. Thanks to Prop. 57, they are free and are re-offending.

There is much that can be done to improve public safety and I hope you will see evidence of that in this report.

I thank the Pacific Research Institute, in particular Sally Pipes, Rowena Itchon, and Tim Anaya, for giving me the opportunity to share my experience and analysis with you, and to Irtaza Mehdi for obtaining the statistics so vital to any analysis. I do so in the hopes that it will help better inform decision making, reduce crime, improve rehabilitation, and more than anything, prevent the needless victimization of more Californians. More than anything this report is for them – the victims.

A Personal Story of Crime in the 1960s

No brush could paint the picture No pen describe the sight That one can find in April In "The Valley of the Heart's Delight" -Clara Louise Lawrence, "The Valley of Heart's Delight"³

Until I was 14, I lived in the Valley of Heart's Delight.

On August 3, 1969, I was in my upstairs bedroom trying to sleep after a summer's day playing until the streetlights came on. As it is now, the Blossom Valley in Santa Clara County was hot in August, but the evenings often brought the cooling breeze and fog from San Francisco Bay and my window was wide open. Sometime that night, a scream rang out from a nearby house. I learned later that the scream was our neighbor hearing the news from the police that her daughter was dead. Kathie Snoozy, aged 15 and her friend Debra Furlong, aged 14, had been stabbed to death while picnicking at a nearby park. Kathie had 200 stab

wounds and Debra 100.

Kathie Snoozy was our backyard neighbor on the same block and her death struck fear in the young families with children in our neighborhood. As a result, our freedom to play after dark ended. I saw cars full of men driving slowly through the neighborhood with white handkerchiefs tied to their aerials. My dad told me they were looking for the killer. Eventually the panic died down but things had changed. We lived barely a block from Dickinson Elementary School, but school buses were available to take us. If we missed the bus, our moms would take turns driving us the few minutes it took to get us to school. One of my classmates was

In 1963, the year I was born, there were 673 murders in California. In 1969, the year of the Snoozy/Furlong murders, that number had more than doubled to 1,386. In 1981, the year I graduated from high school, it had more than doubled again to 3,143. Kathy Werner, a neighbor on Shawnee Lane whose mom shared driving duty with my mom. Kathy had two older brothers, Keith and Karl.

Kathy and I became buddies and her older brother Keith often babysat my sister and me. At least once, their eldest brother Karl shared babysitting duties with Keith.

Two years later, on April 11, 1971, Kathy Bilek was birdwatching at Villa Montalvo – a park that had once been an estate in Saratoga. When she didn't come home, her father Charles and sheriff's deputies searched the grounds. Later the next day her dad found her dead body – she had been stabbed 49 times. This time, there was a witness whose description of a suspicious person led them to a suspect.

One night soon after we were watching the news on TV and saw Karl Werner being led out of his apartment in downtown San Jose by police. He was under arrest for the murder of Kathy Bilek. Werner had been high school classmates with Kathie Snoozy and Debra Furlong – he later confessed to killing all three girls.

The night of Werner's arrest, his younger brother Keith came to our door sobbing to tell my parents how sorry he was and assuring them that he wasn't like his brother. That night the Werners left the Valley and we never saw them again.

Karl Werner died in prison in 2015.

In 1963, the year I was born, there were 673 murders in California.⁴ In 1969, the year of the Snoozy/Furlong murders, that number had more than doubled to 1,386.⁵ In 1981, the year I graduated from high school, it had more than doubled again to 3,143.⁶ In my 18 years, California's homicide rate increased 367 percent, while its population had grown by just 37 percent.⁷

By 1993, the number of murders in California peaked at 4,096.8

The Tipping Point

In October 1993, Polly Klaas was at a sleepover party when she was kidnapped, raped, and murdered by career criminal Richard Allen Davis. Californians had had enough of ever-increasing crime and the Polly Klaas murder galvanized political will in a profound way. The legislative response was SB 971, commonly known as "*Three Strikes and You're Out*" and its identical twin, the ballot measure Proposition 184. They were passed respectively in March and November of 1994 by the Legislature and voters.

The key provisions of Three Strikes included increased sentences for violent crimes. As the nonpartisan Legislative Analyst's Office wrote in an October 2005 primer on Three Strikes, these included:

- Second Strike Offense. If a person has one previous serious or violent felony conviction, the sentence for any new felony conviction (not just a serious or violent felony) is twice the term otherwise required under law for the new conviction. Offenders sentenced by the courts under this provision are often referred to as "second strikers."
- Third Strike Offense. If a person has two or more previous serious or violent felony convictions, the sentence for any new felony conviction (not just a serious or violent felony) is life imprisonment with the minimum term being 25 years. Offenders convicted under this provision are frequently referred to as "third strikers."
- Consecutive Sentencing. The statute requires consecutive, rather than concurrent, sentencing for multiple offenses committed by strikers. For example, an offender convicted of two third strike offenses would receive a minimum term of 50 years (two 25-year terms added together) to life.
- Unlimited Aggregate Term. There is no limit to the number of felonies that can be included in the consecutive sentence.
- Time Since Prior Conviction Not Considered. The length of time between the prior and new felony conviction does not affect the imposition of the new sentence, so serious and violent felony offenses committed many years before a new offense can be counted as prior strikes.
- **Probation, Suspension, or Diversion Prohibited.** Probation may not be granted for the new felony, nor may imposition of the sentence be suspended for any prior offense. The defendant must be committed to state prison and is not eligible for diversion.
- **Prosecutorial Discretion.** Prosecutors can move to dismiss, or "strike," prior felonies from consideration during sentencing in the "furtherance of justice."

• Limited "Good Time" Credits. Strikers cannot reduce the time they spend in prison by more than one-fifth (rather than the standard of one-half) by earning credits from work or education activities.⁹

In 2015, former State Senator and later Judge Chuck Poochigian wrote, "On August 30, 1993, the Department of Corrections estimated that the adult inmate population on June 30, 1999, would be 170,834."¹⁰ Less than one year later, on April 28, 1994, the Department revised its inmate population projections to, "incorporate the effects of the Three Strikes Law," signed on March 7, 1994. The new estimate for June 30, 1999, was 245,554, an increase of almost 75,000 inmates.¹¹ This is based on the statistics from the crime increases in the decade preceding the passage of Three Strikes, when the state prison population grew from 42,000 in 1984 to 116,000 in 1993, an increase of 190 percent.¹²

The Three Strikes effect was nearly immediate. By November 1994, prosecutors statewide charged 7,400 second and third strike allegations, more than 5,000 of which were in Los Angeles County alone.¹³ This caused an increase in jury trials as there would be no advantage or possibility of a reduced sentence for a defendant to plead guilty to a third strike. The Department of Corrections waited for their predictions to come true.

But what actually happened? Crime dropped and the rate of incarceration slowed.

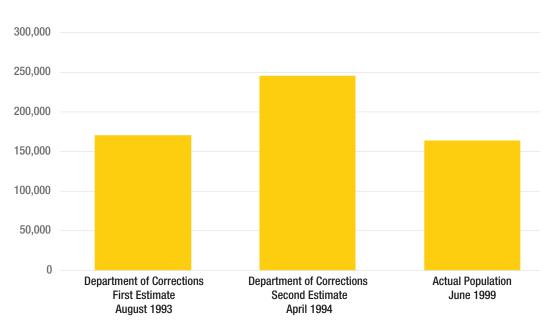


FIGURE 1. PREDICTED AND ACTUAL CALIFORNIA PRISON POPULATION UNDER THREE STRIKES LAW, 1999

Source: California Department of Corrections and Rehabilitation

Many would-be criminals, regardless of their socio-economic circumstances, choose crime and when their cost benefit analysis leans heavily toward the cost of committing a crime - they are deterred from committing that crime. From an estimated population of 245,554, the prison population had actually only risen to 164,000.¹⁴ This compares from an actual increase of 190 percent in the decade preceding 1994 to an increase of just 31 percent in the

decade after passage.

While Three Strikes and the number of "lifers" is often blamed for prison overcrowding, the number of inmates never reached the dire estimates of the Department of Corrections. And it never has. How could it be that the experts were so wrong? It's called deterrence and incapacitation. 66 By any measure, California made significant progress in reducing victimization.

By any measure, California made significant progress in reducing victimization. The 1994-2011 decline in homicides **saved 28,169 lives** that would have been lost had

homicides remained at just their 1993 levels and not increased.¹⁵ Had they been allowed to continue their relentless increase the death toll would have been nearly unimaginable for a modern democracy.

The Policy Cycle

It's impossible to discuss crime in the early 21st century without first talking about crime in the late 20th century. And any discussion about rising or falling crime is not complete without knowing something about the late Professor Eric Monkkonen, who was an eminent scholar of History and Policy Studies at UCLA before his death in 2005. His research indicates that crime is cyclical and that its rise and fall is largely a function of public policy. As crime rises, public policy shifts towards robust enforcement and accountability. As statistics now show, when crime rates fall, the door opens for reduced accountability and a resulting lack of deterrence.

In a 2016 interview with David Frum in *The Atlantic*, criminologist Barry Latzer echoes Monkkonen by saying, "rises in violent crime have much more to do with migrations of high-crime cultures, especially to locations in which governments, particularly crime-control agents, are weak. Declines are more likely when crime controls are strong, and there are no migrations or demographic changes associated with crime rises."¹⁶ Unfortunately, Latzer also wrote in 2016 that while crime was rising, it wasn't indicative of a trend.¹⁷ Crime statistics from 2018 through 2021 would prove him wrong.

Reformers in California seized on the period of low crime to reevaluate the operations of the state's criminal justice system. Supported by researchers including the notable Harvard researcher and

K Reformers in California seized on the period of low crime to reevaluate the operations of the state's criminal justice system. author Steven Pinker, who took notice of declining homicide rates and declared the United States – and in fact, the entire world – was in the midst of a great civilizing period. Pinker's detailed analysis of violence worldwide in his book *The Better Angels* of our Nature provided compelling evidence of this and reformers went to work.

Rallying behind the terms "mass incarceration," "non-violent drug offenses," and "institutional racism," they successfully shifted the focus away from the priority of reducing victimization to reducing incarceration. Using racial statistics that show black Americans are arrested and incarcerated at

higher rates than whites, they have sought to delegitimize the criminal justice system and its agents as institutionally flawed, racist, and ultimately unjust. The new victims were criminals who were victims of that system. Meanwhile black Americans are overwhelmingly victimized at rates far above the victimization rates of any other racial groups. This is something the reformers choose to dismiss or ignore.

Beginning in 2011, crime and the operation of the criminal justice system in California has been shaped by many forces: the legislative changes that began with AB109, the so-called public safety realignment law enacted in 2011, followed by voter-approved ballot measures Prop. 47 in 2014, and Prop. 57 in 2016, as well as numerous acts by the California Legislature and administrative decisions by the California Department of Corrections and Rehabilitation (CDCR). Those changes are four pronged. De-criminalize. De-carcerate. De-legitimize. And after the death of George Floyd, De-fund. While the de-fund movement has lost momentum, its effect on police morale, retention, and recruiting has been lasting.

As much as the work of academic research is important to the study of crime – it is perhaps better at explaining why things happened in the past and are less effective at predicting future events. In the words of Chuck Poochigian – "Felons do not think like academics and . . . academics do not know how felons think."¹⁸

A Note on Crime Statistics

The standard for measuring crime are the annual crime rates. They are tabulated at the local, state, and national level and those results are published annually - sometimes with monthly or quarterly updates as the year progresses. All three are reflections of reported crime, which typically number well over one million incidents per year in California and are indicative of the FBI tabulation standards set forth in the Uniform Crime Report at the federal level and the Crime in California report at the state level.

Some demographic details are also included in crime statistics including gender, race, and age of both victims and perpetrators. Hate crimes and gender-biased violence are also featured in the California Attorney General's Office annual report.

Many crimes in California are not included in state crime statistics because they are investigated and prosecuted at the federal level. They are mainly immigration and drug offenses, however, nearly the full range of criminal activity is investigated and prosecuted by the various federal investigative agencies and the US Attorney's office. These crimes can have broad and profound impact on victims in California, for example the multi-million dollar GLR fraud scheme in Scotts Valley¹⁹ or Bernie Madoff's multi-billion dollar Ponzi scheme that reached many Californians²⁰. These statistics are available – but are not included in California's criminal incident databases. In 2020, the total number of crimes prosecuted at the federal level in California was 5,382.²¹

Coupled with the formal reporting mechanisms are thousands of discretionary decisions made every day by criminal justice professionals that can impact whether a crime is reported and recorded in the crime statistics or not. Should an officer arrest or release with a warning someone for a minor offense? Or should a probation officer document a probation violation as a new criminal case or is continued monitoring on probation the better option. In the case of probation officers the decision is also monetary as under realignment county probation departments are funded by probationers on their caseload – sending them to prison cuts their own budget. All these examples are criminal law violations known to law enforcement but not recorded in the statistics.

In addition, survey data like the National Crime Victimization Survey indicates there is an underreporting-phenomena.²²

Other sources of unreported property losses exist. Insurance trade groups and various retail organizations track losses due to criminal activity that is often not reported due to the business decision that participation in the criminal justice system is a cost item they do not want to incur.

A recent survey conducted by the *San Francisco Chronicle* and Stanford University researchers indicated that 45 percent of San Franciscans had been the victim of a crime, which is far above San Francisco's reported crimes.²³ In short – most victims elect not to report when they have been victimized.

And yet, criminal justice policy remains heavily focused on two indicators – reported crime statistics and demographic data. Objectively, this allows a common reference point for the measurement of crime as well as a way of comparing jurisdictions of different sizes in a common framework.

What it also does is reduce victimization and victims to numbers, which will be explored in greater detail in the following sections of this paper.

Plata, Prop. 109, and Realignment

In 2012, when California was still recovering from the 2008 financial crisis, then-Gov. Jerry Brown called for \$15 billion in state spending cuts in his 2012 budget proposal. At the same time, California was forced by the Supreme Court to reduce its prison population to 137.5 percent of its so-called "design capacity." Known as the *Plata* decision, it was the result of over ten years of litigation between the State of California and prisoner rights attorneys over the poor quality of prisoner health care.

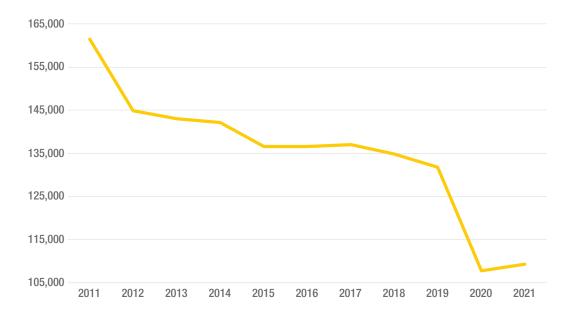
Design capacity is determined by the architects and designers of a facility and the operational capacity of a prison is determined by staffing and resources. Some prison facilities have cells, while inmates live in dormitories or housing pods in others. Today, for the most part, a single celled inmate is either in solitary confinement or administrative segregation due to the inmate's risk to others or vice versa. Hence, solitary confinement and single cell housing are not synonymous. A single cell inmate has far greater access to out of cell recreation, prison jobs, and other programs versus an inmate in solitary confinement. Many design capacities are determined by the number of inmates that can be held in single cells.

Seizing on the opportunity to both reduce future spending and satisfy the terms laid out in Plata, Gov. Brown signed Assembly Bill 109, which called for the release or transfer to county jails of tens of thousands of inmates.

Seizing on the opportunity to both reduce future spending and satisfy the terms laid out in *Plata*, Gov. Brown signed Assembly Bill 109, which called for the release or transfer to county jails of tens of thousands of inmates. The released prisoners were known as "triple-nons": non-violent, non-serious, and non-sex-offender inmates. They were further triaged by release dates – the nearer an inmate was to the end of their sentence, the sooner they would be released. Other felons were transferred to county jails for the remainder of their sentences, and counties received additional funding to increase jail capacity.



2011-2021, All inmates under the supervision of CDCR with the exception of parolees



Source: CDCR Data

Along with state prisoner transfers to county jails, less serious felons are currently being sentenced to multi-year terms in county jail rather than state prison. Ironically, some of the transferred prisoners are not happy in county jail. Jails were built for pretrial detention and short sentences of less than a year. In comparison, CTF Soledad (now closed) has the largest prison yard in the system that includes lawns, athletic fields, basketball courts, tennis, a par course, and picnic benches. Just up the highway, Santa Cruz County jail has a few small concrete and fenced patios. The prison transferees also brought with them a much higher level of criminal sophistication into facilities not as well prepared to manage them as the prison system. Whatever their faults, the state prison system is managed by correctional professionals while our county jails are managed by elected sheriffs, who in most cases, rise through the operational/patrol side of law enforcement.

Despite the releases and transfers, California prisons and jails were still considered overcrowded. More releases were needed. Enter Props. 47 and 57.

Note: CDCR population figures may vary slightly depending on the data source

Proposition 47 (2014)

Prop. 47, known as the "Safe Neighborhood and Schools Act," was passed overwhelmingly by the voters in 2014. The Judicial Council of California writes "Proposition 47 created new misdemeanors and reclassified several felony theft offenses as misdemeanors."²⁴ The savings to the state budget from fewer incarcerated inmates would be channeled into treatment programs and – taking a page from the California Lottery campaign of the 1980s – promised to better fund public schools. Prop. 47 also allowed for the resentencing and release of anyone incarcerated under the old statutes.

CRIME	PROP 47 REVISION	PRIOR LAW
Shoplifting/Commercial Burglary	Created the new misdemeanor crime of commercial theft/shoplifting of less than \$950.00 for offenders who enter with the intent to steal	Formerly the felony crime of burglary regardless of value
Forgery	Any forgery resulting in the theft of good values less than \$950.00	Formerly chargeable as a felony or a misdemeanor (wobbler)
Insufficient Funds	Forgery of "specified instruments" under \$950.00 would be punishable as a misdemeanor. With three offenses it increases to a felony	Formerly chargeable as a felony if there were certain priors or if the value was over \$450.00
Petty Theft	Raised the felony threshold to thefts over \$950 in value	Formerly chargeable as a felony for thefts over \$400 in value
Receiving Stolen Property	Raised the felony threshold to thefts over \$950 in value	Formerly chargeable as a misdemeanor or a felony (a wobbler) for thefts over \$400 in value
Petty Theft w/a Prior	Eliminated the crime unless the prior offense requires registration as a sex offender	Formerly chargeable as a felony if the suspect had committed certain prior offenses.
Personal Use Drug Possession	Reduces the possession of dangerous drugs for "personal use" to a misdemeanor. Including marijuana, opiates, and methamphetamines.	Formerly chargeable as a felony if the suspect had committed certain prior offenses.

Those offenses reduced included:

Chart source: Judicial Council of California, "Proposition 47: The Safe Neighborhoods and Schools Act," https://www. courts.ca.gov/prop47.htm Advocates of Prop. 47 cite declining theft statistics as evidence that the reduction and its treatment programs have had a positive effect on crime rates as offenders were being treated in pre-trial diversion programs. They do so by reaching back to 2011 to be able to average the crime rate to levels favorable to their argument.

Theft

The National Retail Federation reports that retailers lost \$720,000 for every \$1 billion in sales in 2020. That's up from \$450,000 just 5 years earlier. Further, about 69 percent of retailers said they had seen an increase in organized retail crime (ORC) activity over the past year. They cited reasons such as COVID-19, policing, changes to sentencing guidelines, and the growth of online market-places for the increase in ORC activity.²⁵

Reported theft statistics may have also decreased due to the trend towards online retailing. It is also worth considering that as theft rates are not based on the number of businesses victimized – they are based somewhat obtusely on the population – this means that the number of thefts are being borne by fewer retail victims. Additionally, not all theft is retail and occurs throughout the manufacturing and supply and distribution chain, which in most cases is written off as shrinkage.

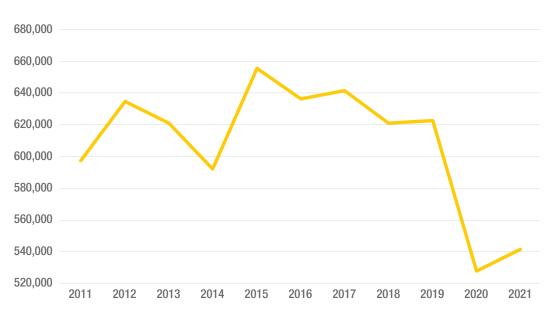


FIGURE 3. TOTAL REPORTED INCIDENTS OF LARCENY IN CALIFORNIA BY YEAR, 2011-2021

Source: California DOJ Crime Data



Source: KTLA-TV, Los Angeles, https://ktla.com/news/smash-and-grab-robbery-of-t-mobile-store-in-orange-caught-on-camera/; CBS News Los Angeles, https://www.cbsnews.com/losangeles/news/indictment-2-7-million-worth-jewelry-beverly-hills-smashand-grab; NBC News, https://www.nbcnews.com/news/us-news/chanel-latest-target-string-southern-california-smash-grab-attacks-rcna39370

Thefts from private citizens also appear to be running far above the reported statistics.

In San Francisco, thefts from vehicles are so common that car owners have been leaving notes on the windshields of their unlocked cars advising would-be thieves that there is nothing inside hoping they will return to not find their windows smashed. The *San Francisco Chronicle* maintains a "Car Break-In Tracker" on its website indicating that from September 5 – October 5, 2022, 1,950 car break-ins occurred. That's 65 per day and those are only the victims who bother to report, usually because their insurance company requires them to in order to file a claim.

In Los Angeles, the advent of fall signals the start of school and with it bike theft season. Since the passage of Prop. 47, from January 1, 2015, to July 31, 2022, there have been 8,402 reported thefts of bicycles in the city limits of Los Angeles alone.²⁶

Sexual Assault

In 2013 the FBI reset the standard by which sexual assaults are reported. According to the department:

Previously, offense data for forcible rape was collected under the legacy UCR definition: the carnal knowledge of a female forcibly and against her will. Beginning with the 2013 data year, the term "forcible" was removed from the offense title, and the definition was changed. The revised UCR definition of rape is Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. Attempts or assaults to commit rape are also included; however, statutory rape and incest are excluded.²⁷

This caused the FBI and State statistics to reflect an increase.

While "force" is now being properly defined, using intoxicants on victims is another form of sexual assault that is on the rise. Alcohol has long been in use by would-be-rapists, but now drugs with the capacity to render victims unable to defend themselves or give consent while also impairing their memory are available. Commonly known as "ruffies," they are a broad category of intoxicants that include Rohypnol, GHB, as well as commercially available sedatives like Ambien. Together they are known as "date rape" drugs.

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Their use in sexual assaults has become

epidemic, leading nonprofit drug and alcohol rehabilitation organization Phoenix House to report that 55 percent of all female victims and 75 percent of all male victims of sexual assault were victimized through the use of intoxicants.²⁸ The possession of these drugs was, until 2014, a felony.

Prop. 47 reduced the possession of these drugs for "personal use" to a misdemeanor and sexual assaults generally climbed. The only decline in sexual assaults after 2013 reached its low in 2020, when colleges and universities were closed during the COVID-19 pandemic. In 2022, rates began to increase again.

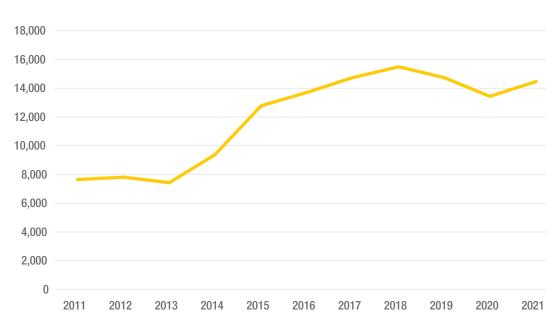


FIGURE 4. TOTAL REPORTED INCIDENTS OF RAPE IN CALIFORNIA BY YEAR, 2011-2021

Source: California DOJ Crime Data

Public Safety Policy Changes and Drug Crimes

In many ways, Prop. 47 was built on laws that were already failing. Prop. 36 had been in effect for nearly fifteen years but had done little to nothing to reduce addiction and was such a failure that, by 2014, many judges were no longer sentencing individuals under the law or did so knowing that the suspect would fail out of their treatment programs in most cases. The term "non-violent" drug offense led people to believe that California was filling its prisons with minor drug offenders. It wasn't true in 2000 and it is not true now. Drug offenders represent between 5 and 8 percent of the inmate population, and in most cases, they are manufacturers and traffickers. With drug offenders "out of the system," why have any narcotics enforcement at all?

Prop. 36 (2000)

With the passage of Prop. 36 in 2000, California began the process of effectively decriminalizing heroin and in fact, all illegal drugs. The idea was that arrestees would be diverted into mostly outpatient treatment programs and their progress in treatment would be monitored by probation officers and the courts. It hasn't worked. The outpatient treatment programs left patients on the streets on their own and – without threat of rearrest and prosecution – most reverted to their previous drug using behaviors, if they ever stopped at all. This was particularly true of heroin addicts.

After Prop. 36, Gov. Brown began to disarticulate California's drug enforcement apparatus. He began by cutting grant funded narcotics enforcement and culminated his efforts by shutting down the California Bureau of Narcotics Enforcement entirely. Today, California's budget contains a paltry \$20 million in drug task force expansion²⁹ in a state of 39 million people. Without effective interdiction of illegal drug distribution systems through enforcement, the drug problem will not end.

Today, just three percent of Prop. 47 "savings" find their way to our public schools. In 2021, that meant \$3.48 million.³⁰ It's a ridiculous budgetary shell game.

With nearly 10,000 dead addicts to bury and hundreds of thousands of low performing students, skyrocketing thefts, and closing businesses, one has to wonder how, other than a reduced prison population, Prop. 47 advocates define success. Voters expected and deserved more.

Drugs, Death, and Declining Schools

In most cases theft finances drug addiction. While Prop. 47 has reduced potential charges for personal use drug possession to a misdemeanor and claims to be funding treatment programs, what has also happened are skyrocketing overdose deaths.

According to the U.S. Centers for Disease Control, in 2015, there were 4,659 fatal drug overdoses in California. In 2020, there were 8,908. This is an increase of 91 percent in five years. By the end³¹ of 2021, the deaths totaled almost 10,000. California now accounts for roughly 10 percent of all overdose deaths nationwide.³²

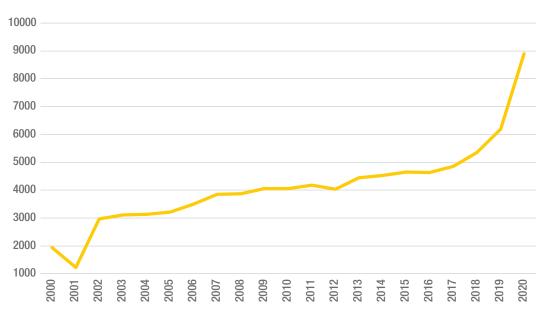


FIGURE 5. CALIFORNIA DRUG OVERDOSES BY YEAR, 2000-2020

Source: CDC & NCHS

Heroin, Oxycontin and Fentanyl are all opioids. It's difficult to explain the incredible hold that opioids have on users, but I can tell you about one I knew named Josh.

An Opiate Case Study

As a criminal investigator in the Santa Cruz County District Attorney's Office, I worked with a witness in a sexual assault case we'll call "Josh." He told me that his addiction to heroin was so powerful and expensive that in order to afford them, Josh, who identified as a heterosexual, willingly prostituted himself to homosexuals and preferred to smoke heroin to avoid the telltale injection marks from the family he sometimes saw and also from potential tricks. But mostly he stole. He, like most addicts, explained getting high on heroin in sexual terms. It makes sense because opioids activate the pleasure receptors in the brain. But if sex is a 100 on a pleasure scale – an opioid high is 100 times that. He told the classes that when he used heroin, he instantly lost all of his insecurities and became the man he dreamed he could be. Fentanyl is many times more powerful than heroin.

The Price of Addiction

Based on my prior law enforcement experience on the streets, a daily opioid (heroin or fentanyl) habit can sometimes reach \$100 per day or \$36,500 per year depending on price, availability, and how far one has progressed in their addiction. That's potentially \$36,500 an addict needs to raise before they eat or find a place to sleep – and they choose drugs over food or shelter all the time. But stolen goods do not sell on the street for their full retail value. In fact, stolen property sells for pennies on the dollar. At 25 cents on the dollar, that's \$146,000 in stolen goods per addict. It's not hard to see why a city like San Francisco has seen an explosion in car burglaries, retail thefts, and homicides. Those same 100 addicts can generate almost \$1.5 million in thefts through stealth, brazen thefts, and violence. California has many times that number.

66 Many drug treatment providers believe there is a vital link between law enforcement and treatment.

Compounding all of that, most drugs are not produced in pharmaceutical labs, and even when they are, they are "stepped on" or diluted by dealers with other substances in order to increase their profit margins. This means an addict has little control over their actual dose. The result is an overdose.

Prior to Prop. 36, an individual arrested

for being under the influence of an opiate (11550 HS) would face 90 days in county jail. Why 90 days? Because they could be detoxed in 90 days, and then referred to a drug program. Many drug treatment providers believe there is a vital link between law enforcement and treatment. If treatment and sobriety are the carrots – law enforcement provides the stick. Law enforcement and their social service partners can also help identify those in need of care and then enforce the terms of their eventual release and post care monitoring.

Josh's story confirms what many in law enforcement and treatment already know. Being addicted to heroin, or any drug, places you on an ever-declining addiction sine curve. The horizontal axis contains a line called normal and the sine curve peak is the high. But as the high wears off, you descend below normal.

Over time, the highs become less high and the lows, lower. Eventually becoming high doesn't get you high anymore. Addicts struggle to get back to normal. The "low" or being "sick" is so painful that drug addicts will do anything to "stay well." Being high is constipating and being sick causes intense diarrhea. No one should be surprised that San Francisco has a public defecation problem.

Such is the cycle of addiction.

Many have stolen their way out of a place to live as family and friends can no longer sustain their presence in the home. Today many are the "un-housed."

In response to this, the Legislature actually expanded eligibility for probation to heroin dealers, including dealers with prior convictions, by enacting SB 73 (2021).³³ This effectively puts heroin into the drug distribution system consequence free.

Proposition 57 (2016)

Passed by the voters in 2016, Prop. 57, the so-called "Public Safety and Rehabilitation Act," was designed to reduce the length of sentences for individuals serving time for violent crimes committed during California's "get tough on crime" era of the 1990s. It allows for early release for inmates deemed by the CDCR to be suitable through a variety of criteria. Where in the past individuals serving sentences for violent crimes were required to serve at least 85 percent of time served before they would be eligible for early release, CDCR's new rules allow for early release at just 50 percent of time served.

CDCR reports that under Prop. 57 guidelines in 2018 they released 1,136 felons, another 1,184 in 2019, 1,234 in 2020, and 1,424 in 2021, for a total of 4,978.³⁴

Proposition 57 has allowed the CDCR to modify parole release criteria:

- It has allowed for people convicted of multiple offenses involving multiple victims to be eligible for release as if they had committed just one offense with one victim.
- Repeat offenders are eligible for release after serving the same sentence as first-time offenders.
- Offenders who engaged in egregious conduct (enhanced sentences for the use of a gun, or particularly cruel and injurious victimization) are eligible for release, as if those facts did not exist.

Where in the past individuals serving sentences for violent crimes were required to serve at least 85 percent of time served before they would be eligible for early release, CDCR's new rules allow for early release at just 50 percent of time served.

Worse, Prop. 57 prohibits a district attorney from filing adult charges against juveniles, even for violent crimes including homicide, rape, and carjacking. This reverses Prop. 21, passed by the voters in 2000.

AB 3234 – "Elderly" Parole

Elderly parole is intended to further reduce California's prison population by releasing older inmates no longer deemed to be a threat to public safety.

On the face of it, elderly parole seems reasonable. Many inmates do age out of their criminality and the idea that an elderly inmate using a wheelchair or a walker is a threat to public safety seems remote.

When the policy was first implemented in 2014, inmates had to be at least age 60 and have served 25 years consecutively to qualify. With a new law (Assembly Bill 3234) taking effect in 2021, it was reduced to age 50 and having served just 20 years. Consider that "elderly" Dwayne "The Rock" Johnson is 50 years old, Mark Wahlberg is 51, and Tom Cruise is 60.

Since then, the Board of Parole Hearings (BPH) have been busy as prisoner advocate attorneys have been advising their clients to seek release under the new, more favorable rules. From 1978 to 2013, it granted parole to a total of 4,885 inmates – over 35 years. From 2014 through 2021, that number jumped to 8,521 in just 7 years.³⁵

Prop. 21 and Juvenile Crime and Accountability (SB 1391) Collide

Proposition 21 was a ballot proposition aimed at addressing gang violence and allowing prosecutors to hold juveniles accountable as adults for violent crimes.³⁶ 18 years later, voters reaffirmed their desire to continue to hold juveniles accountable by voting to pass Prop. 57, only now the decision is left to a judge.

However, in 2018 the state legislature reversed the will of the voters by enacting Senate Bill 1391 to prohibit charging anyone under 16 as an adult, but allowing judicial discretion if a prosecutor seeks to charge a 16 or 17 year old as an adult.

Charging juveniles as adults sounds draconian. There is a compelling case to be made that once a juvenile is convicted as an adult, reaches 18, and is transferred to adult prison, their future prospects are bleak.

But prior to SB 1391's passage, district attorneys rarely ever charged juveniles as adults. Known as "adult court dispositions," their numbers peaked in 2010 at just over 700 statewide and declined to under 200 in 2017 before lawmakers acted. Even at its peak, many adult court referrals went to the now closed Youth Authority.³⁷

- By 2019, adult dispositions dipped to below the number of juveniles charged with murder and in 2020 California saw juvenile homicides increase. That means juvenile murderers as old as 17 and 11 months can be released before the expiration of juvenile court jurisdiction at age 25.³⁸
- There are two reasons to charge juveniles as adults. One is that their crime is so egregious that the perpetrator is not suitable for rehabilitation within the juvenile system. Surprisingly, the other is that exempting a class of people from criminal prosecution makes them far easier to exploit by older, more sophisticated criminals. In *Oliver Twist*, Dickens identified that person as Fagan. Today they are the leaders of California's criminal street gangs.³⁹

Thanks in part to SB 1391, those gangs again have at their disposal youths who they lure into criminal activity with the promise of safety, friendship, and relative wealth that is essentially risk free. In short, juveniles are now less safe.

If an officer stops a car full of gang members, who will claim ownership of any contraband, drugs, or guns in the car? The juvenile, of course. A juvenile is always in the car.

Prop. 21 made juveniles legally equal in terms of criminal culpability, thus granting prosecutors a valuable tool to obtain their cooperation in testifying against older, more sophisticated gang members. Successful gang prosecutions went up while juvenile prosecutions – and all crime – went down.

Today, that legal tool has been taken away from California's prosecutors and gangs know it. After reaching a ten-year low, homicides by juveniles are now up, rising from 68 in 2019 to 101 in 2021 – an increase of 48.5 percent. In addition, only 12 of the 101 were referred to adult court. This means 89 murderers in 2021 will be free by their 25th birthday.⁴⁰

Voters should consider that even well-meaning criminal justice reforms can have the opposite effect when poorly conceived, researched, and implemented. SB 1391 is just such a reform.

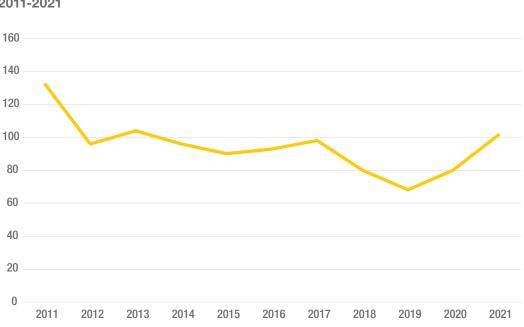


FIGURE 6. CALIFORNIA HOMICIDES COMMITTED BY JUVENILES, BY YEAR, 2011-2021

Source CA Attorney General

Homicide Up 31 Percent

In 2011 Californians experienced 1,794 homicides, less than half their 1993 peak. By 2021 the number of victims had risen to 2,361, an increase of 7.2 percent over 2020 levels (which was in turn a 31.6 percent increase over 2019).⁴¹

Since 2011, there have been three peaks and two valleys in the number of homicides. The peaks were 1,878 in 2012, 1,930 in 2016, and 2,361 in 2021 and the valleys were 1,745 in 2013 and 1,679 in 2019. Some of those homicides have been committed by prison inmates released under the newly relaxed parole standards permitted under Prop. 57.

Take the case of Smiley Martin. In the early morning hours on Sunday April 3rd, 2022, as people were leaving a nightclub in downtown Sacramento, automatic weapons fire rang out sending people fleeing. When the victims were counted, 18 people were shot and six were dead. On the following Tuesday, the *Sacramento Bee* reported three suspects had been arrested and one of them, Smiley Allen Martin, had been granted early release, over the objections of the Sacramento County District Attorney's Office, by the California Department of Corrections and Rehabilitation (CDCR) under Prop. 57.⁴²

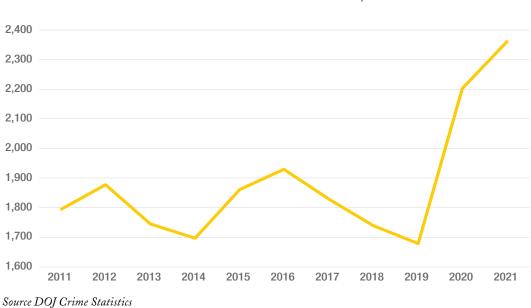


FIGURE 7. TOTAL REPORTED CALIFORNIA HOMICIDES, 2011-2021

In the United States, 80,000 people are injured by firearms every year. Some are accidental, others self-inflicted (suicide), and others criminal. Over 40,000 will die.⁴³ Forty-three percent of those are homicides. What's not often reported are the number of intended homicides that are prevented due to medical care. Those numbers lie within the aggravated assault statistics.

Aggravated Assault Up 34 Percent

Aggravated (violent) assaults have increased without abate for eight years. Most alarming is the number of gunshot wounds treated in California's trauma centers. On September 29, 2022, physicians from Highland Hospital in Oakland reported in 2018 they treated 278 gunshot wounds. By 2021 that number increased to 547 - an increase of 93 percent. With only three months left in 2022, they had already treated another 514 - well on the way to match or exceed 2021.⁴⁴

The murderous rampage in Sacramento in April 2022 allegedly by Smiley Martin and his accomplices resulted in 18 people being injured—six of whom would later die due to their injuries. That ratio is consistent with other mass shootings and informs us that murderous intent runs far higher than the actual number of homicides.

Consider the ratios in other recent mass gun crimes:

- November 21, 2022 Colorado Springs 5 Killed. 25 Injured.
- June 12, 2016 Orlando 49 Killed. 53 Injured.
- December 2, 2015 San Bernardino -14 Killed. 22 Injured.⁴⁵

Trauma centers are holding the line on what would be a murderous catastrophe on top of what is already an epidemic.

The trauma to survivors, victims' families and loved ones, and lost human potential is incalculable.

According to Stanford University research, the financial costs are also high:

Government insurance paid the most for hospitalizations related to firearm injuries during the six-year period, according to the study. Of a total \$5.47 billion in costs, Medicaid contributed \$2.1 billion and Medicare provided \$389 million. Private insurance and self-paying patients each accounted for about \$1.1 billion, while the remainder was covered by other payers.⁴⁶

In a similar national study covering 2006 through 2014, Johns Hopkins University found average per-patient emergency department charges of \$5,254 a year, and inpatient charges of \$95,887, add-ing up to \$2.8 billion annually.⁴⁷

Smiley Martin was a Prop. 57 early release, and while seemingly a just action to the proponents of Props. 47 and 57 and the advocates of decarceration and racial justice, it was anything but just in hindsight.

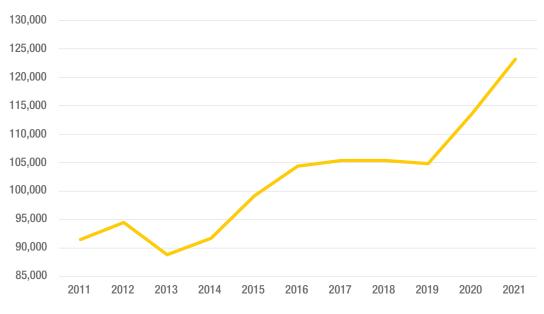


FIGURE 8. TOTAL REPORTED CALIFORNIA AGGRAVATED ASSAULTS, 2011-2021

Source DOJ Crime Statistics

COVID-19, Health Care and Incarceration

Twenty years ago, prisoner advocates made a case that prison health care in California needed improvement. In 2005, a federal judge established a prison receivership and appointed J. Clark Kelso as receiver. Over the course of the receivership, additional billions have been spent on California prisoner health care. Today, California's 107,000 custodial inmates are served by 15,219 medical, dental, and mental health professionals with an annual budget of \$2.1 billion and per capita inmate spending of \$19,626.⁴⁸ This is considerably higher than per person health care spending for non-criminals, which the Kaiser Family Foundation puts at \$10,299.⁴⁹

Contrary to depictions in the media of a violent and dangerous environment, administered by a failed bureaucracy, and serviced by a poor health care system, prisons and prison inmates are a highly protected population and enjoy a relatively risk-free environment in terms of overall mortality.



FIGURE 9. MORTALITY RATES PER 100,000 IN 2020

Sources: U.S. Centers for Disease Control, California Prison Receivership

The 2020 prison receiver's "Analysis of California Correctional Health Care Services" reports an average inmate population of 107,347.⁵⁰

There were 141 fatal cases on COVID-19 found among inmates, including 83 cases of cancer, 54 incidents of cardiovascular disease, 46 cases of infectious disease, 32 cases of liver disease, 31 suicides, 23 drug overdoses, 11 cases of neurological disease, and 10 cases of pulmonary disease. All other forms of death are in single digits. Homicides and suicides run higher that the state average but significantly below the homicide rates in California's most dangerous cities. An inmate is far less likely to be the victim of a homicide in prison than he or she would be on the streets of Oakland.⁵¹

Lastly, most inmate deaths are categorized as "expected" as inmates succumb to terminal illnesses.

Between July 2020 and December 2021, nearly 17,000 nonviolent, non-serious, and non sex offender prison inmates were ordered released under emergency COVID-19 protocols instituted by Gov. Gavin Newsom on July 10, 2020.⁵² An inmate is far less likely to be the victim of a homicide in prison than he or she would be on the streets of Oakland.

Initially, violent offenders weren't included in the emergency release protocols but then COVID-19 incentives and sentence reductions including granting 12 weeks of "PPC" positive programming credit were instituted. CDCR, under authority granted by Gov. Newsom, stated PPC "will be awarded to help offset not only credits not earned due to program suspensions, but also to recognize the *immense burden incarcerated people have shouldered through these unprecedented times*."⁵³

The prisoners receiving a three-month reduction in their sentence included "all Division 'A' through 'F' offenses, which include but are not limited to murder, rape, battery, assault, arson, escape, possession/distribution of contraband, possession of a cellphone, and gang activity."⁵⁴

The criteria include no institutional rule violations for three months. Nearly every inmate, with the exception of those under sentence of death and life without parole, or LWOP, qualified for the credit.

That's a one for one reduction even for inmates required to serve 85 percent of their sentence for violent offenses. CDCR wrote "that nearly 108,000 people will be eligible for PPC. Of these, about 2,100 would advance to the point they are eligible for release between July and September."⁵⁵ This included violent offenders.

Gov. Newsom's state of emergency authority will not end until February 28, 2023, allowing the extra-legal releases to continue until then.

Homicide Victimization by Race

From 2011-2021, 20,715 Californians were the victim of a criminal homicide. Based on their percentage of the population the three largest racial groups should have experienced the following numbers of homicide victimizations⁵⁶:

White	Black	Hispanic
35% of Population	6.5% of Population	40% of Population
7,218	1,340	8,250

The actual victimization statistics are:

4,089	5,954	9,087
White	Black	Hispanic
19.7% of Victimization	28.7% of Victimization	43.9% of Victimization

Put another way, blacks are victimized at nearly 4.5 times their percentage of the population while Hispanic victimization rates are equal to their percentage and white victimization rates are half that of their percentage of the population.

Most personal crime stays within racial and ethnic groups. Blacks victimize blacks, whites other whites and so on. Blacks are overrepresented in homicide statistics because they are murdered by other blacks at a rate far higher than other racial groups.

This helps clarify police use of deadly force. In order to reduce violent crime in black communities, police find themselves engaging with those same individuals who are committing the murders of 5,954 blacks in California – violence can be the result.

According to the California Attorney General's Office, 110 of the 660 civilians involved in police use of force fatal and non-fatal incidents were black. This represents just 16.7 percent of the number injured or killed, far below the number and percentage of black criminal victimization.⁵⁷

Critics of the justice system often remind us that blacks represent approximately 28 percent of the prison population⁵⁸, a fact which should lead one to the conclusion that perhaps the best way to save lives as well as reduce minority overrepresentation in prison is to prevent crime.

Conclusion

Reducing crime, incarceration, and racial over-representations in the criminal justice system cannot be done through decriminalization and de-carceration without first changing incentives. Reformers know this but they have gone about these changes in the wrong order. Also, they have forgotten about the effectiveness of deterrence and the threat of incarceration in modifying human behavior.

De-carceration and decriminalization in order to prevent so-called mass incarceration and correct racial inequities has left California with a new reality for 2023 – that of "mass victimization" through increasing homicide, sexual assault, aggravated assault, thefts, overdose deaths, and the collective trauma of the absence of public safety and confidence in our institutions.

The correcting of racial disparities in the criminal justice system can and should be addressed through crime reduction which will also prevent victimization. And certainly the longest sentences need to be reserved for the most serious and dangerous offenders.

Issues relating to effectiveness of counsel and racial sentencing and probation disparities probably exist but here is a fact – every defendant who pled guilty did so standing next to a defense attorney. But that is a topic for another study.

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About the Author

Steven Smith is a fellow in urban studies at the Pacific Research Institute, focusing on criminal justice policy in California.

He is a recognized leader in education, training, law enforcement, and peacekeeping operations, with over 20 years of experience in domestic and international policing and investigations. His work has been published in numerous outlets, including the *New York Times*.

He began his career as a police officer with the Scotts Valley Police Department, conducting criminal investigations, serving as a department juvenile officer, managing juvenile diversion programs, and conducting community crime prevention programs.

Later, he served as an inspector with the Santa Cruz County District Attorney's office, conducting criminal case investigations and trial preparation, serving as the office public information officer for many different cases, and serving as the office representative on the county sexual assault and domestic violence task forces.

For 14 years, Smith served as a lead instructor in the Administration of Justice program at Gavilan College in Gilroy, instructing students for future criminal justice employment in topics including community policing, investigations, corrections, evidence, juvenile justice, criminal procedures, criminal law, probation and parole, and narcotics. While at Gavilan, Steve continued his law enforcement service at the San Benito County Sheriff's Office.

His international law enforcement and security work has included serving as station commander for the United Nations mission to Bosnia at the close of the Bosnian war, supervising 25 officers from 11 countries and conducting human rights and war crimes investigations. He has also served with the United States Security Coordinator for Palestine training law enforcement in the Palestinian Authority, designed curriculum for the Serbian National Police Training Center, and has been an elections observer with the Organization for Security and Cooperation in Europe in Bosnia, North Macedonia, Kazakhstan, Kyrgyzstan, Albania, and Ukraine.

In addition to his work at PRI, Smith is also an independent security consultant with multiple private sector clients. In 1990, Gov. Deukmejian appointed Smith to serve on the California Medical Board (Medical Quality Review Committee). He is a graduate of California State University, Sacramento.

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