



Free markets. Real solutions.

R STREET POLICY STUDY NO. 102  
July 2017

## HOW CALIFORNIA SOFTENED ITS 'TOUGH-ON-CRIME' APPROACH

Steven Greenhut

### INTRODUCTION

California has a long history of pioneering criminal-justice reforms. From the 1960s to the early 2000s, such reforms mostly toughened the state's approach to handling criminals, with some of the most significant policy reforms implemented at the ballot box. California's past approaches—especially its “three-strikes” law—have become models for other states, although such policies have led to some troubling results.

More recently, as overall crime rates have fallen to levels not seen since the 1960s, the state has led the way both to soften those earlier approaches and to implement innovative policies that reduce sentences for some offenders. This shift has been driven in part by a prison-overcrowding crisis, but public sentiment has also changed over the years.

Given the high costs—both financially and in terms of civil liberties—the state's incarceration-heavy approach imposed, these changing policies and attitudes are a welcome development. Many of the tough-on-crime approaches of the past

### CONTENTS

Introduction	1
California as a law-and-order state	1
An uneasy pendulum shift	3
The prison-overcrowding crisis	3
A legacy of high costs and problems	3
Major criminal justice reforms	4
2011 – Public safety realignment	4
2012 Proposition 36 – Changes to ‘three strikes’	4
2014 Proposition 47 – Reducing criminal sentences	5
2016 Proposition 57 – Increasing use of parole	5
2016 – Death penalty repeal fails	5
Considering the ‘Right on Crime’ approach	5
Growing fear about crime	6
What's next on the horizon?	7
Conclusion	8
About the author	8

were driven by the state's powerful law-enforcement lobby and “public safety” unions, who appeared at times more interested in protecting their budgets (and creating new “customers”) than promoting justice.

Not every new proposal is ideal, of course, and California has yet to embrace the kind of wide-ranging reforms in its corrections bureaucracy that have been implemented by Texas, for instance. The state also has failed to implement significant reforms to its public-employee pension system and has moved away from outsourcing – measures that could help stretch California's budget, which is burdened by the highest cost in the nation (total and per capita) for running its prison system. Notwithstanding such costs, California still has an astoundingly high recidivism rate of approximately 65 percent.<sup>1</sup>

This paper seeks to place these shifts in historical context. It examines a few of the most significant reform policies that have passed through the Legislature or been put to voters through the state's robust initiative process. As California goes, so goes the nation. As such, it is worth seeing where the state is headed on this significant issue.

### CALIFORNIA AS A LAW-AND-ORDER STATE

These days, California has a national reputation as a “deep blue” liberal state. But on criminal justice issues, it has long been a bastion of law and order, a place where tough-on-crime measures have been sure winners in the Legislature and routinely approved by voters at the ballot box. Until recent years, even Democratic politicians (at least those with statewide ambitions) have played to public fears about crime, which resonate in California's heavily suburban population. For instance, in the 1990s and 2000s, California passed the

1. “Recidivism Rates,” California Innocence Project, 2016. <https://californiainnocenceproject.org/issues-we-face/recidivism-rates/>.

toughest-in-the-nation “three-strikes law” and other significant anti-crime measures. After California passed its “three-strikes” legislation in 1994, 12 other states subsequently adopted similar legislation that same year and 10 more followed suit in 1995.<sup>2</sup>

Indeed, Ronald Reagan was first elected governor on an anti-crime platform in 1966, setting the stage for decades of related rhetoric by other governors. In one of Reagan’s first speeches once in office, on Jan. 16, 1967, he lamented his state’s high crime rate: “California is the leading state in terms of major crimes ... On a percentage basis, we have nearly twice our share – 9 percent of the population and 17 percent of the crime.”<sup>3</sup> Accordingly, Reagan later proposed a wide-ranging package of measures designed to toughen penalties and give local police more power. He even proposed a new government agency to coordinate crime-fighting efforts.

Reagan’s approach largely continued through successive administrations. But that ethic arguably came to an apex in the 1998 campaign for governor between moderate Democrat Gray Davis and Republican Attorney General Dan Lungren, who spent the campaign boasting about his law-enforcement credentials. Given the public’s views about crime and punishment, it was the one main area where that year’s Democratic gubernatorial and legislative candidates felt vulnerable. As such, Davis wasn’t about to get outflanked by the right on crime. In a May 2000 article, *The New York Times* reported: “As governor, Mr. Davis ... insisted he would be harder on crime than anybody” and that “he would give judges discretion to sentence 14-year-olds to death; he would let them consider supporting non-unanimous jury verdicts. Indeed, Mr. Davis said in a televised debate, on issues of law and order, he considered Singapore – a country that executes drug offenders – ‘a good starting point.’”<sup>4</sup>

These debate points were somewhat controversial even at the time, but they seem unfathomable after 17 years of hindsight. As violent crime rates in California and across the country dropped, the public’s and politicians’ attitudes began to change so much that journalists and historians look back at the anti-crime rhetoric in that debate as something almost absurd. The political winds started to shift shortly thereafter.

When Republican Gov. Arnold Schwarzenegger replaced Davis in the historic 2003 recall election,<sup>5</sup> he challenged the powerful California Correctional Peace Officers’ Association (CCPOA) and began moving inmates in the state’s overcrowded prison system to privately run facilities. By contrast, Davis had granted the guards a 38 percent pay increase (over several years) during the budget crisis.<sup>6</sup>

While these matters dealt mostly with pay and hiring issues, it was nevertheless significant that Schwarzenegger was willing to defy a public-safety union that had been largely getting its way for years, in part due to the perception that it constituted the front lines of the crime problem. Indeed, CCPOA had played to these crime fears and had itself been a prominent backer of tougher measures and “law-and-order” politicians.

More importantly, an article by The Associated Press and *Huffington Post* reported that Schwarzenegger “signed legislation [...] that increased early release credits, made it more difficult to send ex-convicts back to prison for parole violations, and rewarded county probation departments for keeping criminals out of state prisons.”<sup>7</sup> It was perhaps the first major policy shift in decades.

Change intensified when Jerry Brown succeeded Schwarzenegger as governor in 2011. Despite his reputation as a progressive, Brown’s criminal-justice views have been as unpredictable and quirky as many of his other positions. In the 1970s, during Brown’s first term as governor, when the state passed tougher sentencing laws, he actually supported a key part of that agenda in the form of mandatory minimum sentences. Commenting on this decision in an interview last year, Brown told the *Mercury News*, “Back then, there was a feeling we should make punishment more certain ... There were claims that the parole board was arbitrary and influenced by bias against minorities ... There was also a great skepticism about rehabilitation and a belief that it didn’t work. Therefore, the only thing left was punishment.”<sup>8</sup> It was precisely this approach that filled prisons beyond the brim and had debatable results in terms of fighting crime.

---

2. Nicole Shoener, “Three Strikes Laws in Different States,” *Legal Match*, Sept. 30, 2016. <http://www.legalmatch.com/law-library/article/three-strikes-laws-in-different-states.html>.

3. Gov. Ronald Reagan, “Statement of Governor Ronald Reagan on Crime,” Jan. 16, 1967. <https://www.reaganlibrary.archives.gov/archives/speeches/govspeech/01161967a.htm>.

4. Evelyn Nieves, “California’s Governor Plays Tough on Crime,” *The New York Times*, May 23, 2000. <http://www.nytimes.com/2000/05/23/us/california-s-governor-plays-tough-on-crime.html>.

---

5. The recall centered on tax hikes, budget deficits and an electricity crisis that resulted in rolling blackouts.

6. Ben Carrasco, “Assessing the CCPOA’s political influence and its impact on efforts to reform the California corrections system,” *California Sentencing & Corrections Policy Series*, Stanford Criminal Justice Center Working Papers, Jan. 27, 2006. [http://www.sjra1.com/index\\_files/cjreports/2006%20ASSESSING%20CCPOA%20POLITICAL%20INFLUENCE%20AND%20IMPACT%20ON%20REFORM.pdf](http://www.sjra1.com/index_files/cjreports/2006%20ASSESSING%20CCPOA%20POLITICAL%20INFLUENCE%20AND%20IMPACT%20ON%20REFORM.pdf).

7. Don Thompson, “California Inmate Release: Schwarzenegger Prison Reform Policies Were Mixed,” *The Associated Press/Huffington Post*, July 24, 2011. [http://www.huffingtonpost.com/2011/05/24/california-inmate-release\\_n\\_866189.html](http://www.huffingtonpost.com/2011/05/24/california-inmate-release_n_866189.html).

8. Jessica Calefati, “California Gov. Jerry Brown vigorously defends Proposition 57,” Oct. 7, 2016. <http://www.mercurynews.com/2016/10/07/jerry-brown-on-prop-57/>.

## AN UNEASY PENDULUM SHIFT

California has always had a complicated relationship with crime and punishment. The aforementioned *Mercury News* interview with Brown focused on Proposition 57, a November 2016 statewide measure that his administration authored. It moved the state's sentencing approach away from those mandatory minimums imposed in the 1970s and toward more frequent use of parole for those convicted of a number of lesser offenses. Between his first term in the 1970s and his current term, Brown's views changed in ways that track changes across the state.<sup>9</sup>

In 2009, California was under pressure by the federal courts to slash its prison population, which contained double the number of prisoners it was designed to house. The state Senate passed a bill backed by Schwarzenegger that would have reduced the population by 27,000 by allowing some prisoners to finish their sentences at home. In an article written for the *Orange County Register* by Brian Joseph and Tony Saavedra, the authors detailed the heated debate occurring in the state capitol with respect to the measure: "Legislative Republicans ... say the entire plan is soft on crime" and "that's enough to cause serious problems in the Assembly. Several Democrats there are eyeing higher office. Others face tough re-election bids. A 'soft-on-crime' label could kill their political careers."<sup>10</sup> Joseph and Saavedra's assessment proved prophetic, as the bill eventually was killed and a costly and watered-down alternative passed. To this day, California has "the most-costly state prisons in the country."<sup>11</sup>

In that same 2009 article, the reporters also pointed to the way voters across the state, even in liberal cities such as Los Angeles, "consistently put their support behind tough-on-crime candidates, tough-on-crime ballot initiatives, tough-on-crime sentencing laws."<sup>12</sup> As a result of these conflicting priorities, spending on prisons and law enforcement continued to gobble up growing chunks of the budget. All of this was exacerbated by the massive amounts of money<sup>13</sup> that the

state had promised to pay in pensions to police and prison guards hired in response to public-safety fears.

Those same fears also enabled police officers and guards accused of wrongdoing the ability to gain more extensive job protections than those in other states. This has made it "almost impossible to publicly identify offending officers and determine whether they are being adequately punished."<sup>14</sup> In other words, these policies came with a steep and enduring price.

## THE PRISON-OVERCROWDING CRISIS

During the first major criminal justice crisis of his recent terms, Jerry Brown in 2013 actually echoed themes from the law-and-order past. The issue was a federal court order for the state to release thousands of prisoners from its overcrowded state prison system, with the goal of reducing overcrowding to 137 percent of prison capacity. Instead of going along with the order, the Brown administration initially refused to comply (and even evoked imagery of George Wallace standing in the courthouse doorway).<sup>15</sup> This caused the court to respond: "Despite our repeated efforts to assist defendants to comply with our Population Reduction Order, [the Brown administration has] consistently engaged in conduct designed to frustrate those efforts."<sup>16</sup> Thus began a curious test of wills between the federal courts, which had long been frustrated by the state's prison conditions, and a governor who wasn't about to put criminals back on the streets, even though the state had lost its appeal at the U.S. Supreme Court.

Soon after Jerry Brown defied the supposedly out-of-touch federal judiciary, he embraced a far more ameliorative approach. Since then, he has continued to push criminal-justice reforms. Likewise, the Legislature has authored dozens of justice-related bills, with mixed success. The law-enforcement lobby retains its status as among the most powerful in the Capitol, but these days, it is usually playing defense.

## A LEGACY OF HIGH COSTS AND PROBLEMS

Despite record levels of spending, California's state budget remains tight. Whatever one thinks of the Legislature's priorities, this much is clear: it never has enough money to spend on all the programs it deems important. Currently, for example, the governor is simultaneously attempting to fund a \$68 billion bullet train and a \$39 billion project to build

---

9. In addition to his change of heart on sentencing, Brown was also known for his opposition to the death penalty, although he vowed to implement the will of the people. He appointed Rose Bird as chief justice of the California Supreme Court, and she became the only chief justice in the state's history to be removed by voters. The fight over Bird was in 1986, three years after Brown left the governorship. Her failure to be reconfirmed was based on a campaign that highlighted her refusal to implement the death penalty (she overturned the death penalty in all 64 such cases that came to her court). Republican Gov. George Deukmejian led the battle by depicting her as soft on crime. California still has a death penalty, although only 13 people have been executed since 1976, when the penalty was reinstated by the U.S. Supreme Court. Yet the fracas over the death penalty underscores the broader crime debate.

10. Brian Joseph and Tony Saavedra, "Tough-on-crime stance emptied California's pocketbook," *Orange County Register*, Dec. 6, 2009. <http://www.ocregister.com/2009/12/06/tough-on-crime-stance-emptied-californias-pocketbook/>.

11. *Ibid.*

12. *Ibid.*

13. These pensions were estimated to approach \$1 trillion by the Stanford Institute for Economic Policy Research, based on return projections that track the risk-free Treasury rate. See, e.g., <http://www.pensiontracker.org/>.

---

14. Joseph and Saavedra, "Tough-on-crime stance emptied California's pocketbook."

15. George Skelton, "Gov. Jerry Brown holds strong hand on prisons," *Los Angeles Times*, June 30, 2013. <http://articles.latimes.com/2013/jun/30/local/la-me-cap-prisons-20130701>.

16. Sharon Bernstein, "Judges stand firm on California prison crowding relief plan," *Reuters*, July 3, 2013. <http://www.reuters.com/article/us-usa-california-prisons-idUSBRE96302S20130704>.

tunnels underneath the Sacramento-San Joaquin Delta to improve water deliveries to the Central Valley and Southern California.

Moreover, legislators have recently embraced a single-payer health-care plan that, although it was shelved in the Assembly, would cost more than three times the entire state general-fund budget, even by the Legislature's own estimates. In an attempt to raise the revenue necessary to fund these programs, Brown recently signed into law a record-setting gasoline tax and vehicle-license fee hike after legislators claimed there was insufficient money to maintain and improve the state's decrepit system of roads and freeways.

Yet despite such efforts, California has been unable to get its prison spending under control, even with the massive changes made under the realignment system. According to a 2015 study from the Vera Institute for Justice, a New York-based think tank that promotes criminal-justice reform: "Despite a decline in both its prison population and the number of prison staff, California's prison spending rose \$560 million between 2010 and 2015, primarily because salary, pension and other employee and retiree benefits continued to increase, also a result of union-negotiated increases."<sup>17</sup>

This is not particularly surprising, since California still has the nation's largest jail population. It costs \$190 a day to house inmates.<sup>18</sup> With more than 82,000 total inmates in jail, the state spends more than \$15 million a day to house its jailed population. This amounts to more than \$5.5 billion per year – a staggering sum that does not even include its prison population.<sup>19</sup>

An analysis for the California Policy Center noted that:

California is in an ignominious group of 10 states that saw declines in the prison population since 2010, but which increased spending by \$1.1 billion. Furthermore, California's spending increase accounts for more than half of that number. California has by far the costliest system of incarceration in the nation at more than \$75,000 per inmate per year – more than triple the average cost of the 18 states with the least-costly rates.<sup>20</sup>

Furthermore, cities and counties are struggling with increased jail costs and are facing new rounds of increases in

17. Christian Henrichson, "The Price of Prisons," Vera Institute of Justice, May 23, 2017. <https://www.vera.org/projects/the-price-of-prisons>.

18. "How much does it cost to incarcerate an inmate?" Legislative Analyst's Office, March 2017. [http://www.lao.ca.gov/PolicyAreas/CJ/6\\_cj\\_inmatecost](http://www.lao.ca.gov/PolicyAreas/CJ/6_cj_inmatecost).

19. "The Facts: State-by-state data," The Sentencing Project, Accessed June 16, 2017. <http://www.sentencingproject.org/the-facts/#rankings?dataset-option=SJR>.

20. Steven Greenhut, "Prison unions punish taxpayers," California Policy Center, June 6, 2017. <http://californiapolicycenter.org/prison-unions-punish-california-taxpayers/>.

their pension payments to the California Public Employees' Retirement System (CalPERS). Low investment returns fail to make up for the 50 percent retroactive pension increases granted to public-safety workers, starting in 1999.<sup>21</sup>

California's recent softening on anti-crime policies has not always been directly tied to spending issues, but these shifts might nonetheless offer some relief to state and local budgets. Policymakers argue that policies that might reduce California's highest-in-the-nation recidivism rates could also result in cost savings. Unfortunately, the state's heavily bureaucratic and union-dominated criminal-justice system has shown little willingness to adopt privatization or reform measures.

## MAJOR CRIMINAL JUSTICE REFORMS

In recent years, California has experienced the following major reforms:

### 2011 – Public safety realignment

The governor's realignment approach was unquestionably the most significant change in prison policy that the state has embraced in decades. In 2011, Brown signed two major criminal-justice bills: Assembly Bill 109 and Assembly Bill 117. The goal of these pieces of legislation was to move lower-level felons from the state to the county, in hopes of lowering state prison populations, keeping inmates closer to their families and reducing incarceration costs.

While the results of the policy are still subject to debate and study, a 2015 review by the nonpartisan Public Policy Institute of California (PPIC) concluded:

Realignment substantially reduced the prison population, but almost all of the decline took place during the first year and was not enough to meet the judicial target. By September 2012, the prison population had fallen by about 27,400 and the institutional population, including all inmates housed in California Department of Corrections (CDCR) facilities ... had dropped to 150.5 percent of capacity. The population then leveled off and began to rise slightly.<sup>22</sup>

### 2012 Proposition 36 – Changes to 'three-strikes'

California's original three-strikes law was unique in that it imposed a 25 years-to-life sentence on those who had been convicted of two or more serious or violent crimes – even

21. Jack Dolan, "How a pension deal went wrong," *Los Angeles Times*, Sept. 18, 2016. <http://www.latimes.com/projects/la-me-pension-crisis-davis-deal/>.

22. Magnus Lofstrom and Brandon Martin, "Public Safety Realignment: Impacts So Far," Public Policy Institute of California, September 2015. [http://www.ppic.org/main/publication\\_quick.asp?i=1164](http://www.ppic.org/main/publication_quick.asp?i=1164).

if the third conviction was for something relatively minor. In 2004, voters rejected a measure to reduce its harshness (Proposition 66).

The original law led to some well-publicized controversies, such as the case of a man whose third strike was the theft of a piece of pizza from a group of children at Redondo Beach in 1995. He was ultimately let free after five years, but his case became well-known. According to a 2010 *Los Angeles Times* article, “Controversial life sentences under the three-strikes law are hardly novel ... Those sentenced under the law include a thief caught shoplifting a bottle of vitamins and a drug addict who swiped nine videotapes to sell for heroin.”<sup>23</sup>

In view of this, Proposition 36, which passed in 2012 by 69 percent to 31 percent, revised the original three-strikes law to authorize a life sentence only when the new felony conviction is “serious or violent.” It also gave 3,000 inmates whose final conviction failed to meet such criteria the ability to petition the court for an early release. The proposition moved the state closer to meeting its prison-reduction targets.

### 2014 Proposition 47 – Reducing criminal sentences

Perhaps the most controversial of the recent reform measures, Prop. 47 also passed on a statewide ballot with a solid majority, 60 percent to 40 percent. The controversy has centered on whether the measure, which reduced certain crimes from felonies to misdemeanors, has led to a recent uptick in crime in California’s major cities.

As the state’s official ballot argument explained:

Criminal offenders who commit certain non-serious and nonviolent drug and property crimes would be sentenced to reduced penalties (such as shorter terms in jail). State savings resulting from the measure would be used to support school truancy and dropout prevention, victim services, mental health and drug abuse treatment, and other programs designed to keep offenders out of prison and jail.<sup>24</sup>

According to the Public Policy Institute of California, Prop. 47 reduced the state prison population by almost 8,000 inmates, which finally enabled California to meet the federal court order’s prison-reduction targets.

---

23. Jack Leonard, “‘Pizza thief’ walks the line,” *Los Angeles Times*, Feb. 10, 2010. <http://articles.latimes.com/2010/feb/10/local/la-me-pizzathief10-2010feb10>.

24. “Proposition 47,” Legislative Analyst’s Office, Nov. 4, 2014. <http://www.lao.ca.gov/ballot/2014/prop-47-110414.aspx>.

### 2016 Proposition 57 – Increasing use of parole

This proposition was sponsored by Gov. Brown and passed by a 64 percent to 36 percent margin. It allows nonviolent felons to gain parole consideration and sentence credits for good behavior and education. It also gives the courts discretion to decide whether to prosecute a juvenile as an adult. In other words, it moves the state closer to where things were before the 1970s.

In his interview with the *Mercury News*, Brown explained his reasoning for authoring the bill as a way to reset the needle:

The Legislature kept moving the goalposts – not dozens of times but hundreds and hundreds of times. We now have more than 5,000 criminal provisions in California ... After 1977, the law went on steroids. Every time a headline about a terrible crime appeared, the Legislature would jump up and say it had a solution.<sup>25</sup>

### 2016 – Death penalty repeal fails

Not every recent effort to reduce punishment in California has succeeded. For instance, in November 2016, voters were presented with two different death-penalty measures. State law requires that if conflicting measures pass, the one that receives the most votes goes into effect. In this case, Proposition 62 would have eliminated the death penalty and replaced it with life in prison without the possibility of parole. It failed, 53 percent to 47 percent.

However, by a 51 percent to 49 percent margin, voters approved Proposition 66, which promises to expedite use of the death penalty by reducing the number of appeals and petitions that people on death row can file. The California Supreme Court stayed its implementation following the filing of a lawsuit that claims the initiative is unconstitutional. The fairly slim voter margins on both initiatives, however, suggest changing attitudes in the state. After all, in previous decades, it is unlikely a death-penalty repeal would have had any chance at all.

### CONSIDERING THE ‘RIGHT ON CRIME’ APPROACH

In 2014, former California Assemblyman Chuck DeVore, R-Irvine, was invited by a joint legislative committee to come from Austin (where he serves as vice president of the free-market Texas Public Policy Foundation) to Sacramento to speak about his adopted state’s approach to criminal-justice reform. It was an ironic twist, given that some of the Legislature’s most liberal members were eager to hear from one its most conservative former members.

---

25. Calefati, “California Gov. Jerry Brown vigorously defends Proposition 57.”

In an interview with the *San Diego Union-Tribune*, DeVore explained, “In spite of Texas’ well-deserved reputation as this tough-on-crime state, and some of us would like to think perhaps because of it, the lawmakers in Texas ... have seen fit to begin to innovate in the area of criminal-justice reform.”<sup>26</sup> DeVore went on to note that the reform in question had saved Texans some \$3 billion in taxpayer outlays and from having to provide another 17,000 prison beds. This, according to DeVore was a policy known as “Right on Crime.”<sup>27</sup>

Run by Marc Levin, the “Right on Crime” effort “is designed to move conservatives away from a purely ‘law and order’ approach.” Its goals are to: “enable criminals to pay restitution to victims and otherwise take responsibility for their actions, evaluate the size of the criminal-justice bureaucracy, preserve family involvement, and reserve prison time for crimes that threaten public safety.”<sup>28</sup>

What they are doing in Texas is working, as crime rates continue to plummet even though the state has shuttered several prisons. Unfortunately, few of Texas’ ideas have made it through the California Legislature, which has focused more on simply reducing sentences than reforming the way its prison bureaucracy operates. According to the Vera Institute study, Texas is a state where both prison populations and prison costs have fallen.<sup>29</sup>

## GROWING FEAR ABOUT CRIME

California’s significant changes in incarceration policy have not gone without controversy. Republican officials and law-enforcement unions, in particular, have tried to focus the public’s attention on some troubling increases in crime rates since the public safety realignment and passage of Prop. 47. There has not been a detailed study determining the degree to which the new policies are linked to the latest crime statistics, but criminologists know that public fears—and politicians’ generalizations about crime—don’t always correlate precisely to crime trends.

For example, in a March 2017 statement Sen. Jeff Stone, R-Riverside, claimed: “Since the passage of Proposition 47 by voters in 2014 and the signing of AB 109 in 2011, violent crime has been on the rise in California, up 12 percent in 2015 statewide according to the FBI.”<sup>30</sup> This statement later was

rated only “half-true” by PolitiFact: “Stone is correct when looking at the overall violent crime rate. From 2011 to 2015, there was a 3.1 percent increase statewide in the rate of violent crimes, a category that includes homicides, rapes, robberies and aggravated assaults.”<sup>31</sup> The report went on to note that the 12 percent crime hike was only for the first half of 2015, while the increase for the full year was only 8.4 percent. In any case, there was a general, overall increase in crime, although it is hard to verify whether release policies were the cause.<sup>32</sup>

A more detailed analysis from PPIC concluded: “Realignment did not increase violent crime, but auto thefts rose.”<sup>33</sup> These were findings, as the study was released only a year after Prop. 47’s passage. A later American Civil Liberties Union study in 2015 likewise saw little data to suggest concern:

On three separate occasions since 2000, California implemented reforms that significantly scaled back overly harsh penalties for nonviolent offenses that had crowded state prisons and cost taxpayers billions. Despite repeated assertions by some in law enforcement that each of these reforms would lead to a ‘spike’ in crime, the data tells another story: crime rates have continued to decline over the past 15 years and California by 2014 had the lowest violent crime rate since 1967.<sup>34</sup>

A 2016 study published by the American Society of Criminology further concluded that, “within just 15 months of its passage, Realignment reduced the size of the total prison population by 27,527 inmates, prison crowding declined from 181 percent to 150 percent of design capacity, approximately \$453 million was saved, and there was no adverse effect on the overall safety of Californians.”<sup>35</sup>

Despite what the initial data suggest, rhetoric around criminal justice reform often continues to play on public fears and anxieties. In a June 8 column for *Fox & Hounds Daily*, Michele Hanisee, president of the Association of Los Angeles Deputy District Attorneys, wrote:

---

31. Chris Nichols, “Has violent crime been on the rise in Calif. Since 2011? Did it spike 12 % in 2015?”, *PolitiFact*, March 6, 2016. <http://www.politifact.com/california/statements/2017/mar/06/jeff-stone/has-violent-crime-been-rise-california-2011-and-dj/>.

32. *Ibid.*

33. “Public Safety Realignment: Impacts So Far,” Public Policy Institute of California, September 2015. <http://www.ppic.org/publication/public-safety-realignment-impacts-so-far/>.

34. Margaret Dooley-Sammuli, “Changing Gears: California’s Shift to Smart Justice,” American Civil Liberties Union of California, November 2015. [https://www.acluca.org/wp-content/uploads/2015/11/Prop47\\_report\\_final.pdf](https://www.acluca.org/wp-content/uploads/2015/11/Prop47_report_final.pdf).

35. Jody Sundt, Emily J. Salisbury et. al., “Is Downsizing Prisons Dangerous?”, *Criminology & Public Policy*, March 9, 2016. <http://onlinelibrary.wiley.com/doi/10.1111/1745-9133.12199/abstract>.

---

26. Steven Greenhut, “No crime for California to learn from Texas,” *San Diego Union-Tribune*, Feb. 3, 2014. <http://www.sandiegouniontribune.com/news/politics/sdut-no-crime-California-learn-from-Texas-2014feb03-htlmstory.html>.

27. *Ibid.*

28. *Ibid.*

29. Henrichson, “The Price of Prisons.”

30. Office of Sen. Jeff Stone, “Statement by Senator Stone on the slaying of Whittier Police Officer,” Press statement, Feb. 21, 2017. <http://district28.cssrc.us/content/state-ment-senator-stone-slaying-whittier-police-officer>.

Prop. 57 will flood our streets with thousands of dangerous criminals released early from prison, a fact that has been made clear as the California Department of Corrections and Rehabilitation has begun publishing the release criteria. ... Inmates are now eligible for parole after serving 50 percent of the sentence for their primary offense – regardless of any enhancements that had been added onto the sentence, and regardless of previous strikes for brutal crimes such as rape and murder.<sup>36</sup>

But so far, increases in crime have not led to a lessened state of public safety or to pushback against these and other criminal-justice reforms. Former Republican Lt. Gov. Abel Maldonado's 2014 run for the governorship made old-time law-and-order policies the main theme of his campaign. His press conferences featured photos of people he said committed crimes after early release and his campaign sign featured the imagery of a knife. His campaign never gained traction. It remains to be seen whether this approach will resonate with other politicians as the 2018 race approaches.

If crime trends continue upward, California prison reformers could face a 1970s-style backlash. That would be problematic, given that California is long overdue for a correction. After years of uncontrolled spending, a backlash would threaten a variety of reforms that have been making their way through the state Legislature.

## WHAT'S NEXT ON THE HORIZON?

Although Gov. Brown has complained it was the Legislature that kept moving the goalposts in the 1970s, these days, it is reformers who are mostly on the offensive. Last year, they managed to pass a far-reaching reform of the state's civil asset forfeiture process, particularly with respect to drug crimes. The expanded and widely abused forfeiture rules, another vestige of the war on crime, often were used against ordinary people never convicted or even accused of wrongdoing. Police agencies increasingly and inappropriately have viewed asset forfeiture as a means to fund their departments, rather than a tool to battle drug kingpins. Even U.S. Justice Department officials who helped start the program have argued that, "the tactic has turned into an evil itself, with the corruption it engendered among government and law enforcement coming to clearly outweigh any benefits."<sup>37</sup> Under California's reforms, it now requires conviction before forfeiture in most cases.

---

36. Michele Hanisee, "Prop. 57: Criminals far and wide love it," *Fox & Hounds Daily*, June 8, 2017. <http://www.foxandhoundsdaily.com/2017/06/prop-57-criminals-far-wide-love/>.

37. John Yoder and Brad Cates, "Government self-interest corrupted a crime-fighting tool into an evil," *Washington Post*, Sept. 18, 2014. [https://www.washingtonpost.com/opinions/abolish-the-civil-asset-forfeiture-program-we-helped-create/2014/09/18/72f089ac-3d02-11e4-b0ea-8141703bbf6f\\_story.html?utm\\_term=.8274e535b52d](https://www.washingtonpost.com/opinions/abolish-the-civil-asset-forfeiture-program-we-helped-create/2014/09/18/72f089ac-3d02-11e4-b0ea-8141703bbf6f_story.html?utm_term=.8274e535b52d).

This year, civil libertarians have backed two major bills that would reduce the use of money bail and replace the current system with one that relies on a risk-assessment system. The current system allows people accused of serious crimes to go home as they await trial, provided they can afford to post a bond. Meanwhile, people accused of lesser offenses languish in county jails if they or their family members cannot afford the bail bond. This also encourages them to cop a plea so they can get back to their jobs and pay the rent. This is a major problem, both from the perspective of justice and for state taxpayers, given the costs associated with keeping the jails so full.

According to a 2013 report from the Laura and John Arnold Foundation: "A study, using data from state courts, found that defendants who were detained for the entire pretrial period were over four times more likely to be sentenced to jail, and over three times more likely to be sentenced to prison than defendants who were released at some point pending trial."<sup>38</sup> Those higher sentencing numbers are related directly to the pressure defendants face to accept a plea deal, even an unfavorable one.

Supporters of money bail argue that the system saves money for taxpayers, because private bail companies are responsible for assuring that the accused show up to their court appointments, but research suggests the opposite is true. Because so many people cannot post bail, they must sit unnecessarily in jails at taxpayer expense. According to a January report from the Pretrial Justice Institute:

Jailing arrested people before trial is the greatest expense generated by current pretrial justice practice ... (T)axpayers spend approximately \$38 million per day to jail people who are awaiting trial (63 percent of the total jail population, or more than 450,000 individuals on any given day). Annually, this \$14 billion is used to detain people who are mostly low risk, including many whose charges will ultimately be dropped.<sup>39</sup>

The Senate reform measure, S.B. 10, passed the full Senate in May by a 26 to 11 margin and still has a chance of passage in the Assembly. The Assembly measure, A.B. 42, narrowly failed to pass on the Assembly floor in June. This remains one of the most important reforms that California could pass in 2017, given the cost and fairness implications.

Another bill up for consideration in 2017 would make an enhanced sentence for gun possession discretionary rather than mandatory, which is a welcome move away from the

---

38. Public Safety Assessment, Laura and John Arnold Foundation, 2016. <http://www.arnoldfoundation.org/wp-content/uploads/PSA-Risk-Factors-and-Formula.pdf>.

39. "Pretrial Justice: How Much Does it Cost?", Pretrial Justice Institute, January 2017. <https://university.pretrial.org/viewdocument/pretrial-justice-how-much-does-it>.

mandatory minimum sentences embraced by California policymakers in the 1970s and 1980s. Yet another would reform the state's sex-offender registry by eliminating lifetime registration requirements for many people convicted of minor sex-related offenses. California's registry has topped 100,000 individuals, most of whom are considered by law enforcement to be "low-risk." Instead of improving public safety, the list diverts law-enforcement resources from more pressing concerns and undermines the future prospects of those low-risk people ensnared by the system.

Even many members of the law-enforcement community now support reform of California's sex-offender registry, which dates to the 1940s. California is one of only four states nationally that treats all offenders the same, regardless of their age at the time of the offense or the person's risk to reoffend.<sup>40</sup> S.B. 421, which passed the Senate floor May 31, would create a tiered registry system. Further reform proposals that have been discussed, but are not proposed officially at present, would remove juveniles entirely from the registry. The latter would be a wise move, except in egregious cases.

## CONCLUSION

The fate of various bills related to criminal justice remains uncertain for the ongoing legislative session, but there's little question that the pendulum is swinging in a more lenient direction, at least when it comes to prison-related issues. There are few serious efforts in the current Legislature to toughen sentencing. Unfortunately, lawmakers' willingness to reduce sentences has not led to a renewed willingness to rethink other critical elements of the law enforcement bureaucracy or to challenge costly and inhumane rules defended by unions who represent workers in California's massive justice system.

The new dynamic at least offers some hope that California can save money and create a more efficacious and fair justice system. To do so, state officials should pay more attention to DeVore's "Right on Crime" approach that is currently being used successfully in Texas to reduce the prison population and to lower costs for taxpayers.

The question remains whether current upward trends in crime rates will lead to increased fear among the general public and a scuttling of the state's efforts to move away from its longstanding, but expensive and counterproductive "law and order" approach. However, it would be a shame if the state abandons attempts at meaningful reform before the bulk of their efforts have an opportunity to be closely examined for long-term results.

## ABOUT THE AUTHOR

**Steven Greenhut** is senior fellow and Western region director of the R Street Institute. He is responsible for overseeing R Street's efforts in California, Oregon, Washington state, Nevada, Arizona, Alaska and Hawaii. His duties include authoring op-eds and policy studies, testifying before state and municipal legislative bodies and representing R Street as a speaker, public commentator and coalition ally in venues in which it is possible to move state and local policy in the Western region in a more free-market direction.

He joined R Street in February 2016, having most recently served as California columnist for the San Diego Union-Tribune. In this role, from his base in Sacramento, he wrote a regular reported news column covering the State Capitol and issues outside of San Diego. Previously, he was vice president of journalism at the Franklin Center, where he oversaw a team of watchdog editors and reporters in state capitols.

Steven spent most of his career as a member of the editorial board of the Orange County Register, where he still writes a weekly local-politics column. He also spent nearly five years as a building and remodeling editor at Better Homes & Gardens magazine, and continues to ply his interest in remodeling old houses.

---

40. Steven Greenhut, "R Street Institute letter of support, S.B. 421," May 19, 2017. <http://www.rstreet.org/outreach/letter-support-california-sb-421/>.