



# HOW CALIFORNIA

CAN CUT PRISON SPENDING,  
PROTECT HEALTH AND  
EDUCATION SPENDING,  
AND IMPROVE PUBLIC SAFETY.

July 2020



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# BACKGROUND

California is at a crossroads. The state, in the midst of an unprecedented public health crisis, faces looming massive deficits, and new calls for lawmakers to design a more racially equitable justice system. “Despite substantial reforms enacted over the past decade, the prison population has still grown by more than 400 percent, and spending on prisons has increased by more than 800 percent since the 1980s. Prison spending is expected to hit an all-time high of \$13 billion this year. Now more than ever, policymakers must take bold steps to reverse the decades-old trend of over- incarceration.

California can reduce the prison budget, and help protect funding for local public safety programs, schools, health care and health services. These policies will enhance public safety by reducing the negative impact of overly long sentences, will protect vital education and health services that are key to maintaining safe communities, and allow resources to be reallocated from corrections to local programs that address the core drivers of crime.

Key policy options to reduce prison spending include:

- 1) Reducing incarceration for people sentenced to prison determined to be low risk;
- 2) Reviewing the sentences of individuals convicted of crimes who are elderly or medically frail;
- 3) Revising or eliminating the Three Strikes Law to reduce extreme sentencing;

- 4) Requiring wider use of alternatives to incarceration to strengthen local public safety programs;
- 5) Creating a task force required to reduce the prison budget that would consider a range of sentencing changes.

Overall, California voters support these policies to protect schools, health care and health funding over protecting prisons and corrections spending *by a 4 to 1 margin.*

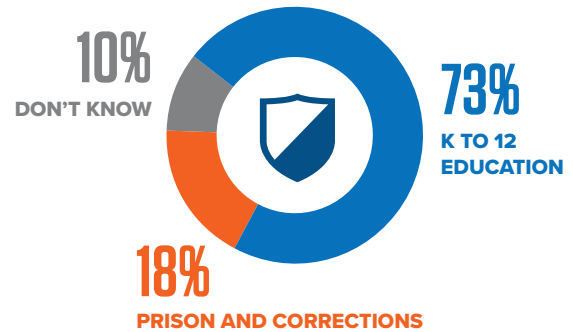


# SUMMARY

## POLICY OPTIONS FOR REDUCING PRISON SPENDING.

- **Assess what proportion of people sentenced to prison for crimes that are currently assessed to be of low risk to public safety could be released, resentenced and see their prison sentences reduced.**
- **Review for release people sentenced to prison for crimes who are elderly and have served at least 10 years of their current sentence.** Review people sentenced for crimes who are medically frail or who have chronic health conditions and assess if they can be released.
- **Lawmakers could pass legislation to refer to voters' changes to revise or eliminate the Three Strikes Law.** This change could also allow people currently sentenced to prison for these crimes with sentencing enhancements to petition for release. Changes to the Three Strikes Law could ensure that judges can rule on these petitions to take into consideration public safety risk.
- **Develop a statewide protocol for people with mental illness entering the justice system** that requires local jurisdictions to exhaust all options prior to incarceration. The protocol should guide local jurisdictions on how to quickly scale up mental health crisis responders and mental health courts to manage these populations more effectively without incarceration.
- **Lawmakers could impanel a short-term, multi-agency task force or commission** to review sentence lengths and recommend law, policy and practice changes and emergency regulations to release people sentenced for crimes that are a low risk to public safety.

Which of the following would you prefer to protect from spending cuts?



## PUBLIC SUPPORT FOR REDUCING PRISON SPENDING.

- **By more than a 2 to 1 margin, voters support reducing incarceration** for people determined to be low risk to public safety, in order to close prisons and reduce the prison budget by \$1 billion.
- **Nearly 8 out of 10 voters authorize the review of sentences to allow for release** of people in prison who are elderly or frail and are determined to low risk to public safety, to reduce the prisons budget by \$1 billion or more.
- **By a 3 to 1 margin, voters support revising the Three Strikes Law** to impose longer sentences only when a new conviction is serious or violent, and authorize resentencing of people in prison under the Three Strikes Law if the judge determines their release does not risk public safety, to reduce incarceration and reduce the prisons budget by \$1 billion.



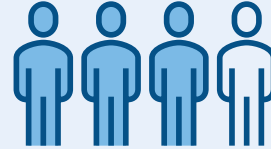
# SUMMARY

- **More than 7 out of 10 voters support requiring the wider use of alternatives to incarceration** to reduce the prisons budget by at least \$1 billion, with savings designated to protect schools and hospital funding.
- **By a 3 to 1 margin, California voters support creating a task force** that is required to reduce the state prisons budget by \$2 billion, with savings designated to protect the public health and hospital budgets, and to protect the school budget.

## Which of the following would you prefer to protect from spending cuts?

Health care and health services.

Prisons and corrections.



**78%** HEALTH CARE AND HEALTH SERVICES

**16%** PRISONS AND CORRECTIONS

**7%** DON'T KNOW



# POLICIES THAT CAN REDUCE PRISON SPENDING AND INCREASE SAFETY

## 1) REDUCING INCARCERATION OF PEOPLE SENTENCED TO PRISON WHO ARE OF LOW RISK TO PUBLIC SAFETY.

Overly long sentences do not increase safety.<sup>1</sup> A body of research has shown that incarcerating people for crimes who are assessed to be low risk makes it more likely they will commit another crime.<sup>2</sup>

According to a risk assessment used by the California Department of Corrections and Rehabilitation (CDCR), 49 percent of the institutional population (63,000 people sentenced to prison for crimes) were assessed to be low risk to reoffend<sup>3</sup> for a violent crime.

### POLICY OPTION:

*Lawmakers should assess what proportion of people sentenced to prison for crimes who are currently assessed to be of low risk to public safety could be released, resentenced and see their prison sentences reduced.*

BY A MARGIN OF MORE THAN

# 2 TO 1



voters support reducing incarceration for people determined to be low risk to public safety, in order to close prisons and reduce the prison budget by \$1 billion people.

### PUBLIC SUPPORT:

*By more than a 2 to 1 margin, voters support reducing incarceration for people determined to be of low risk to public safety, in order to close prisons and reduce the prison budget by \$1 billion.*

*More than 7 out of 10 voters authorize the review of sentences to allow for the release of people in prison who have already served more than 10 years, and are determined to be of low risk to public safety, to reduce the prison budget by \$1 billion.*

## 2) RESENTENCING OF INDIVIDUALS CONVICTED OF CRIMES WHO ARE ELDERLY OR MEDICALLY FRAIL.

In California, 19,000 people in prison (about 15 percent of the prison population) are aged 55 and over.<sup>4</sup> Research shows that the likelihood of someone sentenced to prison in that age group committing a new crime can be as low as 2 percent.<sup>5</sup> Because of the cost of their medical care and other services, it costs twice as much<sup>6</sup> to incarcerate older people, costing California taxpayers at least \$160,000 a year per person incarcerated.

Older people sentenced to prison for crimes are more likely to be at a health risk due to the COVID-19 virus, because they are more likely to have types of chronic health conditions that put them at a higher risk of serious illness. National studies suggest that as many as 41 percent of the general prison population, and 73 percent of older individuals sentenced to prison for crimes have a current chronic illness.<sup>7</sup>



# POLICIES THAT CAN REDUCE PRISON SPENDING AND INCREASE SAFETY

## POLICY OPTION:

*The state could immediately review for release people sentenced to prison for crimes who are elderly and have served at least 10 years of their current sentence.*

*The state could conduct an immediate systemwide review of people sentenced for crimes who are medically frail or who have chronic health conditions and assess if they can be released.*

## PUBLIC SUPPORT:

*Nearly 8 out of 10 voters authorize the review of sentences to allow for release of people in prison who are elderly or frail and are determined to low risk to public safety, to reduce the prisons budget by \$1 billion or more. More than 7 out of 10 voters authorize the review of sentences to allow for the release of people in prison who have already served more than 10 years, and are determined to be of low risk to public safety, to reduce the prison budget by \$1 billion.*

Nearly 8 out of 10 voters authorize the review of sentences to allow for release of people in prison who are elderly or frail, and are determined to low risk to public safety, to reduce the prisons budget by \$1 billion or more.



## 3) REVISING OR ELIMINATING THE THREE STRIKES LAW TO REDUCE EXTREME SENTENCING.

While Californian voters have made some changes to the Three Strikes Law by passing Proposition 36 in 2012, there are still significant sentencing enhancements associated with the law: If someone has been convicted of one eligible crime under the law and are later convicted of any other felony, they can receive double the normal maximum sentence for that crime.

The latest data show that there are 33,000 people sentenced to prison under the Three Strikes Law who were sentenced with an enhancement, 18,000 of whom were sentenced for a nonviolent offense.<sup>8</sup> There is no evidence that the Three Strikes Law is effective at reducing crime or recidivism, and California would save hundreds of millions of dollars through complete elimination of the sentencing enhancement.

## POLICY OPTION:

*Lawmakers could pass legislation or refer to voters changes or eliminate the Three Strikes Law. This change could also allow people currently sentenced to prison for crimes with such enhancements to petition for release. Changes to the Three Strikes Law could ensure that judges can rule on these petitions to take into consideration public safety risk.*

MORE THAN

**7 OUT OF 10**



voters authorize the review of sentences to allow for release of people in prison who have already served more than 10 years, and determined to be of low risk to public safety to reduce the prison budget by \$1 billion.



# POLICIES THAT CAN REDUCE PRISON SPENDING AND INCREASE SAFETY

BY A MARGIN OF  
**3 TO 1**



voters support revising the Three Strikes Law to impose longer sentences only when new conviction is serious or violent, and authorize resentencing of people in prison under Three Strikes if the judge determines release does not risk public safety, to reduce incarceration and reduce the prisons budget by \$1 billion.

Cities, counties and the state need a range of options to address the mental health and treatment needs of people who are arrested for crimes, but local leaders repeatedly point to there being very few programs available to effectively address this challenge. To give a sense of the scale of the challenge, an estimated 400,000 calls for service in California (generally, a 911 call) involved a person in mental health crisis.<sup>10</sup> While innovative, evidence-based diversion programs have been instituted in some communities, these programs may serve, in total, a few thousand people a year.<sup>11</sup>

## PUBLIC SUPPORT:

*By a 3 to 1 margin, voters support revising the Three Strikes Law to impose longer sentences only when a new conviction is serious or violent, and authorize resentencing of people in prison under the Three Strikes Law if the judge determines release does not risk public safety, to reduce incarceration and reduce the prisons budget by \$1 billion.*

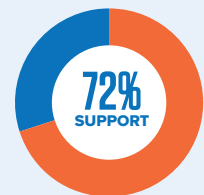
## 4) REQUIRING WIDER USE OF ALTERNATIVES TO INCARCERATION TO STRENGTHEN LOCAL PUBLIC SAFETY SYSTEMS.

The latest data show that 37,000 people sentenced to prison for crimes have a mental health challenge.<sup>9</sup> Often these mental health challenges, along with related drug and addiction issues, are key contributors to such individuals being arrested, convicted and sentenced for crimes. At a cost of \$80,000-plus per person sentenced to prison for a year, prison is one of the most expensive places someone can receive mental health services.

To address this local challenge, California communities need more:

- **Mental health and crisis intervention services.** Emergency services can be expanded to provide a first-response alternative to law enforcement that is mobile, accessible 24/7, and staffed by professionals trained in mental health and crisis intervention who can intervene and de-escalate situations without

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# POLICIES THAT CAN REDUCE PRISON SPENDING AND INCREASE SAFETY

making an arrest.

- **Crisis stabilization centers and detoxification centers.** As alternatives to jail, these centers can help stabilize people experiencing temporary crises and are operated by treatment experts, who are trauma-informed and accessible to law enforcement.
- **Law enforcement pre-booking diversion options.** Pre-booking diversion programs such as Law Enforcement Assisted Diversion (LEAD) sees police refer people committing low-level drug and prostitution crimes with underlying substance abuse or mental health issues to community-based health and social services rather than arrest them. LEAD is being pioneered in a half dozen California communities, but currently serve less than a few thousand people a year.

## POLICY OPTIONS:

*Lawmakers could develop a statewide protocol for people with mental illness entering the justice system that requires local jurisdictions to exhaust all options prior to incarceration. The protocol should guide local jurisdictions on how to quickly scale up mental health crisis responders and mental health courts to manage these populations more effectively without incarceration.*

*Some of the dollars saved by reducing the state confinement of individuals with mental health challenges could be reallocated to local treatment programs.*

## PUBLIC SUPPORT:

*More than 7 out of 10 voters support requiring the wider use of alternatives to incarceration, to reduce the prisons budget by at least \$1 billion, with savings designated to protect schools and hospital funding.*

## 5) CREATING A TASK FORCE REQUIRED TO REDUCE PRISON SPENDING THAT WOULD CONSIDER MULTIPLE OPTIONS.

There are no shortage of options or ideas that the state could develop to expand sentencing options to reduce prison spending. Roughly 80 percent of people sentenced for crimes to state custody are subject to sentencing enhancements, and roughly 25 percent of people in state custody are serving sentences extended by three or more enhancements.

Examples of the types of policies that could be considered by a task force include:

- **Eliminating the five-year sentencing enhancement for serious felonies.** The state could build on SB 1393 by eliminating the five-year sentence enhancement by allowing people currently in state custody who have served their base term to petition for release. The process could include opportunities for judges to rule on the petition, taking into consideration public safety risk.

BY A MARGIN OF

**3 TO 1**



California voters support creating a task force that is required to reduce the state prisons budget by \$2 billion, with savings designated to protect the public health and hospital budgets and to protect the school budget.



# POLICIES THAT CAN REDUCE PRISON SPENDING AND INCREASE SAFETY

- **Limiting consecutive sentencing.** The state could require concurrent, rather than consecutive, sentencing in all cases where someone is convicted of multiple offenses or a base term is subject to one or more sentencing enhancements. California could allow people currently in state custody who have served their base term to petition for release based on the new law. The process could include opportunities for judges to rule on the petition, taking into consideration public safety risk.
- **Shortening felony probation and parole terms and ensuring more supervision success.** To reduce new arrest or revocations leading to imprisonment, the state could limit all felony probation terms to two years (and allow presumptive early termination after the first year of supervision if no public safety challenges present themselves), and limit parole terms to six months. Building off the success of SB 678, reductions in supervision terms and reductions in revocations and re-arrests could be linked to a reallocation of resources to build up local programs to bolster the success of the probation and parole system.
- **Expanding the use of sentence recall.** The state could build on efforts in AB 2942 to expand the ability of courts to revisit, recall, and modify old sentences by allowing people to petition for sentence recall on their own behalf.
- **Revising or eliminating the Three Strikes Law.** As noted above, there are still significant sentencing enhancements associated with the Three Strikes Law, and these changes could be considered by the taskforce, and potentially offered to legislators to refer to voters for change.

## POLICY OPTIONS:

*Lawmakers could empanel a short-term, multi-agency task force or commission to review sentence lengths and recommend law, policy and practice changes and emergency regulations to release people sentenced for crimes that are a low risk to public safety.*

## PUBLIC SUPPORT:

*By a 3 to 1 margin, California voters support creating a task force that is required to reduce the state prisons budget by \$2 billion, with savings designated to protect the public health and hospital budgets, and to protect the school budget.*



# CONCLUSION

## VOTERS SUPPORT REDUCING PRISON SPENDING THAT WOULD SAVE BILLIONS OF DOLLARS.

By choosing these policies, state and local governments can sustain the resources to build a strong, inclusive safety framework for all Californians. A more thoughtful reallocation of resources with an eye towards prevention and healing is the key to building safe neighborhoods and stopping cycles of crime. There has never been a more important time to achieve this vision. Incarceration rates have declined—but much more is needed to finally begin reducing excessive prison expenditures, repairing the harm caused by the “tough on crime era” and bringing stability and dignity to communities in need.

As long as the state continues to overspend on prisons, the unresolved drivers of crime will continue to plague vulnerable communities. Concrete and bold steps must be taken to build out new safety priorities rooted in community health and well-being. The policy options are knowable. The solutions are emerging and scalable. The public is ready and deserving.

In a sign of how much support there is from voters for these policies, overall, California voters support these policies to protect vital public services over protecting prisons and corrections spending cuts by a 4 to 1 margin. When voters were specifically asked what they preferred to protect from spending cuts, 78 percent of voters preferred health care and health services, 73 percent preferred education be protected, and only 18 percent or less preferred prison and corrections be protected.

The sentencing policy options offered here would garner significant savings, even using the most conservative ways of estimating the costs of confinement.

For example, a conservative estimate is that 20,000 people sentenced for crimes who are 55 or older, medically frail, and have a mental health challenge could be impacted by these types of reforms. Using the most conservative<sup>12</sup> way of calculating the savings, 20,000 fewer people in prison for crimes would save \$200 million in the first year.

Over time, billions could be saved, because declines in the prison population of this magnitude would make more facility closures more possible, allowing for more of the full costs of incarceration to be captured as savings.

Another example: If half the people sentenced to prison for crimes who are low risk were not in prison, that in itself would result in over 30,000 fewer people in prison. Currently, there is no facility in California with an institution population of more than 4,000 people. With more than \$80,000 being spent per person sentenced to prison each year, keeping these low-risk people out of prison would reduce prison spending by over \$2 billion.

California communities need policymakers to reallocate billions of dollars from prison spending to protect funding for education, health care and health services. California voters strongly support these policies. Policymakers should harness this popular support to enact these policies and help keep California communities safe, strong and healthy.



# METHODOLOGY

Californians for Safety and Justice commissioned a voter survey to help policymakers better understand their views on public policy.

David Binder Research conducted the survey in English and Spanish in May 2020, among 600 voters likely to cast a ballot in November 2020. The survey was administered by telephone to landlines and mobile phones. The overall margin of error is 4 percent.

The data and information cited on California correctional issues comes directly from the California Department of Corrections public document, where they offer data and information on the institutional population. Where relevant, other field research was incorporated into this brief.

## ABOUT CALIFORNIANS FOR SAFETY AND JUSTICE

Californians for Safety and Justice is an advocacy organization working to replace over-incarceration with new approaches to safety that work to stop the cycle of crime and improve community wellbeing. We engage in legislative advocacy, research and

communications, and crime survivor organizing. We're working to change laws and systems to put the communities that have been most harmed and least helped at the center of public safety strategies and investments.



## REFERENCES

- <sup>1</sup> National Research Council, Division of Behavioral and Social Sciences and Education, & Committee on Law and Justice. (2014). *Growth of Incarceration in the United States*. Washington: National Academies Press.; Cullen, F. T., Johnson, C. L. & Nagin, D. S. (2011). Prisons do not reduce recidivism: The high cost of ignoring science. *The Prison Journal*, 91 (3): 48-65.
- <sup>2</sup> Skeem, J. L. and Monahan, J. (2011). Current Directions in Violence Risk Assessment. *Current Directions in Psychological Science* 20:1: 38-42, cited in Desmarais, S. L. and Singh, J. P. (2013). *Instruments for Assessing Recidivism Risk: A Review of Validation Studies Conducted in the U.S. Council of State Governments Justice Center*.
- <sup>3</sup> The California Static Risk Assessment utilizes an offender's demographic and criminal history data to predict a low, moderate, or high risk to reoffend. The California Static Risk Assessment scores range from one (1) at the lowest to five (5) at the highest. Offender Data Points: Offender Demographics for the 24-Month Period Ending December 2018. (p. 16). [https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2020/01/201812\\_DataPoints.pdf](https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2020/01/201812_DataPoints.pdf)
- <sup>4</sup> California Department of Corrections and Rehabilitation. (2020). *Offender Data Points: Offender Demographics for the 24-Month Period Ending December 2018* (p. 20).
- <sup>5</sup> Recidivism research demonstrates that arrest rates drop to just more than 2 percent in people ages 50 to 65 years old and to almost zero for those older than 65. See Silber, R., Shames, A., & Reid, K. (2017). *Aging Out: Using Compassionate Release to Address the Growth of Aging and Inform Prison Populations* (p. 3). Vera Institute of Justice.
- <sup>6</sup> The cost of incarcerating older people is two to three times that of housing younger people, due to health care expenses. Thigpen, M., Solomon, L., Hunter, S., & Ortiz, M. (2004). *Correctional Health Care: Addressing the Needs of Elderly, Chronically Ill, and Terminally Ill Inmates*. Washington D.C.: U.S. Department of Justice, National Institute of Corrections. Retrieved from <https://nic.gov/correctional-health-care-addressing-needs-elderly-chronically-ill-and-terminally-ill-inmates>; Chiu, T. (2010). *It's About Time: Aging Prisoners, Increasing Costs, and Geriatric Release* (p. 5). New York: Vera Institute of Justice. Retrieved from <https://perma.cc/DRT2-5ZB6>, reports that elderly adults in prison have "have five times as many visits to health facilities per year than similarly aged people who are not incarcerated."; Pew Center on the States. (2008). *One in 100: Behind Bars in America 2008*. Washington, D.C. Retrieved from <https://perma.cc/GTC6-FJZY>
- <sup>7</sup> Prison Health Care Costs and Quality. How and why states strive for high-performing systems; Bureau of Justice Statistics, Medical Problems of State and Federal Prisoners and Jail Inmates, 2011-2012 (2016), Accessed here: <https://www.bjs.gov/content/pub/pdf/mpsfpi1112.pdf>
- <sup>8</sup> California Department of Corrections and Rehabilitation. (2020). Offender Data Points: Offender Demographics for the 24-Month Period Ending December 2018 (p. 22 and 23).
- <sup>9</sup> California Department of Corrections and Rehabilitation. (2020). Offender Data Points: Offender Demographics for the 24-Month Period Ending December 2018 (p. 26).
- <sup>10</sup> An estimated 10 percent of calls for service involved a person in a mental health crisis, and these figures were applied to the total California number of calls for services. Wood, J. D., Watson, A. C., Fulambarker, A. J. (2017). The "Gray Zone" of Police Work During Mental Health Encounters: Findings from an Observational Study in Chicago, 20(1), 81-105. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5342894/>; Bureau of Justice Assistance.: Learn about the issues and facts related to Police-Mental Health.
- <sup>11</sup> Six communities are now advancing Law Enforcement Assisted Diversion (LEAD), a pre-arrest diversion to treatment and housing support at first contact with law enforcement, and Los Angeles County has a fully funded Office of Diversion and Reentry, which is part of the Department of Health and Human Services. Both are an important advance in the types of alternatives needed statewide, but the LEAD programs in California and LA County's office of diversion and reentry may serve, in total, approximately 3,303 people a year. These figures are derived from Proposition 47 grant program two-year preliminary evaluations submitted to the BSCC for Contra Costa County's LEAD Program, which currently has an enrollment rate of 3.67 people a month, i.e., approximately 44 people annually, and the Los Angeles County Department of Health Services, Office of Diversion and Reentry, which served 3,259 clients under its Proposition 47 program from April 2018 to March 2019. See Bastomski, S., Cramer, L., & Reimal, E. (2020). *Evaluation of the Contra Costa County Law Enforcement Assisted Diversion Plus Program: Interim Evaluation Report* (p. 21). Urban Institute. Retrieved from <http://www.bscc.ca.gov/wp-content/uploads/Contra-Costa-County-Health-Services-Department-1.pdf> and Los Angeles County Department of Health Services, Office of Diversion and Reentry. (2019). *Proposition 47 Two Year Preliminary Report* (pp. 4, 12, 38). Los Angeles County Department of Health Services, Office of Diversion and Reentry. Retrieved from [http://www.bscc.ca.gov/s\\_bsccprop47/](http://www.bscc.ca.gov/s_bsccprop47/)
- <sup>12</sup> Marginal costs are used to help develop estimates to show the absolute minimal savings that could accrue from an estimate. These marginal costs are based on 2016 amounts calculated by the California Budget and Policy Center and were converted using inflation estimates to 2020 values of \$9,884 per person per year. For more information on how these estimates were derived, contact Californians for Safety and Justice.

