

FEWER PRISONERS, LESS CRIME: A TALE OF THREE STATES

Although the pace of criminal justice reform has accelerated at both the federal and state levels in the past decade, current initiatives have had only a modest effect on the size of the prison population. But over this period, three states – New York, New Jersey, and California – have achieved prison population reductions in the range of 25%. They have also seen their crime rates generally decline at a faster pace than the national average.

Key findings:

- New York and New Jersey led the nation by *reducing* their prison populations by 26% between 1999 and 2012, while the nationwide state prison population *increased* by 10%.
- California downsized its prison population by 23% between 2006 and 2012. During this period, the nationwide state prison population decreased by just 1%.
- During their periods of decarceration, violent crime rates fell *at a greater rate* in these three states than they did nationwide. Between 1999-2012, New York and New Jersey's violent crime rate fell by 31% and 30%, respectively, while the national rate decreased by 26%. Between 2006-2012, California's violent crime rate drop of 21% exceeded the national decline of 19%.
- Property crime rates also decreased in New York and New Jersey more than they did nationwide, while California's reduction was slightly lower than the national average. Between 1999-2012, New York's property crime rate fell by 29% and New Jersey's by 31%, compared to the national decline of 24%. Between 2006-2012, California's property crime drop of 13% was slightly lower than the national reduction of 15%.

These prison population reductions have come about through a mix of changes in policy and practice designed to reduce admissions to prison and lengths of stay. The experiences of these states reinforce that criminal justice policies, and not crime rates, are the prime drivers of changes in prison populations. They also demonstrate that it is possible to substantially reduce prison populations without harming public safety.

A DECADE OF EVOLVING CRIMINAL JUSTICE REFORM

For more than a decade the political environment shaping criminal justice policy has been evolving in a direction emphasizing “smart on crime” and evidence-based approaches to public safety. This has involved growing bipartisan campaigns at both the federal and state levels to promote more strategic sentencing and reentry policies, and to address the unprecedented growth and cost of the corrections system created over the past several decades.

The changing climate can be seen in a variety of legislative, judicial, and policy changes during this period of time. At the federal level, this has included the Fair Sentencing Act of 2010 which reduced the disparity in sentencing between crack and powder cocaine offenses; the adoption of the Second Chance Act in 2008 which currently funds about \$67 million in reentry services

annually; and the U.S. Supreme Court's 2005 *Booker* decision making the Federal Sentencing Guidelines advisory and thereby restoring a greater degree of sentencing discretion to federal judges.

At the state level, 29 states have adopted reforms designed to scale back the scope and severity of their mandatory sentencing policies over the past decade.¹ Voters in California approved a ballot initiative in 2012 that curbed the scope of the state's notoriously broad "three strikes and you're out" law and policymakers around the country have become increasingly supportive of Justice Reinvestment initiatives, reducing parole revocations, establishing treatment courts, and developing alternatives to incarceration.

LIMITED IMPACT ON INCARCERATION TO DATE

The impact of these various initiatives on incarceration has been mixed. At the federal level the prison population has continued its more than three-decade historic rise, driven in large part by the ongoing effect of mandatory penalties for many drug and gun crimes, and increasing incarceration for immigration offenses.²

At the state level there has been more of a shift in prison population trends. The number of people incarcerated in state prisons has declined for three years since 2010,

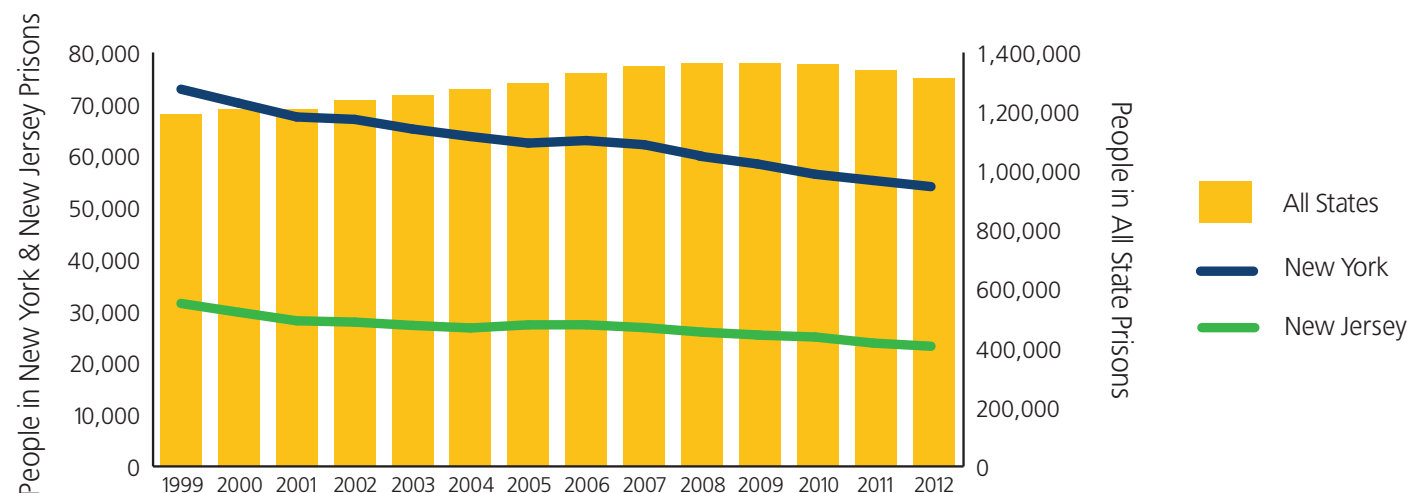
and in 2012 (the most recent year for which data are available) 27 states experienced a reduction in their population.

While these trends are encouraging it is also important to note that the overall scale of change has been quite modest. The national prison population has only declined by less than 2% annually in recent years, and a disproportionate amount of that decline is due to California's "Realignment" policy. In 2012, the prison population reduction of 15,000 in California accounted for half of the national decline for all states that year.

SUBSTANTIAL PRISON POPULATION DECLINES IN THREE STATES

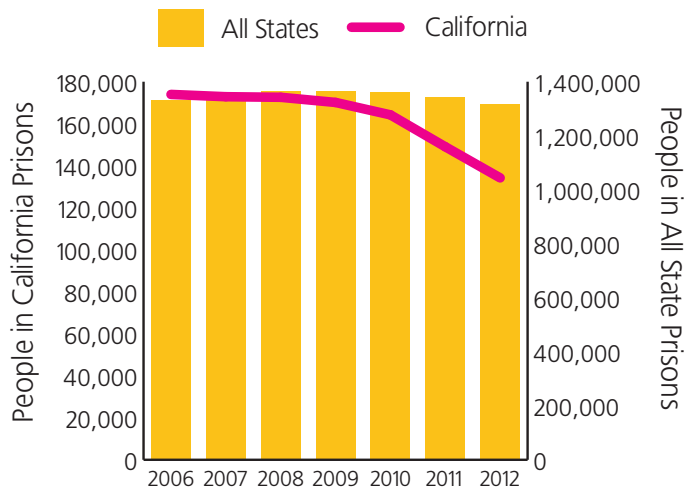
The exceptions to the modest scale of decarceration can be seen in three states – New York, New Jersey, and California – each of which has reduced its prison population in the range of 25% over the past decade. While New York and New Jersey reduced their prisoner counts by 26% between 1999 and 2012, the nationwide state prison population increased by 10%. While California downsized its prison population by 23% between 2006 and 2012, the nationwide level decreased by just 1%.³ Six other states achieved double-digit reductions during varying periods within these years,

Figure 1. People in State Prisons in New York, New Jersey, and All States, 1999-2012



- 1 RAM SUBRAMANIAN & RUTH DELANEY, PLAYBOOK FOR CHANGE? STATES RECONSIDER MANDATORY SENTENCES (Vera Institute of Justice 2014), available at <http://www.vera.org/sites/default/files/resources/downloads/mandatory-sentences-policy-report-v3.pdf>.
- 2 All prison population data taken from various corrections reports of the Bureau of Justice Statistics.
- 3 California's Realignment policy has produced a concomitant increase in the jail population, although of a much smaller magnitude than the prison decline, as described later in the report.

Figure 2. People in California Prisons and All States, 2006-2012



though of a lesser magnitude: Colorado, Connecticut, Hawaii, Michigan, Rhode Island, and Vermont. Coming after a nearly four-decade historic rise in imprisonment, the substantial and sustained reductions in New York, New Jersey, and California should be particularly instructive for all concerned with excessively high prison populations.

Table 1. State Prisoners in the United States, New York, New Jersey, and California: 1999, 2006, 2012

Prisoners	1999	2012	Change
Nationwide	1,191,118	1,314,906	10%
NY	72,896	54,073	-26%
NJ	31,493	23,225	-26%

Prisoners	2006	2012	Change
Nationwide	1,331,127	1,314,906	-1%
CA	173,942	134,211	-23%

Because incarceration is ostensibly designed to support public safety, in this analysis we review how prisoner reductions in these three states impacted crime control. While some political leaders warn of a “crime wave” when prison population reductions are considered, such talk ignores the complexity of how public safety is produced. Incarceration is a limited factor among many that shape public safety. Further, in the era of mass incarceration, there is a growing consensus that current

levels of incarceration place the nation well past the point of diminishing returns in crime control.

IMPACT OF PRISON POPULATION REDUCTIONS ON CRIME

The periods in which New York, New Jersey, and California significantly decreased their prison populations were ones in which crime rates were declining around the country.⁴ Yet in these states, crime rates generally fell at a faster pace than in the country as a whole. In all three states, violent crime rates decreased more than they did nationwide. Property crime rates decreased in New York and New Jersey more than they did nationwide, while California’s property crime reduction was slightly lower than the national average.

ALL THREE STATES EXPERIENCED VIOLENT CRIME DROPS THAT EXCEEDED THE NATIONAL AVERAGE

The violent crime rate measures the incidence of four crime categories (murder, forcible rape, robbery, and aggravated assault) per 100,000 residents. Between 1999-2012, the nationwide violent crime rate decreased by 26%. New York and New Jersey outpaced this decline, with reductions of 31% and 30%, respectively. California’s violent crime drop of 21% between 2006-2012 also exceeded the national decline of 19% during this period.

Table 2. Violent Crime Rates in the United States, New York, New Jersey, and California: 1999, 2006, 2012

Violent Crime Rate	1999	2012	Change
Nationwide	523.0	386.9	-26%
NY	588.8	406.8	-31%
NJ	411.9	290.2	-30%

Violent Crime Rate	2006	2012	Change
Nationwide	479.3	386.9	-19%
CA	532.5	423.1	-21%

New York and California’s violent crime reductions have exceeded nationwide trends despite recent upticks. Between 2010 and 2012, while the nationwide violent

4 All crime data are offenses known to law enforcement, taken from the Federal Bureau of Investigation’s *Crime in the United States* series.

crime rate slowed its decline, New York's violent crime rate increased each year – by 3.7% between 2010 and 2012. Because this uptick has only brought the state back to its 2007 level, New York maintains its historically low violent crime rate.

Figure 3. Violent Crime Rates in the United States, New York, and New Jersey, 1999-2012

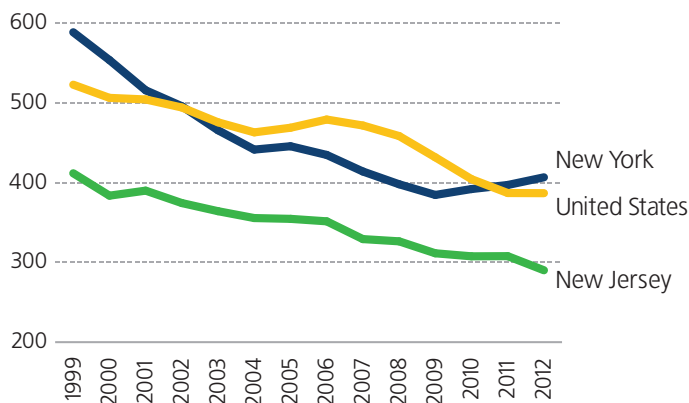
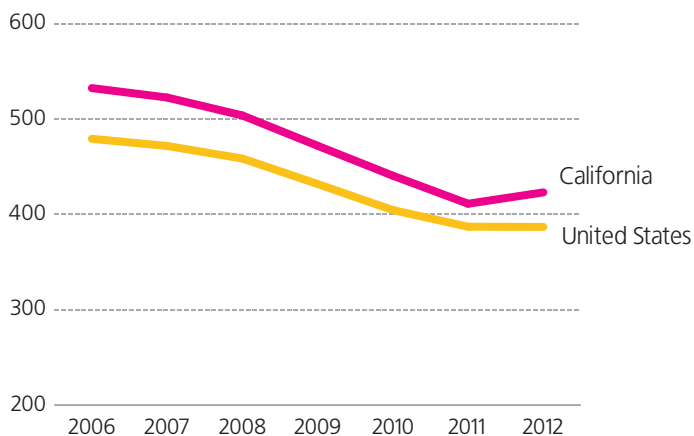


Figure 4. Violent Crime Rates in the United States and California, 2006-2012



California's violent crime drop between 2006 and 2012 also exceeded the national average. Its rate in 2012 was 21% lower than in 2006 despite an increase of 2.9% in 2012.

Magnus Lofstrom and Steven Raphael's analysis of county-level variation in crime and incarceration rates has shown that California's violent crime uptick in 2012 was

unlikely to have been related to the prison downsizing achieved through Realignment, a policy that went into effect in October 2011.⁵ Lofstrom and Raphael compared monthly changes in crime rates with changes in jail and prison incarceration rates in each California county in the twelve months before and after Realignment. "There is no evidence that realignment resulted in an increase in murder or rape, with the estimates near zero and statistically insignificant," they concluded. When they examined California crime data without controlling for broader regional trends, they found that Realignment had a small and marginally significant effect on robbery and aggravated assault. But "all evidence of an effect of realignment on violent crime vanishes," they noted, when broader regional trends are incorporated into the analysis.

ALL THREE STATES EXPERIENCED SUBSTANTIAL DECLINES IN PROPERTY CRIME RATES, AND TWO EXCEEDED THE NATIONAL AVERAGE

The property crime rate measures the incidence of four crime categories (burglary, larceny-theft, motor vehicle theft, and arson) per 100,000 residents. While the national property crime rate decreased by 24% between 1999 and 2012, New York's rate dropped by 29% and New Jersey's by 31%. Between 2006 and 2012, California's property crime rate decreased significantly, but at a slightly lower rate than the national average. While California's property crime rate fell by 13% during this period, the nationwide property crime rate fell by 15%.

Table 3. Property Crime Rates in the United States, New York, New Jersey, and California: 1999, 2006, 2012

Property Crime Rate	1999	2012	Change
Nationwide	3743.6	2,859.2	-24%
NY	2690.5	1,922.0	-29%
NJ	2988.2	2,047.3	-31%

Property Crime Rate	2006	2012	Change
Nationwide	3,346.6	2,859.2	-15%
CA	3,170.9	2,758.7	-13%

5 MAGNUS LOFSTROM & STEVEN RAPHAEL, PUBLIC SAFETY REALIGNMENT AND CRIME RATES IN CALIFORNIA (Public Policy Institute of California 2013), available at http://www.ppic.org/content/pubs/report/R_1213MLR.pdf.

New York and New Jersey have outpaced the national decline in property rates since 1999 even while experiencing modest upticks in some years. Both nationwide and in New York and New Jersey, property crime rates have been falling at a slower rate since 2009.

Figure 5. Property Crime Rates in the United States, New York, and New Jersey, 1999-2012

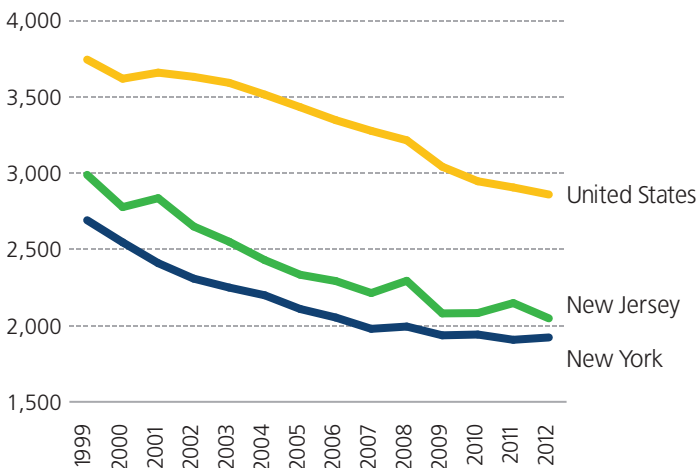
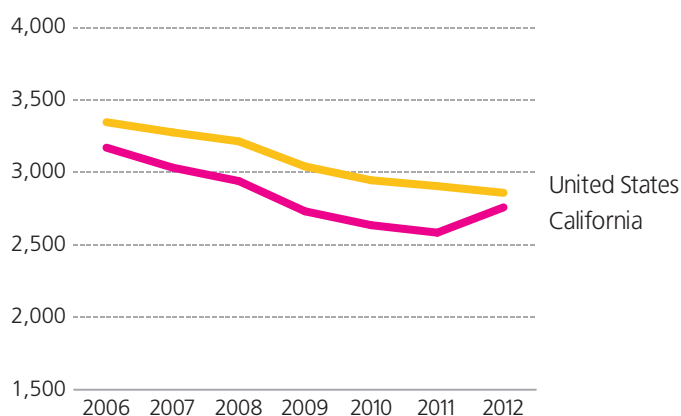


Figure 6. Property Crime Rates in the United States and California, 2006-2012



While California's property crime rate decreased by 13% between 2006 and 2012, the state experienced a 6.8% uptick in 2012. That increase, the first since 2003, brought the state's property crime rate back to its 2009 level.

Lofstrom and Raphael's analysis of California's monthly crime data at the county level presents evidence that the small uptick in property crimes, particularly auto

thefts, was related to Realignment.⁶ "The start of the increase in motor vehicle theft coincides exactly with the implementation of realignment in October 2011," they write, and there was a statistically significant relationship between decarceration and motor vehicle theft at the county level even after incorporating broader regional trends. But, as the authors note, the post-Realignment uptick in car thefts only brought the state's auto theft rate back to 2009 levels. Given Realignment's modest impact on property crimes, Lofstrom and Raphael's cost-benefit analysis leads them to conclude that Realignment's "benefits in terms of prison expenditure savings outweigh the costs in terms of somewhat higher property crimes."

POLICIES AND PRACTICES THAT REDUCED PRISON POPULATIONS IN THREE STATES

The declining prison populations of New York, New Jersey, and California were not simply the result of falling crime rates; rather, prisons were downsized through a mix of policy and practice changes designed to reduce admissions to prison and lengths of stay. While crime rates were declining nationally during this period, other states either experienced continued increases in their prison populations, or only modest declines. Following is a brief overview of the key reforms that produced these outcomes.

NEW YORK

New York's prison population peaked in 1999, with 72,896 prisoners. Mandatory penalties created by the passage of Rockefeller Drug Laws and related legislation, along with the intensification of street drug enforcement in the 1980s and 1990s caused the state's prison population to balloon in size with lower-level drug offenders.⁷ Other "get-tough" measures, such as limitations on parole, also added to the state's prison population. Through a combination of changes in policy and practice that largely affected enforcement and sentencing for drug offenses in New York City, the state's 2012 prison population was 26% smaller than its 1999 peak.

⁶ *Id.*

⁷ Judith Greene & Marc Mauer, *Downscaling Prisons: Lessons from Four States*, THE SENTENCING PROJECT (2010), http://www.sentencingproject.org/doc/publications/publications/inc_DownscalingPrisons2010.pdf.

Felony drug arrests began their sharp decline in New York City beginning in 1999, following a widely-publicized poll showing that the public had grown critical of mandatory drug sentencing.⁸ The decline in arrests was driven largely by a shift in enforcement priorities in the New York City Police Department. During the 1990s, there were generally over 40,000 felony drug arrests per year in New York City.⁹ By 2003, there were only 23,711 felony drug arrests, and that figure had fallen to 19,680 by 2012.¹⁰

At the same time, misdemeanor drug arrests had increased dramatically in New York City – doubling between 1986 and 2008 – in part because of the broader growth in controversial police policies to target misdemeanor crimes under “broken windows” and “stop and frisk” strategies.¹¹ James Austin and Michael Jacobson have argued that “NYPD’s *shifting resources* toward misdemeanor arrests as part of the ‘broken windows’ policing model contributed to the decrease in the felony arrests” (emphasis added).¹² Given the disproportionate influence of prison admissions from New York City, policing changes in that jurisdiction played a significant role in the state’s prison decline.

Prison disposition rates also fell, with a growing number of people with felony drug arrests being diverted to alternative sentences, enabled by the growth in treatment programs and their demonstrated efficacy. Initiatives such as the Drug Treatment Alternative to Prison program, pioneered by the Brooklyn District Attorney’s Office, provided high quality substance abuse treatment services to an otherwise prison-bound population, and have

since been replicated in a number of other jurisdictions. Statewide, the proportion of people with felony drug arrests who were sentenced to prison declined from 23.3% during the 1990s to 13.2% in 2012.¹³ Recently, the city and state have also curbed prison admissions through probation revocations by shortening probation terms, thereby reducing unnecessary supervision of low-risk individuals.¹⁴

The state also implemented a “Merit Time Program,” signed into law by Governor George Pataki in 1997. This program enabled people serving prison sentences for a nonviolent, non-sex crime to earn reductions in their minimum term and become eligible for parole consideration sooner by completing educational, vocational, treatment, and service programs.

Finally, between 2003-2005 the state made substantial revisions to the mandatory sentences stipulated by the Rockefeller Drug Laws, and in 2009 largely repealed the provisions of the policy. Mandatory minimum terms were eliminated or reduced in 2009, and the revisions were made retroactive for persons still incarcerated under the old law.

NEW JERSEY

New Jersey reached its peak prison population in 1999, with 31,493 prisoners, and reduced its size by 26% by 2012. The state downscaled its prisons through both front-end reforms affecting the number of admissions and sentence lengths, and back-end reforms that increased rates of parole and reduced parole revocations.

In 2001, the state settled a lawsuit accusing the Parole Board of failing to meet deadlines required by state law to prepare pre-parole reports and hold timely hearings.¹⁵ The parole board agreed to conduct more timely hearings to prevent a future backlog as part of the settlement, and it enhanced decision-making tools and supervision. Parole approval rates rose dramatically, from 30.1% in

Through a combination of changes in **policy and practice**, New York’s 2012 prison population was **26% smaller** than its 1999 peak.

⁸ *Id.*

⁹ JAMES AUSTIN & MICHAEL JACOBSON, HOW NEW YORK CITY REDUCED MASS INCARCERATION: A MODEL FOR CHANGE? (Vera Institute of Justice 2012), available at http://www.brennancenter.org/sites/default/files/publications/How_NYC_Reduced_Mass_Incarceration.pdf.

¹⁰ Computerized Criminal History System: Adult Arrests 2004-2013, NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES (Feb. 25, 2014), <http://www.criminaljustice.ny.gov/crimnet/ojsa/arrests/Allcounties.pdf>; Greene & Mauer, *supra* note 10.

¹¹ AUSTIN & JACOBSON, *supra* note 9.

¹² *Id.*

¹³ Computerized Criminal History System: Adult Arrests Disposed, NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES (Apr. 22, 2014), <http://www.criminaljustice.ny.gov/crimnet/ojsa/dispos/nys.pdf>; Computerized Criminal History System: Adult Arrests Disposed, NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES (June 23, 2014) (unpublished) (on file with author).

¹⁴ Vincent Schiraldi & Michael Jacobson, *Could Less Be More When it Comes to Probation Supervision?*, AMERICAN CITY & COUNTY VIEWPOINTS (June 4, 2014), <http://americancityandcounty.com/blog/could-less-be-more-when-it-comes-probation-supervision>.

¹⁵ Greene & Mauer, *supra* note 7.

1999 to 51.0% the following year, and have sustained elevated rates since.¹⁶ The state also reduced the rate at which people who violate the technical terms of their parole are readmitted to prison.

New Jersey's drug policy reforms also contributed to its decarceration. State legislators established a sentencing commission in 2004 that first investigated the state's "drug free zone law," concluding that the law created unwarranted racial disparity among people incarcerated for drug offenses. The New Jersey Office of the Attorney General issued guidelines to exempt the lowest level of drug offenders from the law and increase judicial discretion in sentencing. The state also passed Senate Bill 1866 to give judges discretion to sentence individuals below the mandatory minimums of the school zone law, and made this retroactive with a companion bill.

CALIFORNIA

Since California reached its peak prison population in 2006, with 173,942 men and women, prisoner counts have fallen every year. The rate of decline was small at first: the size receded by 5.6% between 2006 and 2010. But between 2010 and 2012, the prison population decreased by 18.3%. This dramatic change was primarily driven by the state's efforts to comply with a court order to reduce prison overcrowding.

In a significant 2011 decision, the U.S. Supreme Court in *Brown v. Plata* found the provision of health care in the California prison system to be constitutionally inadequate due to the severe overcrowding in the system.¹⁷ Noting that California prisons had been operating at around 200% of their design capacity for at least 11 years, the Court ruled that the state was required to reduce this figure to 137.5% of design capacity within two years. This meant an additional reduction of 37,000 prisoners. Through "Realignment," described next, the state has made significant reductions in its prison population but has yet to reach the court-stipulated level.

In order to substantially reduce prison overcrowding, the California Legislature enacted a "Realignment" policy (Assembly Bill 109) in October, 2011.¹⁸ Key elements of the legislation included: 1) individuals with non-violent, non-sex-related, and non-serious (referred to as "non-non-non") current and prior convictions could be incarcerated in county jails but no longer in state prisons; 2) released prisoners with "non-non-non" offenses would be supervised for a shorter period of time and released to county probation supervision instead of to state parole supervision, and; 3) individuals who violated the technical terms of their probation or parole (i.e., did not commit a new crime) could only be sentenced to jail rather than prison, and for a shorter length of time. Prior to Realignment, the state had also passed legislation in 2009 to limit parole supervision for low-risk individuals, with the intention of reducing the number of people returning to prison for violating the technical terms of their parole.¹⁹

Realignment has increased county jail populations while reducing the state's prison population. But the net effect has been to reduce the total incarcerated population (in jail and prison combined). The best estimates show that: "Realignment increased the average daily jail population by roughly one inmate for every three fewer offenders going to state prison."²⁰

THE LIMITED RELATIONSHIP BETWEEN INCARCERATION AND CRIME

While it might seem intuitive that reducing prison populations would negatively impact public safety – or conversely, that declining crime rates would drive down levels of incarceration – such a relationship has generally been shown to be relatively weak. This is because just as forces beyond crime rates affect incarceration levels, forces beyond incarceration affect crime.

¹⁶ *Id.*; NEW JERSEY STATE PAROLE BOARD, 2013 ANNUAL REPORT (2013), available at <http://www.state.nj.us/parole/docs/reports/AnnualReport2013.pdf>.

¹⁷ *Brown v. Plata*, 131 S. Ct. 1910 (2011).

¹⁸ Joan Petersilia & Jessica Greenlick Snyder, *Looking Past The Hype: 10 Questions Everyone Should Ask About California's Prison Realignment*, 5 CALIFORNIA JOURNAL OF POLITICS AND POLICY 266 (2013), http://www.bscc.ca.gov/downloads/Looking_Past_The_Hype_Petersilia.pdf. This is part of an ongoing series of analyses conducted and produced at Stanford Law School, see Stanford Law Sch., *California Realignment*, <http://www.law.stanford.edu/organizations/programs-and-centers/stanford-criminal-justice-center-sccj/california-realignment>.

¹⁹ CDCR Implements Public Safety Reforms to Parole Supervision, Expanded Incentive Credits for Inmates, INSIDE CDCR NEWS (Jan. 25, 2010), <http://www.insidecdcr.ca.gov/2010/01/cdcr-implements-public-safety-reforms-to-parole-supervision-expanded-incentive-credits-for-inmates>.

²⁰ MAGNUS LOFSTROM & STEVEN RAPHAEL, IMPACT OF REALIGNMENT ON COUNTY JAIL POPULATIONS (Public Policy Institute of California 2013), available at http://www.ppic.org/content/pubs/report/R_613MLR.pdf.

During the near four-decade continuous rise in incarceration since 1972, crime rates increased in some periods and declined in others. Most notably, during the period 1984-1991 the incarceration rate increased by more than 5% each year, reaching a peak increase of 12.8% in 1989 alone. Yet despite this significant rise in the number of imprisoned individuals, crime rates also rose substantially during this time.

Conversely, one might expect that trends in rates of crime might affect the size of the prison population, but there is little evidence for this assertion. As described in the comprehensive 2014 report of the National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*:

“Over the four decades when incarceration rates steadily rose, U.S crime rates showed no clear trend: the rate of violent crime rose, then fell, rose again, then declined sharply. The best single proximate explanation of the rise in incarceration is not rising crime rates, but the policy choices made by legislators to greatly increase the use of imprisonment as a response to crime.”²¹

Even to the extent that changes in crime rates might contribute to a rise or decline in prison populations, the experience of the three states analyzed in this report demonstrates that such a relationship is very much a secondary explanation. During the period that the prison population was declining in these states, crime rates were declining not only in these states but in virtually all states. Yet despite a slowing of incarceration growth, most states nevertheless experienced an increase in their prison populations, and in some cases, very substantial increases. Policy decisions, and not levels of crime, have been the main determinant of the scale of incarceration.

Finally, many studies have asked how one approach to decarceration, shortening prison sentences, affects recidivism. Data on recidivism rates have the advantage

Studies consistently find that expediting prisoners' release from prison has **no or minimal impact** on recidivism rates.

of linking crime to convicted individuals, but they are also impacted by changing police and court practices towards people under parole or probation supervision. Yet studies quite consistently find that expediting prisoners' release from prison has no or a minimal impact on recidivism rates. This pattern has been true among federal prisoners whose sentences were shortened,²² California prisoners re-sentenced under the state's reform to the “three strikes and you're out” law,²³ and California prisoners who avoided prison sentences under Realignment.²⁴

A number of factors are key to understanding why a declining prison population might not produce higher rates of crime. These include:

- The number of individuals released from prison in a given year represents a relatively small proportion of the overall “at risk” population of young males.
- The crime-reducing effect of incarcerating certain groups of offenders – particularly for drug offenses and youth crimes, which are often committed in groups – is relatively modest since such offenders are frequently replaced on the streets by others seeking to gain income.
- To some extent prison may produce criminogenic effects; that is, longer stays in prison may lead to higher rates of recidivism, in part due to the challenges of maintaining ties with family and community. A 1999 meta-analysis of offender studies over four decades found that longer prison sentences were associated with a modest *increase* in

21 NATIONAL RESEARCH COUNCIL, THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES 3 (The National Academies Press 2014), available at http://www.nap.edu/openbook.php?record_id=18613.

22 U.S. SENTENCING COMM'N, RECIDIVISM AMONG OFFENDERS RECEIVING RETROACTIVE SENTENCE REDUCTIONS: THE 2007 CRACK COCAINE AMENDMENT (2014), available at http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/20140527_Recidivism_2007_Crack_Cocaine_Amendment.pdf.

23 Proposition 36 Progress Report: Over 1,500 Prisoners Released Historically Low Recidivism Rate, STANFORD LAW SCHOOL THREE STRIKES PROJECT & NAACP LEGAL DEFENSE AND EDUCATION FUND (2014), <https://www.law.stanford.edu/sites/default/files/child-page/595365/doc/slspublic/ThreeStrikesReport.pdf>.

24 MAGNUS LOFSTROM, STEVEN RAPHAEL, & RYKEN GRATTET, IS PUBLIC SAFETY REALIGNMENT REDUCING RECIDIVISM IN CALIFORNIA? (Public Policy Institute of California 2014), available at http://www.ppic.org/content/pubs/report/R_614MLR.pdf.

recidivism.²⁵ So reductions in the length of prison terms may contribute to public safety, or at least produce fewer negative consequences.

INTERNATIONAL EXPERIENCE IN PRISON POPULATION REDUCTION

The experience of the three states described in this report is mirrored in other nations as well, with policymakers and practitioners abroad enacting a range of measures that have substantially reduced prison populations. The Canadian province of Alberta significantly decreased its prison population in the 1990s. The decline was not produced by a government committed to a reduced use of imprisonment, but rather a newly elected provincial premier committed to balancing the budget through sharp cuts in government expenditures, including corrections. As a result there was a sharp decline in the number of people sentenced to provincial prisons for less serious crimes (persons convicted of serious crimes continued to be sentenced to federal prisons). By closing two provincial prisons, diverting minor cases from the justice system, and expanding the use of alternative sentencing, the province was able to reduce prison admissions by 32% between 1993 and 1997. Researchers have found that the decline was not due to changes in reported crime and also that reduced incarceration “had no obvious important negative impacts on offenders.”²⁶

In Europe, governments in Germany and Finland embarked on ambitious campaigns to reduce prison populations in the 1960s and 1970s, the effects of which can still be seen today.²⁷ In Germany officials concluded that short prison terms served little crime control purpose, but significantly affected offenders’ relationships with families and communities, and so substituted a range of community penalties instead. In Finland policymakers became concerned that though their crime rates were similar to those of other Scandinavian nations their rate of incarceration was two to three times higher. Through a series of sentencing and programmatic shifts over a number of years the country was able to reduce its imprisonment rate to become comparable to neighboring nations. By contrast,

Italy’s 2006 prison downsizing through commutation proved short-lived.²⁸ The large-scale parliamentary commutation cut the country’s prison population by one-third. But the legislation did not reform sentences for future convictions and in fact enhanced prison terms for released individuals who recidivated. Consequently, the country’s incarceration rate returned to its pre-pardon high within two and half years.

POTENTIAL FOR SUBSTANTIAL PRISON POPULATION REDUCTIONS

The experience in New York, New Jersey, and California over more than a decade demonstrates that substantial reductions in prison populations can be achieved without adverse effects on public safety. It is also important to note that prior to embarking on these population reductions these states did not have excessive rates of incarceration by U.S. standards. In 1999, New Jersey and New York had incarceration rates of 384 and 400 per 100,000 population respectively, compared to a national rate for all states of 434 per 100,000. California’s rate of 475 per 100,000 when it began its reduction in 2006 was just 7% above the national rate of 445 per 100,000.

In contrast, 14 states had rates of incarceration in excess of 450 per 100,000 as of 2012. Given the relatively modest relationship between crime rates and incarceration rates we can therefore surmise that the degree of “excessive” imprisonment in these states is likely to be substantial. Such a finding helps to provide context for recent population reductions in states like Texas. During 2012 the state experienced a reduction of nearly 6,000 people in its prison population. This shift built on bipartisan initiatives designed to reduce parole revocations and enhance treatment programming. But even with this recent population reduction the state’s incarceration rate declined only to 601 per 100,000, a dramatic rate of imprisonment even by the standards of a nation of mass incarceration. Such an observation does not diminish the significance of these changes or suggest that changing a political climate on criminal

25 PAUL GENDREAU, CLAIRE GOGGIN, & FRANCIS T. CULLEN, THE EFFECTS OF PRISON SENTENCES ON RECIDIVISM (Public Works and Government Services Canada 1999), available at <http://www.prisonpolicy.org/scans/e199912.htm>.

26 Cheryl Marie Webster & Anthony N. Doob, *Penal Reform ‘Canadian style’: Fiscal Responsibility and Decarceration in Alberta, Canada*, 16 PUNISHMENT AND SOC’Y 3, 23 (2014).

27 MICHAEL TONRY, THINKING ABOUT CRIME: SENSE AND SENSIBILITY IN AMERICAN PENAL CULTURE 29-34 (Oxford University Press 2004).

28 Paolo Buonanno & Steven Raphael, *Incarceration and Incapacitation: Evidence from the 2006 Italian Collective Pardon*, 103 AM. ECON. REV. 2437, 2442 (2013).

justice policy is a simple matter, but it does tell us that there is potential for more substantial change in many states.

Further, we note that in the three states under review continuous prison population reductions were achieved during a mix of Democratic and Republican gubernatorial terms. As can be seen nationally, increasingly issues of criminal justice reform are being viewed as bipartisan initiatives designed to produce better public safety outcomes and reduced reliance on incarceration.

EXPANDING THE AGENDA FOR PRISON POPULATION REDUCTION

In seeking to take advantage of the changing climate for reform, policymakers would be well advised to prioritize several goals:

FOCUS ON LONG-TERM PRISONERS

Much of the reform activity of recent years has centered around lower-level drug offenders, with increasing support for diverting such people to treatment programs rather than prisons, as well as reducing excessively severe mandatory minimum sentencing provisions. While these initiatives have produced significant results in many cases, they represent only one aspect of a broader strategy for prison population reduction. This can be seen by examining the composition of prison populations today.

Among the population in state prisons nationally half (53.5% as of 2011) were incarcerated for a violent offense and a declining proportion, now 16.6%, for a drug offense (with the remainder having been convicted of property and public order offenses). While persons convicted of a violent offense clearly raise significant concerns for public safety, in far too many cases such concerns have led to excessively lengthy prison terms. Through policies and practices such as “life means life” and “no parole for violent offenders,” parole boards and governors in many states have adopted across-the-board policies that fail to distinguish among individual offense circumstances, accomplishments in prison, or degree of risk to public safety. Research over many years has

shown that older offenders have much lower rates of recidivism than younger ones, and so such limitations on release both lack compassion and are counterproductive in allocating public safety resources.

ADDRESS RACIAL/ETHNIC DISPARITIES IN PRISON POPULATION

As policymakers reduce prison populations in the coming years, it will be important to assess how those initiatives affect the racial composition of incarcerated persons. Reductions in populations overall may or may not affect existing disparities in imprisonment depending on the strategies and criteria employed for such change.

For example, in New York State the prison population reduction of recent years has also produced a significant decline in racial disparity among women.²⁹ Most of this decline has come about through a substantially reduced number of persons serving sentences for drug offenses. Since that population was about 90% African American or Hispanic, the declines almost inevitably led to a reduction in overall disparity as well.

But in situations where policymakers restrict sentence reductions for persons convicted of a serious offense and/or with a prior criminal record, population reductions may then exacerbate racial disparities. This is because African Americans in particular are more likely to fall in these categories, either due to greater involvement in offending and/or greater attention from law enforcement agencies. Unless there is a sustained focus and attention to this issue, racial disparities may be compounded even as overall populations decline.

Unless there is a sustained focus and attention to this issue, racial disparities may be **compounded** even as overall prison populations decline.

²⁹ Marc Mauer, *The Changing Racial Dynamics of Women's Incarceration*, THE SENTENCING PROJECT (2013), http://sentencingproject.org/doc/publications/rd_Changing%20Racial%20Dynamics%202013.pdf.

REINVEST IN COMMUNITIES

Mass incarceration has been produced by the combined impact of a broad range of law enforcement, sentencing, and corrections policies. But ultimately, it stems from a substantial shift in the balance of approaches to public safety in disadvantaged communities. Whereas public safety is produced by a complex mix of family and community support, education and economic opportunity, and social interventions to address individual deficits, as well as criminal justice responses, over the past several decades policymakers have created a severe imbalance in these approaches. Rather than preventing or addressing crime through job creation, mental health and substance abuse treatment and other interventions, far too often arrest and incarceration have become the preferred options.

As a means of remedying this imbalance, savings achieved through reductions in prison populations should be targeted to those communities most heavily affected by mass incarceration. As originally conceptualized in Justice Reinvestment, targeting such savings to high incarceration neighborhoods would both address the harms created by mass incarceration as well as promote public safety in a proactive manner.³⁰

CONCLUSION

At least in three states we now know that the prison population can be reduced by about 25% with little or no adverse effect on public safety. Individual circumstances vary by state, but policymakers should explore the reforms in New York, New Jersey, and California as a guide for other states.

There is also no reason why a reduction of 25% should be considered the maximum that might be achieved. Even if every state and the federal government were able to produce such reductions, that would still leave the United States with an incarceration rate of more than 500 per 100,000 population – a level 3-6 times that of most industrialized nations.

In recent years a broader range of proposals has emerged for how to reduce the prison population and by various scales of decarceration. In a recent right/left commentary Newt Gingrich and Van Jones describe how they will “be working together to explore ways to reduce the prison population substantially in the next decade.”³¹ The experiences of New York, New Jersey, and California demonstrate that it is possible to achieve substantial reductions in mass incarceration without compromising public safety.

30 Susan B. Tucker & Eric Cadora, *Ideas for an Open Society: Justice Reinvestment*, OPEN SOCIETY INSTITUTE (November 2003) http://www.opensocietyfoundations.org/sites/default/files/ideas_reinvestment.pdf.

31 Newt Gingrich & Van Jones, *Prison System is Failing America*, CNN OPINION (May 22, 2014 5:23PM EDT), <http://tyger.ac/posts/4036/frame>.