



Prosecutor-Initiated Resentencing:

California's Opportunity to
Expand Justice and Repair Harm

Executive Summary + Recommendations

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Executive Summary

As of Spring 2021, nearly 1.8 million people were incarcerated in U.S. prisons and jails. Despite a decline in recent years, the U.S. continues to incarcerate its people—particularly those who are Black and Brown—at 639 per 100,000 people, a rate far surpassing every other nation. While reforms have been implemented to address mass incarceration, at the current pace of reforms, experts estimate it will take nearly 60 years to cut the U.S. prison population in half.

Until relatively recently, California was home to the largest prison system in the U.S. From 1975 to 2006, California's prison population saw an 800% increase, from less than 20,000 people to 163,000, as the state built 22 of its 34 prison facilities. Though California has enacted a series of reforms in the last decade, over 99,000 people remain incarcerated in the state's prisons. Many of these people, disproportionately people of color, are serving excessively long sentences and could be released without posing a threat to public safety.

California's **Prosecutor-Initiated Resentencing (PIR) law (AB 2942)**, championed by For The People's founder and passed in 2018, gives District Attorneys (DAs) a groundbreaking tool to directly and immediately redress the harm caused by mass incarceration and excessive sentences. The law allows DAs to take a "second look" at past sentences that may no longer be in the interest of justice and ask the court to recall sentences and resentence people, resulting in their earlier release and reunification with family and community.

This report looks at how specific policies led to mass incarceration in California, reviews the evidence in support of releasing people who no longer need to be incarcerated, examines the opportunity for PIR, and shares the real impacts of resentencing on people who have already been released. Finally, the report offers recommendations on implementation and opportunities for further reform.





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KEY FINDINGS

1 California's Prosecutor-Initiated Resentencing Law provides an opportunity for DAs to reduce sentences that are excessively long and not in the interest of justice.

- Despite a series of recent reforms to address mass incarceration in California—largely driven by policies of the “tough on crime” era—there are nearly 100,000 people incarcerated in California state prisons, many of whom are serving excessively long sentences and could be safely released.
- Of all 50 states, California has the highest number of people serving life or virtual life sentences. Approximately 40,878 people fall within this category, including a significant number whose crime did not involve violence.
- A significant proportion of California's prison population is comprised of people serving time for an offense committed as a young adult or child, as more than 41% of people currently incarcerated were under age 26 at the time of their offense.
- As of November 2021, 242 incarcerated people had died in a California state prison facility after contracting COVID-19. 5,199 people in California state prisons are 65 years or older. This elderly group of incarcerated people has a low rate of recidivism compared to other age groups, as well as an elevated risk of death or severe illness if they contract COVID-19.

2 Nearly half of the people incarcerated in California state prisons have already served at least 10 years of their sentence, and over half have served at least seven years. Resentencing these people when appropriate would help to combat racial disparities and strengthen public safety.

- Of the state prison population, approximately 46% of incarcerated people have served at least 10 years of their sentence, and over 58% have served at least seven years of their sentence.
- Black people make up a greater proportion of those who have served at least seven or 10 years of their sentence in comparison to any other racial/ethnic group.



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- While long sentences are often believed to increase public safety, research has revealed that the severity or length of a sentence has little deterrent effect, that people age out of crime, and that recidivism rates decline with age and are the lowest among people who have served the longest sentences for serious crimes.
 - More than half of crime victims in California favor allowing CDCR to shorten sentences for people with serious or violent offenses who are deemed a low risk to public safety, rather than requiring them to serve their full sentences.
 - PIR gives DAs an opportunity to change public perception of law enforcement and to build trust in prosecutors' ability to address sentences that are no longer in the interest of justice while ensuring public safety.

3 Mass incarceration has disproportionately harmed Black and Brown communities. Prosecutor-Initiated Resentencing is a powerful tool to help repair the damage.

- Communities with the highest rates of incarceration also tend to experience high poverty and low employment, with poor communities of color bearing the brunt of “tough on crime” policies.
- More than 80% of people incarcerated in California state prisons are people of color. In particular, Black, Latinx, and American Indian people are significantly overrepresented. People identified as Black comprise 5.8% of California's general population but 29.3% of the state prison population. People identified as Latinx comprise 35.3% of the general population but account for 44.8% of the state prison population. People identified as American Indian account for 0.4% of the general population, but they comprise 1.2% of those incarcerated in state prisons.
- Having an incarcerated loved one takes a heavy toll on families and communities, many times leading to a substantial loss of income, debt, harmful effects on physical and mental health, and a negative impact on educational achievement. Bringing people home through PIR can help repair these harms.
- The toll of mass incarceration falls heavily on women, with one in four women reporting having an incarcerated loved one, and for Black women, one in every two. About half of incarcerated people are parents of minor children; the separation of children from their parents due to incarceration can have harmful impacts on their health, education, and economic well-being.
- Disruption of families due to incarceration contributes to increased crime, leading to more people incarcerated, which, in turn, leads to more family disruption. Resentencing people who are parents of minor children can help to reverse this vicious cycle.

4 Many people are serving excessively long sentences and can be safely released with savings redirected to more effective crime-reducing interventions.

- As of November 2021, more than 100 people had been released in California through PIR. Several of their stories are included throughout this report.



- In 2021, the California State Legislature passed an \$18 million investment over three years to expand PIR throughout the state, starting with nine pilot counties that range in geography, voter base, prosecutor leadership, reentry resources, prison population, and incarceration rates.
- In 2022, California will spend \$871 million to house 8,465 people in prison who have served at least 10 years of their sentence for the types of offenses that many California District Attorneys have begun reevaluating for release.
- If every DA in California were to launch a PIR initiative in their office, as many as 26,000 people could be safely released back into our communities—and as many as 26,000 families reunited. Savings from reduced incarceration can be invested in drug treatment, mental health care, victim services, and other crime-reducing interventions.

We offer the following recommendations that, if adopted, would expand justice and repair harm in California and beyond:

RECOMMENDATIONS FOR PROSECUTORS

Drawing from this report's findings, as well as best practices developed by FTP and our partners since 2019 — the inception year of AB 2942 implementation — we offer the following recommendations to California District Attorneys:

- 1 Establish a Robust Resentencing Unit** – Each California DA's Office should create a Resentencing Unit with staff and resources designated toward resentencing work. The Resentencing Unit should be staffed with experienced felony trial attorneys and paralegals. Each unit should create partnerships and collaborate with CDCR, the court, the Public Defender's Office, and community-based organizations to carry out PIR, from processing cases to developing reentry plans. DAs should establish a rotation structure within the office for line prosecutors to serve in the unit to systemize this work.
- 2 Evaluate Current CDCR Prison Data** – DA Offices should regularly request up-to-date CDCR data on the incarcerated people sentenced from their county to understand trends, racial and ethnic demographics, discrepancies in past sentences, incarceration rates, and categories of sentences that may warrant review.
- 3 Determine Initial Criteria for Case Review** – Each DA Office should create an initial set of review criteria and make the criteria publicly available so that community members are aware of which types of cases a District Attorney is prioritizing during the first phase of implementation. As Resentencing Units progress into further phases of implementation, DA Offices should expand criteria and widen the spectrum of cases prioritized. DA Offices should also consider reviewing sentences on a case-by-case basis and providing a simple and accessible form for use by community members and incarcerated people.



- 4 Establish a Protocol with the Public Defender's Office** – DA Offices should meet with the Public Defender's Office to discuss methodology and required documentation. Protocols should be established for handling cases identified by the District Attorney's Office and cases brought to the DA by the Public Defender's Office.
 - 5 Meet with the Presiding Judge to Develop a Streamlined Process for the Court** – Though PIR has been in effect since 2019, some courts may not be fully aware of how the law operates. DA Offices should provide briefing to the court on (1) how the law works, (2) how information is reviewed, (3) the type of information that will be provided to the court, (4) how new sentences are calculated and imposed, and (5) how to send appropriate documents to CDCR to enable release procedures to occur.
 - 6 Establish a Process and/or Partnership with Community-Based Organizations** – DA Offices should seek out a partnership with one or more community-based organizations (CBOs) working with family and community members to assist in providing a more nuanced and detailed account of an incarcerated person's trajectory of change, mitigating factors, community support, and reentry plans. Ideally, partner CBOs would be trained in participatory defense—an emerging model for convening system-impacted families who are working toward the release of an incarcerated loved one. In addition, CBOs can play an important role in the reentry process by providing formal or informal support services for a person who is transitioning back into their community.
 - 7 Collaborate with Victim Services and Community Groups for Enhanced Victim Support** – Hold a training in collaboration with the DA's victim services division to educate victims about PIR. Collaborate with CBOs engaging in transformative justice practices to help repair harms suffered by crime victims, incarcerated people, their families, and the community. Provide remorse letters, when appropriate, and other information that will enable the DA's victim services division to support the process of engaging crime victims about the potential resentencing of cases. Consider offering opportunities for a facilitated dialogue through restorative justice practices to provide repair and closure for crime victims.
 - 8 Conduct Office-Wide Training, Awareness-Building Activities, and Public Education** – Because PIR is a new practice in DA Offices, DAs should provide office-wide trainings and encourage participation in a Resentencing Unit rotation. DA Offices should provide opportunities for prison visits, panel discussions with recently released people, and dialogues with community leaders to better understand how community groups are supporting people with reentry. DA Offices should also work to educate the public on the justice and safety benefits of reducing lengthy sentences.
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RECOMMENDATIONS FOR POLICYMAKERS

- 1 Support Prosecutor-Initiated Resentencing at Scale** – PIR offers an opportunity to safely address mass incarceration impacts in California, while allowing for the redirection of prison spending to other immediate needs. The state should create a permanent mechanism to make adequate resources available to all 58 California counties to operationalize PIR. In addition, policy-makers should develop a funding formula to identify and redirect savings from PIR to support local efforts and county-based resentencing initiatives.



- 2 Prioritize Measures to Reduce Excessively Long Sentences and Racial Disparities in the Criminal Justice System** – In recent years, California has taken several bold steps to reform policies that drive long sentences and racial disparities in the justice system, including ending mandatory minimum penalties for nonviolent drug offenses, partially repealing the state’s three-strikes law, and ending life without parole (LWOP) sentences for youth. Policymakers should build on these reforms by further scaling back any existing overly harsh sentencing practices, eliminating mandatory minimums and reinstating discretion with the court, creating resentencing and/or parole review for those serving LWOP, and using savings from reduced incarceration to invest in disadvantaged communities.
- 3 Ensure Adequate Rehabilitative Programming Across CDCR Institutions** – Rehabilitative programming such as behavioral health treatment, job training, and education can support successful reentry for people leaving prison. Unfortunately, a 2019 audit found that CDCR has failed to provide access to evidence-based programming to those who need it in California state prisons. Designing effective rehabilitative programming and making it widely available would reduce recidivism and increase the likelihood of success for people when they are released.
- 4 Support Housing for Formerly Incarcerated People** – Upon release from prison, finding safe and stable housing is essential to a person’s successful reentry. For many formerly incarcerated people, barriers to affordable housing and landlord discrimination make access to housing one of the most daunting challenges they face. A wide range of policies should be considered, including increased support for affordable housing and prohibitions on criminal background searches, to ensure that housing is available for people when they are released from prison.
- 5 Increase “Gate Money” for People Leaving Prison** – When people are released from prison, they often lack financial resources to meet basic needs such as food, clothing, and transportation. Since 1973, California has provided the same \$200 in “gate money” to people leaving prison—an amount that would equal about \$1200 today, if adjusted for inflation. A recent study commissioned by the Center for Employment Opportunities found near unanimous agreement among a group of returning citizens that current state support for people leaving prison is insufficient to meet their immediate needs. The amount of gate money provided to people leaving prison should be significantly increased.
- 6 Provide Opportunities to Center the Needs of Crime Victims** – Instead of reflexively placing crime victims in a position of supporting retributive punishments for the people who caused them harm, the criminal justice system should offer opportunities for repair and healing. A holistic approach to justice for communities impacted by violence would center the needs of crime survivors and transform the justice system into a vehicle for accountability, safety, and racial equity. Policymakers should support alternatives to incarceration, whenever possible, and give prosecutors latitude to partner with outside organizations specializing in restorative justice, with the goal of providing healing to those harmed by crime.
- 7 Invest in Public Interventions to Reduce the Likelihood of Crime** – Communities with high incarceration rates also tend to have elevated levels of poverty, unemployment, and racial segregation. Black and Brown communities, in particular, have borne the brunt of the failed policy of mass incarceration. To counter these trends, policymakers should make public safety investments in communities most weakened by incarceration, including through expanded drug treatment, mental health care, and victim services, and by increasing support for education, employment, and affordable housing development in impacted communities.