

JUNE 24, 2020

# Overview of Recent Changes Impacting Sentencing

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PRESENTED TO: Committee on Revision of the Penal Code



LEGISLATIVE ANALYST'S OFFICE

# Selected Changes Impacting Sentencing in Past Decade

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## Chapter 28 of 2009 (SB3X 18, Ducheny)

- Increased credits prison inmates earn to reduce their sentences (such as for completion of rehabilitation programs) and made certain lower-level parolees ineligible for revocation to prison for parole violations by the California Department of Corrections and Rehabilitation (CDCR).
- Reduced felony convictions by increasing the dollar thresholds that allow various theft crimes to be punished as felonies as opposed to misdemeanors.

## Chapter 608 of 2009 (SB 678, Leno)

- Created a fiscal incentive for counties to reduce the number of felony probationers that fail on probation and are sent to state prison.

## 2011 Realignment

- Limited who could be sent to state prison by requiring that certain lower-level felons serve their incarceration terms in county jail or a combination of jail and county community supervision—referred to as mandatory supervision.
- Required that counties, rather than the state, supervise certain lower-level felons released from state prison—referred to as Post-Release Community Supervision (PRCS).

## Proposition 36 (2012): Changes to “Three Strikes” Law

- Eliminated life sentences for certain offenders with two or more prior serious or violent felony convictions whose most recent offenses are nonserious, nonviolent felonies.
- Allowed offenders who were serving these sentences at the time to apply for reduced sentences.



# Selected Changes Impacting Sentencing in Past Decade

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## **Proposition 47 (2014): Sentencing for Nonserious, Nonviolent Felons**

- Reduced penalties for certain offenders convicted of nonserious and nonviolent property and drug crimes.
- Allowed certain offenders who had been previously convicted of such crimes to apply for reduced sentences.

## **Various Court-Ordered Population Reduction Measures (2014)**

- Reduced the prison population primarily by increasing credits certain inmates earn for maintaining good behavior and creating a release consideration process for certain nonviolent inmates sentenced under the three strikes law.

## **Proposition 57 (2016): Parole Consideration, Credits, and Juveniles Charged as Adults**

- Reduced the prison population primarily by expanding inmate eligibility for release consideration and increasing CDCR's authority to reduce inmates' sentences through credits (such as for completion of rehabilitation programs).

## **Expanded Authority for Courts to Resentence Inmates**

- Chapter 36 of 2018 (AB 1812, Committee on Budget) allowed courts to consider post-conviction factors (such as inmates' disciplinary records) in determining whether to reduce an inmate's sentence upon recommendation by a CDCR or jail administrator.
- Chapter 1001 of 2018 (AB 2942, Ting) authorized district attorneys to recommend inmates to the courts for resentencing under this process.



# Selected Changes Impacting Sentencing in Past Decade

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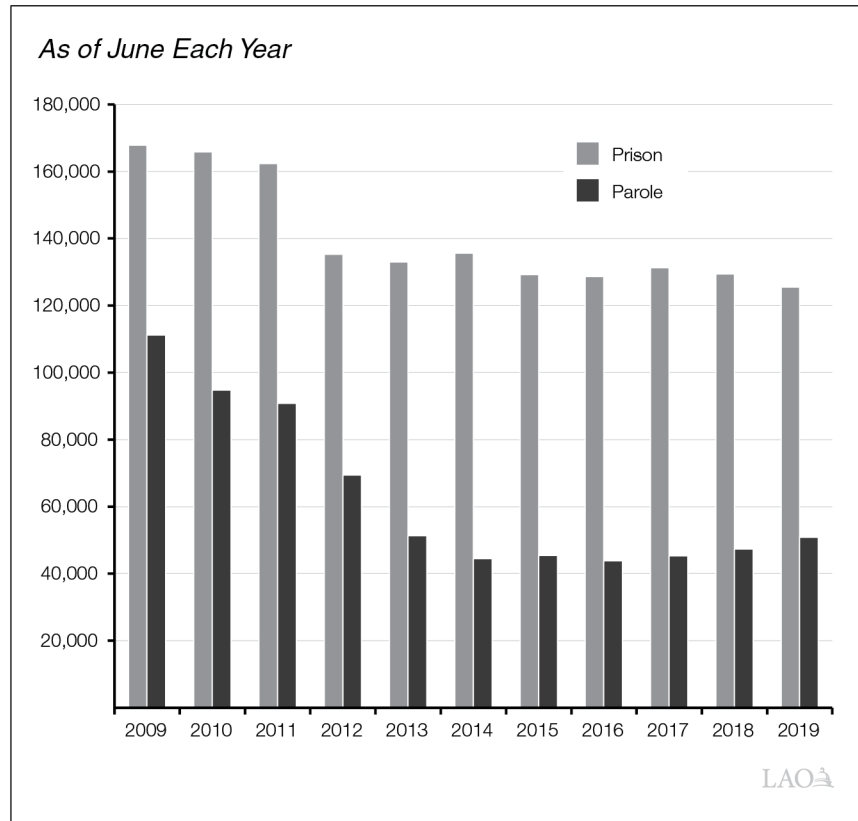
## Various Modifications to Sentencing Enhancements

- Felony offenders may be required to serve additional time in jail or prison due to circumstances surrounding their crime (such as if they used a firearm) or their criminal history. This additional time is known as an “enhancement.”
- Various recent sentencing changes have reduced enhancements that offenders receive:
  - Chapter 677 of 2017 (SB 180, Mitchell) generally eliminated a three-year enhancement imposed on people convicted of drug offenses who also have prior drug offenses.
  - Chapter 682 of 2017 (SB 620, Bradford) allowed judges to choose not to impose certain enhancements in cases where a firearm is used in the commission of a crime.
  - Chapter 1013 of 2018 (SB 1393, Mitchell) allowed judges to choose not to impose a five-year enhancement for those convicted of a serious felony who also had a prior serious felony conviction.
  - Chapter 590 of 2019 (SB 136, Wiener) generally eliminated a one-year enhancement for offenders who have previously served a prison or jail term for a felony.



## State Correctional Populations Have Declined Significantly

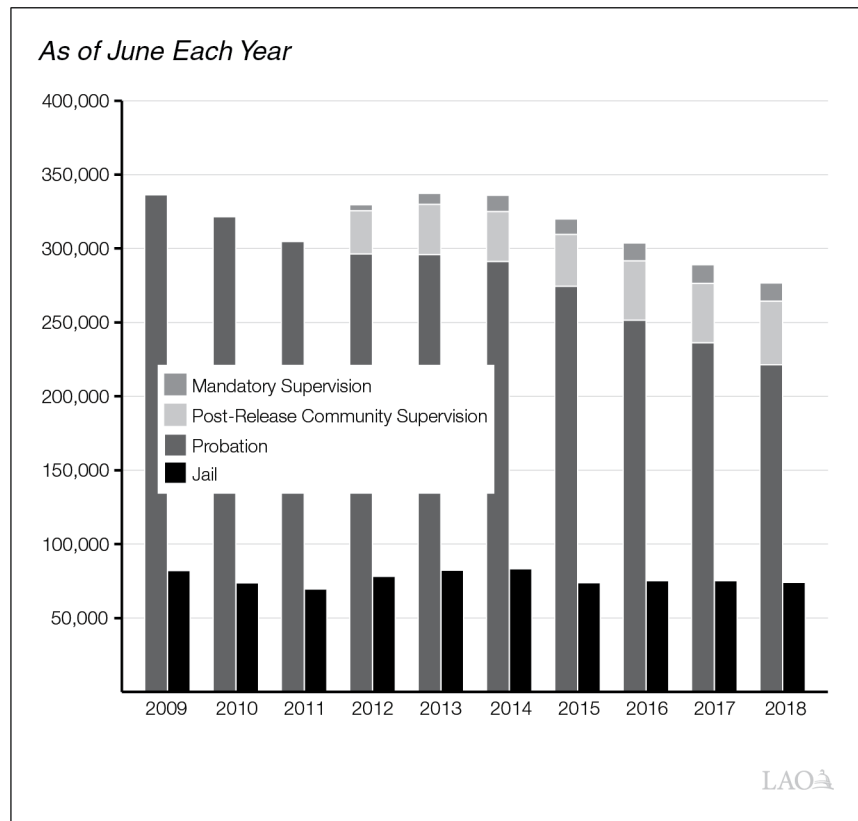
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- Between 2009 and 2019 the prison population declined by about 42,400 (25 percent) and the parole population declined by about 60,400 (54 percent).
- The most significant reductions occurred between 2011 and 2014 when the prison population declined by about 26,800 inmates (16 percent) and the parole population declined by about 46,300 (51 percent)—primarily due to the effects of the 2011 realignment.
- In addition to further reducing the prison population, the various policy changes occurring after the 2011 realignment also offset underlying projected growth in the prison population. Some of the changes, such as Proposition 57, have temporarily increased the parole population by accelerating releases from prison.



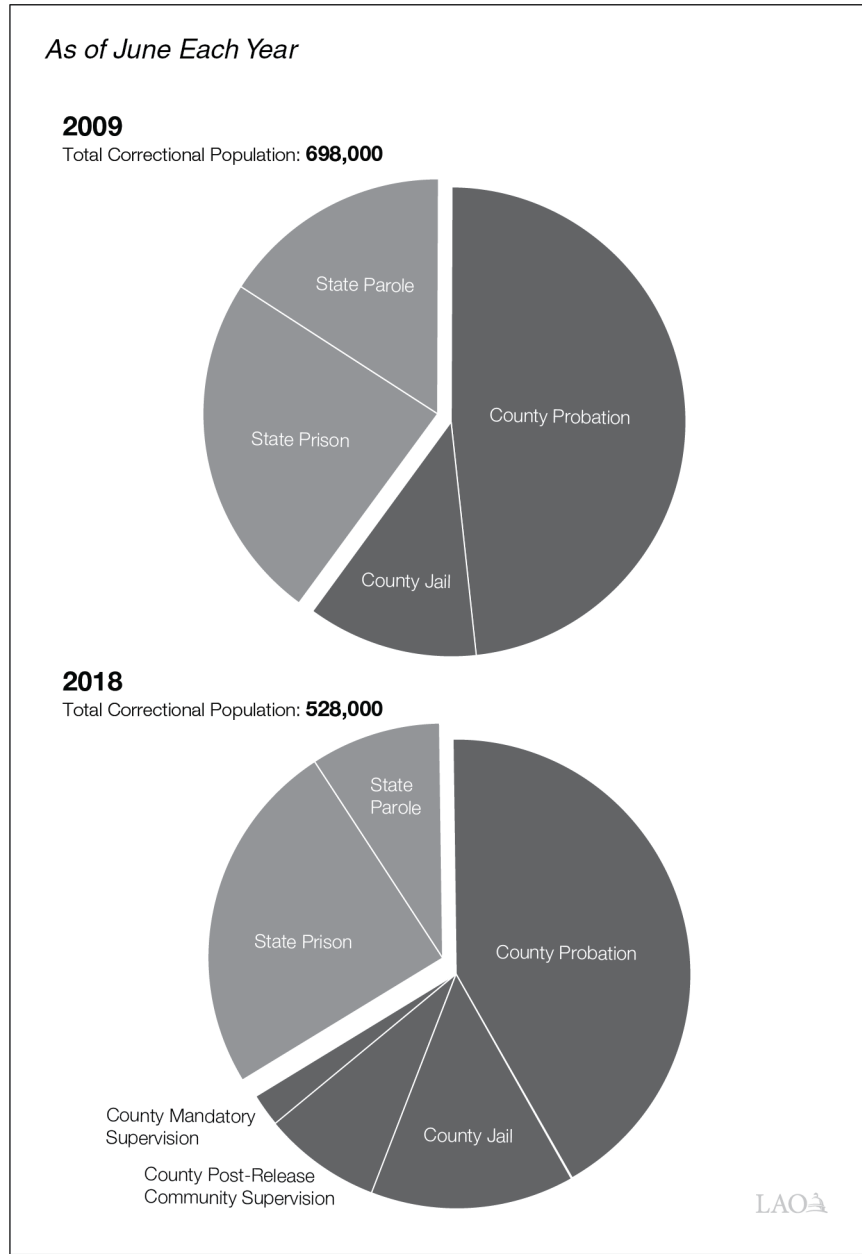
## County Correctional Populations Have Generally Declined



- Between 2009 and 2011, the probation population decreased by about 31,600 (9 percent) and the jail population declined by about 12,500 (15 percent)—likely primarily due to the effects of Chapter 28.
- Between 2011 and 2014, the population under county community supervision (which includes mandatory supervision, PRCS, and probation) increased by about 31,100 (10 percent) and the jail population increased by about 13,600 (19 percent)—primarily as a result of the 2011 realignment.
- Between 2014 and 2018, the population under county community supervision declined by about 59,300 (18 percent) and the jail population declined by about 9,100 (11 percent)—likely primarily due to Proposition 47.



# Total Adult Correctional Population Declined and Shifted to Counties



## Total Adult Correctional Population Declined and Shifted to Counties

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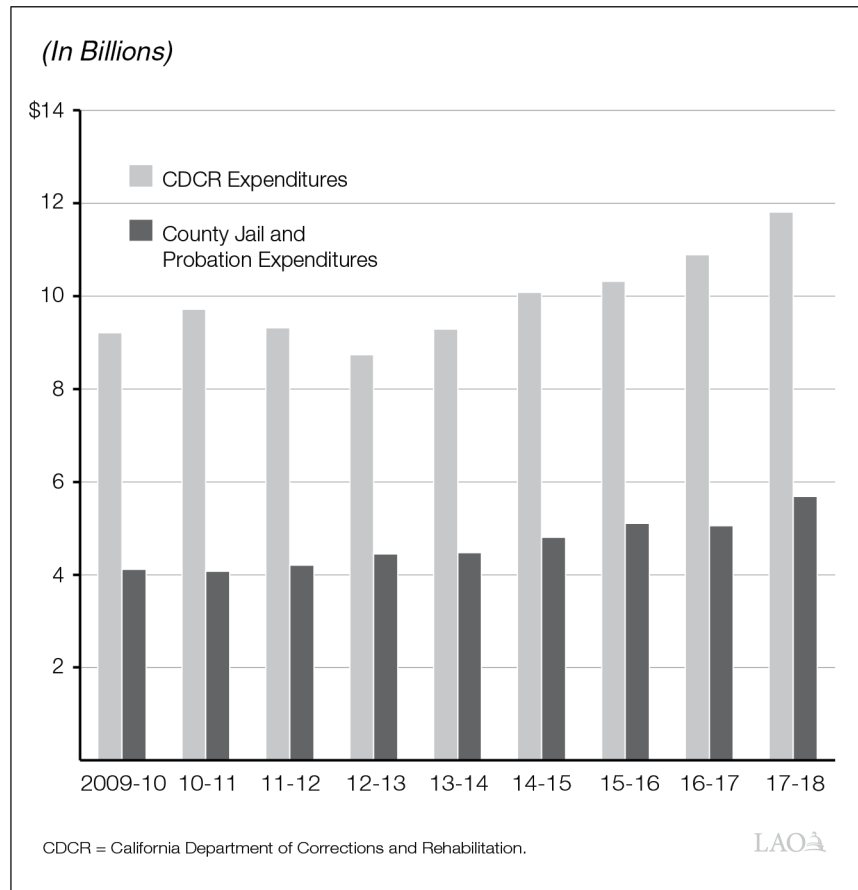
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- Between 2009 and 2018, the total adult state and local correctional population declined by about 170,000 (24 percent).
- While the 2011 realignment shifted certain offenders from the state to the counties, the resulting increase in county populations was smaller than the corresponding decrease in the state population for various reasons. For example, Proposition 47 reduced the time that some realigned offenders serve at the county level.
- On net, the portion of the correctional population under county jurisdiction increased from 60 percent in 2009 to 66 percent in 2018.





## Despite Population Declines, Spending has Generally Increased



- Between 2009-10 and 2017-18, CDCR expenditures increased by about \$2.6 billion (28 percent)—twice the rate of inflation—primarily driven by three factors:
  - **Compliance With Court Orders.** The state had to: (1) expand prison capacity, in order to meet a court-ordered overcrowding limit and (2) make substantial improvements to inmate health care to comply with court orders.
  - **Increased Employee Compensation Costs.** Increases in pension costs and raises given to employees caused employee compensation costs to grow substantially.



## Despite Population Declines, Spending has Generally Increased

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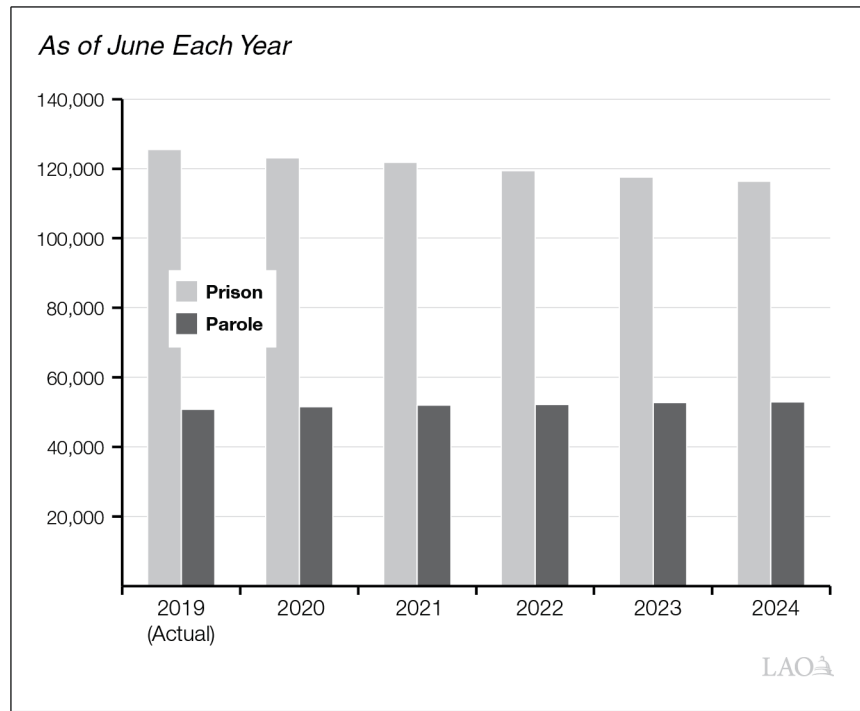
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- ***Spending on Costs Deferred During Fiscal Crisis.*** The state is now paying for costs that were deferred during the fiscal crisis, such as furloughing of correctional officers.
- Between 2009-10 and 2017-18, county correctional expenditures increased by about \$1.6 billion (38 percent)—nearly three times the rate of inflation. This could be for various reasons, including the factors similar to those that increased CDCR spending. We note that some of these expenditures are supported by funds provided by the state, such as funding provided as part of the 2011 realignment.



## State Prison Population Projected to Continue to Decline

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- Between 2019 and 2024, the prison population is projected to decrease by about 9,100 (7 percent) and the parole population is expected to increase by about 2,100 (4 percent), primarily due to the effects of Proposition 57.
- We note, however, there is considerable uncertainty around these projections as they do not reflect various factors, including:
  - The effects of the novel coronavirus 2019 pandemic, which has reduced arrests and crime but also prompted CDCR to suspend rehabilitation programs through which inmates earn time off of their prison sentences.



## State Prison Population Projected to Continue to Decline

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- Proposals to: (1) further expand inmate credit earning, which could reduce the prison population by about 9,600 inmates by 2023-24 and (2) cap parole terms at 24 months for most parolees and create a parole earned discharge process, which could reduce the parole population by about 15,400 by 2023-24.
- Future population declines could have major implications for state spending on corrections. For example, the administration plans to close two prisons by 2022-23, which would create hundreds of millions of dollars in savings.

