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9 **SUPERIOR COURT OF CALIFORNIA**  
10 **COUNTY OF LOS ANGELES**

11 ALLIANCE FOR CONSTITUTIONAL  
12 SEX OFFENSE LAWS, INC.,  
13 a California Non-profit Corporation; and  
14 FRANK LINDSAY, an individual,  
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Case No. 20STCP01993

**PETITIONERS’/PLAINTIFFS’  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
EX PARTE APPLICATION FOR  
TEMPORARY RESTRAINING ORDER**

vs.

RALPH DIAZ, in his official capacity as  
Secretary of the California Department of  
Corrections and Rehabilitation,

Respondent/Defendant.

*[Filed concurrently with: (1) Petitioners’  
Ex Parte Application for Temporary  
Restraining Order; (2) Declaration of Janice  
M. Bellucci; and (3) [Proposed] Temporary  
Restraining Order]*

Date: June 30, 2020  
Time: 8:30 a.m.  
Dept: 86  
Judge: Hon. Mitchell L. Beckloff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Petitioners Alliance for Constitutional Sex Offense Laws, Inc. and Frank Lindsay  
3 respectfully submit this Memorandum of Points and Authorities in support of their *Ex Parte*  
4 Application for Temporary Restraining Order (“TRO”).

5 **I. INTRODUCTION**

6 The California Department of Corrections and Rehabilitation (“CDCR”) has declared that  
7 the lives of persons required to register as a sex offender (“Registrants”) are worth less than others  
8 by categorically and unjustifiably excluding Registrants from its efforts to mitigate the spread of  
9 COVID-19 in state prisons. Specifically, beginning on July 1, 2020, CDCR will implement a  
10 “Community Supervision Program,” under which incarcerated persons with nonviolent, non-serious,  
11 non-domestic violence offenses, who have 180 days or less to serve, will be released early – with  
12 the exception of any person “required to register as a sex offender under Penal Code 290.” (Exh.  
13 A.) In other words, CDCR’s Community Supervision Program excludes not only persons presently  
14 incarcerated for a nonviolent, non-serious sex offense, but also excludes persons presently  
15 incarcerated for a non-sex offense because they committed a sex offense in the distant past, even if  
16 the sex offense was a misdemeanor. The consequence of this exclusion is that Registrants will be  
17 retained in prison and subject to continued risk of infection and death from COVID-19.

18 As revealed by CDCR’s own re-offense data, discussed below, the categorical exclusion of  
19 Registrants is arbitrary and irrational, and therefore violates the equal protection guarantee of the  
20 California Constitution, as well as CDCR’s discretionary authority under state law. Data from  
21 CDCR consistently confirm that persons released from prison who reoffend commit a new sex  
22 offense less than 1% of the time. (See pp. 8-9 below & Exhs. B, C.) In fact, the re-offense rate for  
23 Registrants is the lowest for any offense category except for homicide and (at times) DUI. Further,  
24 the re-offense rate for Registrants is also many times lower than the rate for drug and property  
25 offenses, which are eligible for early release under CDCR’s Community Supervision Program.

26 In light of this data, CDCR’s categorical denial of early release to Registrants has no basis  
27 beyond commonly held myths and notions regarding the re-offense rate for registrable offenses.  
28 Yet, equal protection requires “a serious and genuine judicial inquiry into the correspondence

1 between the classification and the legislative goals.” (*Warden v. State Bar* (1999) 21 Cal. 4th 628,  
2 647-48, internal quotation marks and citations omitted.) Because “assertions are not facts,” the  
3 exclusion of Registrants “cannot be justified by [a] speculative possibility” that public safety will be  
4 enhanced. (*People v. Schoop* (2012) 212 Cal. App. 4th 457, 472-73.) Accordingly, Petitioners seek  
5 interim mandamus relief as well as a TRO that prohibits CDCR’s exclusion of Registrants from the  
6 Community Supervision Program. Interim mandamus and temporary injunctive relief are necessary  
7 because CDCR will begin implementing its Community Supervision Program on July 1, 2020,  
8 which is too soon to obtain relief through a regularly noticed motion. Absent intervention by this  
9 Court, incarcerated Registrants will continue to suffer a disproportionate risk of infection and death  
10 from COVID-19.

## 11 **II. BACKGROUND**

12 “The COVID-19 pandemic is extraordinary and unprecedented in modern times in this  
13 nation.” (*United States v. Hernandez* (S.D.N.Y. Apr. 2, 2020) No. 18-cr-00834, 2020 U.S. Dist.  
14 LEXIS 58739, at p. \*3.) As recognized by state and local government, COVID-19 is transmittable  
15 in the community through person-to-person contact, or by contact with surfaces that host that virus.  
16 “There is no specific treatment, vaccine or cure for COVID-19.” (*Castillo v. Barr* (C.D. Cal. March  
17 27, 2020), No. 20CV00605-TJH, 2020 U.S. Dist. LEXIS 54425, at p. \*5-\*6.) Therefore, the only  
18 means to slow the spread of COVID-19 and the coronavirus that causes the disease are “social  
19 distancing,” the avoidance of gatherings, facial coverings, as well as basic hygiene. (*See id.*) Few,  
20 if any of these measures are available to persons in custody.

### 21 **A. The COVID-19 Pandemic Remains a Threat to Incarcerated Persons and Prison** 22 **Staff**

23 Combating the spread of COVID-19 has involved drastic measures at every level of  
24 government. Most notably, on March 19, 2020, the Governor of California issued an order calling  
25 upon all 40 million residents of the state to remain in their homes, with very limited exceptions.  
26 Although that order has now been modified, COVID-19 remains a threat, particularly in prisons.  
27 That is, persons confined in state prisons are especially susceptible to infection and possible death  
28 from COVID-19, in part because of the close quarters in which they reside, the inability to maintain

1 social distancing, generally unsanitary conditions, and inadequate medical care. “The Centers for  
2 Disease Control and Prevention (“CDC”) have warned COVID-19 poses a heightened risk to those  
3 incarcerated in jails and prisons. *Interim Guidance on Mgmt. of Coronavirus Disease 2019*  
4 *(COVID-19) in Correctional and Detention Facilities*, Ctrs. for Disease Control and Prevention 2  
5 (Mar. 23, 2020) . . . The CDC’s dire predictions have borne out in correctional institutions around  
6 the country.” (*United States v. Burrill* (N.D. Cal. April 10, 2020), No. 17-cr-00491, 2020 U.S. Dist.  
7 LEXIS 65774 at pp. \*6-\*7.)

8 California’s highly populated prisons are especially at risk. In fact, CDCR has announced  
9 that, as of June 24, 2020, “there are 1,826 incarcerated persons with active cases of COVID-19  
10 statewide,” and “356 active CDCR/CCHCS employee COVID-19 cases statewide.”<sup>1</sup> The Secretary  
11 of CDCR, Respondent Diaz, recently characterized the number of COVID-19 cases in California  
12 prisons as “high.”<sup>2</sup> And as of June 24, 2020, a total of 20 inmates in California prisons have died  
13 thus far from COVID-19, with the most recent death being reported that same day.<sup>3</sup>

14 Because of the threat of COVID-19 to incarcerated persons, courts throughout the nation  
15 have ordered the release of persons in custody in order to protect them, prison staff members, as  
16 well as the general public, from COVID-19. For example, the Ninth Circuit *sua sponte* ordered the  
17 immediate release of immigration detainees with a pending petition for review of a removal order  
18 “[i]n light of the rapidly escalating public health crisis, which public health authorities predict will  
19 especially impact immigration detention centers.” (*Xochihua-Jaimes v. Barr*, No. 18-cv-71460,  
20 2020 U.S. App. LEXIS 9069 (9th Cir. Mar. 24, 2020). As one court explained,

21 In times such as these, we must acknowledge that the status quo of a mere few  
22 weeks ago no longer applies. Our world has been altered with lightning speed, and  
23 the results are both unprecedented and ghastly. We now face a global pandemic in  
24 which the actions of each individual can have a drastic impact on an entire  
community. The choices we now make must reflect this new reality.

25 <sup>1</sup> CDCR, COVID-19 Preparedness, at <https://www.cdcr.ca.gov/covid19/>

26 <sup>2</sup> [https://www.cdcr.ca.gov/covid19/wp-content/uploads/sites/197/2020/06/R\\_Office-of-the-  
27 Secretary-Letter-addressed-to-Our-Valued-Community-Partners-and-  
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28 <sup>3</sup> <https://www.cdcr.ca.gov/covid19/population-status-tracking/>

1 Respondents' Facilities are plainly not equipped to protect Petitioners from a  
2 potentially fatal exposure to COVID-19. While this deficiency is neither intentional  
3 nor malicious, should we fail to afford relief to Petitioners we will be a party to an  
4 unconscionable and possibly barbaric result. . . . If we are to remain the civilized  
5 society we hold ourselves out to be, it would be heartless and inhumane not to  
6 recognize Petitioners' plight. And so we will act.

(*Thakker v. Doll* (M.D. Pa. Mar. 31, 2020), 2020 U.S. Dist. LEXIS 59459, at p. \*27-\*28.)

7 **B. CDCR'S Community Supervision Program Categorically Excludes Registrants**

8 CDCR has sought to mitigate the spread of COVID-19 in California prisons by granting  
9 early release to certain incarcerated persons. Most recently, on June 16, 2020, CDCR announced a  
10 "Community Supervision Program" to "further protect inmates and staff from the spread of  
11 COVID-19." (Exh. A.) CDCR explains its Community Supervision Program as follows:

12 CDCR's community supervision plan will be for eligible inmates who have 180 days  
13 or less to serve on their sentences. . . . The incarcerated person must [] have housing  
14 plans identified before participating in the program, and they will remain under close  
15 supervision for the duration of their sentence, up to 180 days. Once an offender  
16 meets their regularly scheduled release date in the community, they will either  
17 remain on state parole supervision, transfer to county post-release community  
18 supervision, or discharge from their sentence, depending on their post-release  
19 requirements. To ensure public safety, those under community supervision may be  
20 remanded back to state prison for any reason . . . .

(Exh. A.)

21 Despite the acknowledged need for this and other efforts to mitigate the spread of COVID-  
22 19 in custodial settings, CDCR has excluded large numbers of eligible and vulnerable inmates based  
23 solely upon the fact that they are Registrants. Specifically, CDCR excludes from the Community  
24 Supervision Program inmates who are "currently serving time for domestic violence, or a violent or  
25 serious crime as denied by law, or are a person required to register as a sex offender under Penal  
26 Code 290." (Exh. A, emphasis added.) In other words, inmates currently incarcerated for a non-  
27 violent, non-serious, non-domestic violence offense are disqualified from early release merely  
28 because their current commitment offense is a non-violent, non-serious sex offense. In addition,  
otherwise eligible inmates who are incarcerated for a non-sex offense are disqualified from early  
release merely because they were convicted in the past of a sex offense, regardless of how long ago  
that offense occurred, the severity of the offense, the rehabilitation achieved by the person, or the  
person's current risk of committing another sex offense.

1           Because there is no rational basis to exclude persons currently incarcerated for a nonviolent,  
2 non-serious sex offense from CDCR’s Community Supervision Program, the agency’s exclusion  
3 violates the equal protection guarantee of the California Constitution, as well as constitutes an abuse  
4 of CDCR’s discretion. CDCR’s categorical mistreatment of Registrants is especially alarming in  
5 this case because the consequence of the exclusion is an increased risk of infection and death for  
6 Registrants unjustly denied the opportunity for early release.

7       **III. STANDARD FOR TEMPORARY RESTRAINING ORDER**

8           The standards for temporary restraining orders and preliminary injunctions are identical.  
9 (*Church of Christ in Hollywood v. Superior Court* (2002) 99 Cal. App. 4th 1244, 1251.) “In  
10 deciding whether to issue a [TRO], a court must weigh two ‘interrelated’ factors: (1) the likelihood  
11 that the moving party will ultimately prevail on the merits and (2) the relative interim harm to the  
12 parties from issuance or nonissuance of the injunction. . . . The trial court’s determination must be  
13 guided by a ‘mix’ of the potential-merit and interim-harm factors; the greater the plaintiff’s showing  
14 on one, the less must be shown on the other to support an injunction.” (*Butt v. State of Cal.* (1992) 4  
15 Cal. 4th 668, 677-78.)

16           **A. Petitioners are Likely to Succeed On the Merits of their Equal Protection and**  
17           **Mandamus Claims**

18           “An official’s duty to perform a mandatory ministerial duty in accordance with law  
19 embodies a corollary duty to not perform the duty in violation of law.” (*Planned Parenthood*  
20 *Affiliates v. Van De Kamp* (1986) 181 Cal. App. 3d 245, 262.). Under mandamus, an agency can  
21 therefore be ordered to exercise its discretion “under a proper interpretation of the applicable law,”  
22 which in this case is the equal protection guarantee of the California Constitution. (*Common Cause*  
23 *v. Board of Supervisors* (1989) 49 Cal.3d 432, 442.)

24           The equal protection analysis consists of two inquiries: (1) whether “the state has adopted a  
25 classification that affects two or more similarly situated groups in an unequal manner” and, if so (2)  
26 whether that classification satisfies “the appropriate level of scrutiny,” which in this case is “rational  
27 basis review.” (*Walgreen Co. v. City and County of San Francisco* (2010) 185 Cal. App. 4th 424,  
28 434-35.) In determining whether there is a rational basis for the statutory classification, the court is

1 “require[d] . . . to conduct ‘a serious and genuine judicial inquiry into . . . the legislative goals’” of  
2 the challenged measure. (*Cooper v. Bray* (1978) 21 Cal. 3d 841, 848, emphasis in original.)  
3 Therefore, the court’s “inquiry must begin with an identification of the purpose of [the measure] so  
4 that we may determine whether the [] classification denying plaintiff [a benefit] rationally relates to  
5 that purpose.” (*Newland v. Board of Governors* (1977) 19 Cal. 3d 705, 711.)

6 **1. *The Purpose of the Community Supervision Program is to Save Lives by***  
7 ***Reducing the Rate of COVID-19 Transmission***

8 The purpose of CDCR’s Community Supervision Program is easily identified and  
9 straightforward: saving lives by reducing the spread of COVID-19. The press release announcing  
10 CDCR’s Community Supervision Program states, in fact, that the Program is being implemented to  
11 “in order to amplify actions to protect staff and inmates at the state’s prisons from the spread of  
12 COVID-19.” (Exh. A.) Specifically, the “Community Supervision Program will create increased  
13 capacity and space to help with inmate movement, physical distancing, and isolation efforts” that  
14 are necessary to prevent COVID-19 infection within the prisons. (Exh. A.) CDCR’s Community  
15 Supervision Program therefore complements various other measures that CDCR has taken since  
16 March 2020 in its facilities.

17 **2. *Registrants and Non-Registrants are Similarly Situated Because***  
18 ***Registration Has No Relationship to COVID-19 Infection***

19 Because the purpose of the Community Supervision Program is to save lives by reducing the  
20 transmission of COVID-19, it cannot be disputed that Registrants and Non-Registrants are similarly  
21 situated. That is, Registrants and Non-Registrants incarcerated in California prisons are equally  
22 likely to contract the coronavirus, are equally to be infected by COVID-19, are equally likely to  
23 transmit COVID-19, and are equally likely to die from COVID-19. The sole basis by which CDCR  
24 distinguishes these two groups (Registrants and Non-Registrants) is the existence of a legal  
25 requirement that persons in the former group comply with the registration requirements of Penal  
26 Code 290. However, an obligation to register has no bearing on a person’s susceptibility to  
27 COVID-19. An obligation to register also has no bearing on the purpose of the Community  
28 Supervision Program, that is, disease mitigation. Therefore, persons required to register as a sex  
offender are similarly situated to persons not required to register as a sex offender for the purposes

1 of the claims in this action.

2 **3. *There is No Rational Basis to Exclude Registrants from CDCR's***  
3 ***Community Supervision Program Because the Re-offense Rates for***  
4 ***Registrants are the Lowest Among the Inmates Eligible for Early Release***

5 At the outset, it is critical to note that Petitioners do not seek the inclusion of all Registrants  
6 in CDCR's Community Supervision Program, but only those Registrants with the least severe  
7 offenses, and who are least likely to reoffend, as determined by CDCR's own parameters for the  
8 Community Supervision Program. Specifically, the general eligibility requirements for CDCR's  
9 Community Supervision Program are: (a) a current commitment for a nonviolent, non-serious, non-  
10 domestic violence offenses; (b) 180 days or less to serve; and (c) identified housing plans. (Exh. A.)  
11 In other words, CDCR's Community Supervision Program merely accelerates, by up to six months,  
12 the release date of inmates who are already near the door and preparing for release on parole or  
13 other supervision. In the case of inmates serving indeterminate sentences, the Board of Parole  
14 Hearings will have already approved the release of these inmates on parole, which necessarily  
15 includes a determination that such persons can be released on parole consistent with public safety.  
(E.g., Cal. Penal Code § 3041, subd. (b)(1).)

16 Therefore, this petition asks only that Registrants be treated on the same terms as other  
17 inmates. The issue for the Court to determine is whether CDCR has a rational basis to distinguish  
18 between Registrants and Non-Registrants as a class, in the context of an early release program for  
19 which the purpose is disease mitigation and saving lives. As explained below, the data published by  
20 CDCR itself confirm that no rational basis exists for this distinction, because Registrants are the  
21 least likely to reoffend among the persons eligible for CDCR's Community Supervision Program.

22 **(a) Registrants Recently Released on Parole Reoffend at a Rate of**  
23 **Less Than 1%**

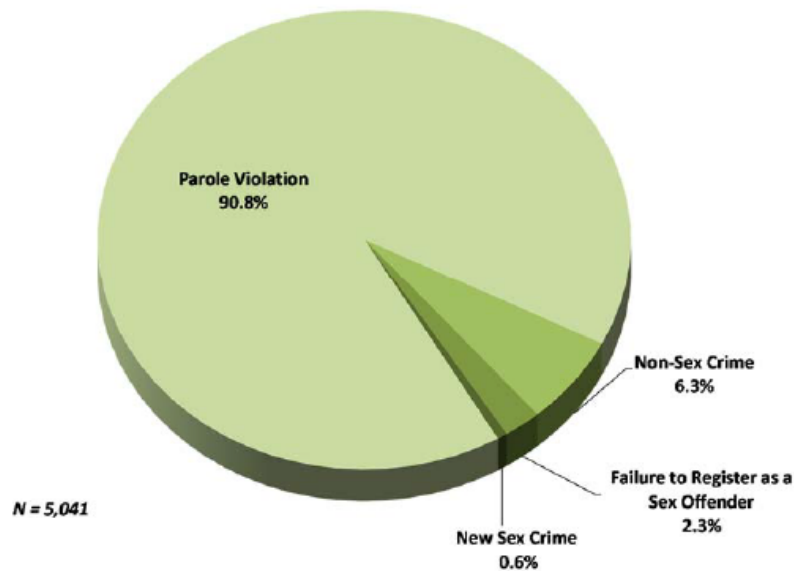
24 All, or nearly all, of the Registrants released from CDCR's custody pursuant to the  
25 Community Supervision Program will be placed on parole.<sup>4</sup> The data regarding re-offense rates for  
26 persons on parole are made available by CDCR in various formats. For example, according to

27 <sup>4</sup> Although the reforms instituted by realignment (AB 109) and Proposition 47 ensure that many  
28 inmates will be released on PRCS or probation, Registrants are excluded from these reforms, and  
therefore generally placed on parole.

1 CDCR’s own 2015 Outcome Evaluation Report, Registrants released from prison during the 3-year  
 2 period under examination were returned to prison for a “new sex crime” 0.6% of the time, a rate  
 3 which is less than:

4 5.2.5 Recommitment Offense for Sex Registrants

5 *Figure 11. Recombitment Offense for Sex Registrants*



18 Figure 11 and Table 14 show the recommitment offense for the 5,041 sex registrants that returned to  
 19 prison during the three-year follow-up period. Of the 5,041 sex registrants, the majority (4,579  
 20 offenders or 90.8 percent) returned for a parole violation, followed by 316 offenders (6.3 percent) with  
 a new non-sex crime, and 115 offenders (2.3 percent) for failing to register as a sex offender. Thirty-one  
 offenders (0.6 percent) were returned for a new sex crime.

21 *Table 14. Recombitment Offense for Sex Registrants*

22  
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Reason for Return-to-Prison	Returned	
	Number	Percent
Parole Violation	4,579	90.8%
New Non-Sex Crime	316	6.3%
Failure to Register as a Sex Offender	115	2.3%
New Sex Crime	31	0.6%
<b>Total</b>	<b>5,041</b>	<b>100.0%</b>

27 (Exh. B, CDCR Office of Research, 2015 Outcome Evaluation Report – An Examination of  
 28 Offenders Released in Fiscal Year 2010-2011, at p. 31 (Aug. 2016).)

1 CDCR data from subsequent years show the same re-offense rate of less than 1%. For  
 2 example, in 2019, the Public Policy Institute of California (PPIC) surveyed CDCR’s re-offense data  
 3 for the period of October 2011 through October 2015.<sup>5</sup> The agency’s data confirm that persons  
 4 released from prison commit the crime of rape less than 0.1% of the time, and commit other sex  
 5 crimes only 0.5% of the time:

6 **TABLE 2**  
 Rates and counts of reconviction offenses vary across sentencing groups

Reconviction Offense	Rates				Counts			
	Prison	Jail	Jail and probation	Probation	Prison	Jail	Jail and probation	Probation
<b>Crimes against persons</b>								
Homicide	0.1%	0.1%	<0.1%	<0.1%	89	24	32	30
Rape	<0.1%	<0.1%	<0.1%	<0.1%	17	2	14	2
Other sex offense	0.5%	0.2%	0.4%	0.2%	471	83	437	165
Assault	3.6%	3.8%	2.6%	2.6%	3,129	1,329	2,728	2,069
Robbery	1.0%	1.0%	0.8%	0.8%	841	349	789	626
<b>Property offenses</b>								
Burglary	2.8%	4.4%	2.8%	3.1%	2,435	1,534	2,895	2,428
Theft	1.4%	2.7%	1.4%	1.6%	1,185	929	1,481	1,228
Motor vehicle theft	2.2%	4.5%	2.2%	2.3%	1,909	1,576	2,293	1,838
Other property offense	2.6%	4.7%	2.2%	3.4%	2,244	1,635	3,023	2,657
<b>Drug and other offenses</b>								
Drug offense	8.8%	12.2%	7.9%	13.4%	7,712	4,230	8,102	10,592
DUI	0.2%	0.1%	0.2%	<0.1%	162	48	161	59
Weapon offense	3.1%	3.2%	1.9%	2.2%	2,693	1,095	2,013	1,777

16 SOURCE: Author calculations based on data from BSCC–PPIC Multi County Study (MCS).

17 (Exh. C, Public Policy Institute of Cal., *Recidivism of Felony Offenders in California*, at p. 25 (June  
 18 2019), at [https://www.ppic.org/wp-content/uploads/recidivism-of-felony-offenders-in-](https://www.ppic.org/wp-content/uploads/recidivism-of-felony-offenders-in-california.pdf)  
 19 [california.pdf](https://www.ppic.org/wp-content/uploads/recidivism-of-felony-offenders-in-california.pdf))

20 This data above are also notable for the reported re-offense rate of persons who are currently  
 21 eligible for CDCR’s Community Supervision Program. Specifically, persons released from prison  
 22 for property, theft, and drug offenses (which are among the nonviolent, non-serious offenses eligible  
 23 early release), re-offend at rates significantly higher than Registrants, including 2.2% for motor  
 24 vehicle theft, 2.6% for “other” property offenses, and 8.8% for drug offenses. Yet, CDCR’s  
 25 excludes only those with the lowest rate of re-offense (*i.e.*, Registrants) from early release.

27 <sup>5</sup> The PPIC study surveyed data from 12 California counties, including Los Angeles County, which  
 28 “comprise about 60 percent of the state population” and “broadly reflect the demographic, economic,  
 and geographic characteristics of the state.” (Exh. C, at pp. 6-7.)

1 The exceptionally low re-offense rates for Registrants on parole is widely reported within  
2 the California state entity responsible for sex offender policy and treatment, the California Sex  
3 Offender Management Board (“CASOMB”). In a 2014 paper arguing against the “myths [that]  
4 continue to influence policymakers and may have detrimental effects on public safety,” CASOMB  
5 declared that:

6 research has focused on exploring the changes in sex offender registration laws and  
7 this has resulted in a constantly growing body of research that has altered the  
8 perspective on sex offender registration. **This research has made it clear that:  
9 The sexual recidivism rate of identified sex offenders is lower than the  
10 recidivism rate of individuals who have committed any other type of crime  
11 except for murder.**

12 CASOMB, *A Better Path to Community Safety: Sex Offender Registration in California – Tiering  
13 Background Paper* (2014), at pp. 1, 4.<sup>6</sup> However, CDCR consistently ignores this data, and  
14 reflexively excludes Registrants from criminal justice reform efforts even when the plain text of the  
15 governing law and numerous court decisions require their inclusion. (*E.g., Alliance for  
16 Constitutional Sex Offense Laws v. Department of Corrections & Rehabilitation* (2019) 45 Cal.  
17 App. 5th 225, 234-38, *rev granted* May 27, 2020 (S261362) [hereinafter, “*Alliance v. CDCR*”]  
18 [rejecting CDCR’s rationale that public safety justified exclusion of Registrants from early parole  
19 consideration pursuant to Proposition 57].).

18 (b) **Case Law Rejects CDCR’s Reliance Upon “Assertions” of High  
19 Re-offense Rates Among Registrants that Defy “Facts”**

20 The data from CDCR reveal no rational basis on which to exclude Registrants, and no  
21 foundation for the generic “public safety” rationale that CDCR is expected to invoke in defense of  
22 that exclusion in this action. Regulatory carve-outs such as that challenged in this action are subject  
23 to equal protection analysis. (*E.g., People v. Edwards* (2019) 34 Cal. App. 5th 183, 198 [“Section  
24 3051 has a carve-out, however, and it is the scope of the carve-out that gives rise to appellants’  
25 equal protection claim.”] That is, where a regulatory program extends a benefit broadly to persons  
26 convicted of criminal offenses, the agency violates equal protection when there is no demonstrable  
27 “factual support” for the exclusion. (*People v. Schoop* (2012) 212 Cal. App. 4th 457, 472-73.)

28 <sup>6</sup> <http://www.casomb.org/docs/Tiering%20Background%20Paper%20FINAL%20FINAL%204-2-14.pdf>

(i) *People v. Edwards*

1 For example, in *People v. Edwards*, the Court considered an equal protection challenge to a  
2 statute that granted youthful offenders the opportunity for early parole – including persons  
3 convicted of murder – but “carved-out” persons convicted of a violent sex offense and denied them  
4 the same benefit. (*People v. Edwards* (2019) 34 Cal. App. 5th 183, 194.) In performing the equal  
5 protection analysis, the Court first considered the purpose of the statute, which was to “provide[] a  
6 person serving a sentence for crimes that he or she committed as a juvenile the opportunity to obtain  
7 release when he or she has shown that he or she has been rehabilitated and gained maturity.” (*Id.* at  
8 p. 198.) The court then evaluated the rational basis for the distinction between the felons who  
9 received the benefit, and the felons who were denied the benefit (*i.e.*, Registrants). The *Edwards*  
10 court ruled that, “measured against [the] legislative purpose” of providing opportunity for youthful  
11 offender rehabilitation, there is “no rational relationship between the disparity of treatment and a  
12 legitimate government purpose to treat persons with sex offense more harshly,” because “no crime  
13 deserves categorically harsher punishment than intentional first-degree murder,” and because  
14 persons convicted of a sex offense are capable of rehabilitation per the purpose of the statute.  
15 (*Ibid.*)

16 Notably, the *Edwards* Court rejected the AG’s asserted rational basis for the carve-out of  
17 Registrants because it was both conclusory and contradicted by available statistical evidence.  
18 Specifically, the AG alleged in *Edwards* that the Legislature made a “rational moral judgment that  
19 the public should be protected from violent sex offenders, and that violent sex offenders should be  
20 incarcerated for longer periods of time” than murderers. (*Edwards*, 34 Cal. App. 5th at p. 198.) In  
21 rejecting this argument as “vague and circular,” the court explained that “the essence of an equal  
22 protection challenge is a comparison between similarly situated groups, and the [AG] carefully  
23 avoids making any such comparison. Certainly the [AG] cites no evidence that violent rapists  
24 recidivate more than other felons.” (*Id.* at p. 199.)\_ The *Edwards* court concluded that, “[w]hile the  
25 law requires no empirical support for the hypothesized concern about recidivism . . . , ‘the realities of  
26 the situation cannot be ignored.’” (*Ibid.*, citation omitted.)  
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**(ii) *People v. Schoop***

Similarly, in *People v. Schoop*, the Court of Appeal found no rational basis for imposing a 10-year rehabilitation period on persons convicted of possession of obscene material, while imposing a shorter 7-year rehabilitation period on persons convicted of importing or advertising obscene material. (*Schoop, supra*, 212 Cal. App. 4th 457, 472-73.) Critically, the *Schoop* court rejected the Attorney General’s argument that the distinction between possessors and persons with “commercial” interests in obscene material was rational, because the Attorney General “[did] not point to any factual support for his hypothesis, let alone anything to indicate that the theory was available to or under consideration by the Legislature when distinguishing rehabilitation periods.” (*Ibid.*, emphasis added.) Because “assertions are not facts,” the Court concluded that statutory distinctions “cannot be justified by [a] speculative possibility” offered by the AG. (*Ibid.*)

**(iii) CDCR Lacks “Factual Support” for its Categorical Exclusion of Registrants from Early Release**

13 Likewise, in this matter, CDCR is expected to “allude to” the possibility that Registrants  
14 present unique public safety risks, but can “cite no evidence” to support that illusion and can  
15 therefore make no true “comparison” that justifies the disparate treatment of Registrants as required  
16 by equal protection. While rational basis review may not “require[] empirical support” to justify the  
17 disparate treatment of some over others, “the realities of the situation cannot be ignored” (*Edwards,*  
18 *supra*, 34 Cal. App. 5th at p. 199), particularly where, as here, CDCR’s own data undermines the  
19 validity of the exclusion that CDCR is enforcing.

20 CDCR’s data especially fails to support the exclusion of persons currently incarcerated for a  
21 nonviolent, non-serious, non-sex offenses from CDCR’s Community Supervision Program. For  
22 example, a person presently incarcerated for a non-serious theft offense, who also suffered a  
23 misdemeanor sex offense conviction 30 years ago, would be eligible for early release but for his  
24 prior sex offense conviction. There is no evidence justifying, or any other rational basis for, treating  
25 all prior sex offenses, however old, as the sole basis to disqualify an otherwise eligible person from  
26 early release on his or her nonviolent, non-serious, non-sex charge.

27 Furthermore, in the case of Registrants serving indeterminate sentences, the Board of Parole  
28 Hearings has already approved their suitability for parole. This determination necessarily includes

1 the parole board’s judgment that public safety will not be threatened by that persons’ release. (E.g.,  
2 Cal. Penal Code § 3041, subd. (b)(1) [“The panel or the board, sitting en banc, shall grant parole to  
3 an inmate unless it determines that the gravity of the current convicted offense or offenses, or the  
4 timing and gravity of current or past convicted offense or offenses, is such that consideration of the  
5 public safety requires a more lengthy period of incarceration for this individual.”].) “There is no  
6 reason to assume that the board will be insensitive to the concern for public safety or will grant  
7 parole to those who present a public danger.” (*In re McGhee* (2019) 34 Cal. App. 5th 902, 913. *Cf.*  
8 *Alliance v. CDCR, supra*, 45 Cal. App. 5th at pp. 235-36 [“[W]e are dubious of the Department’s  
9 premise that allowing nonviolent sex offenders to be considered for early parole endangers public  
10 safety. . . . [T]hose inmates are permitted only early consideration by the Board of Parole Hearings,  
11 which is charged with determining whether an inmate is suitable for parole.”].) Yet, as with its own  
12 re-offense statistics, CDCR’s exclusion of Registrants from its Community Supervision Program  
13 contradicts the determination of the Board of Parole Hearings without any basis.

14 **B. Denying Temporary Relief Will Harm Registrants With No Impact on Public**  
15 **Safety**

16 The equities of interim relief tip sharply in Petitioners’ favor because Registrants subject to  
17 early release present minimal risk to public safety, but will suffer significant risk of harm due to the  
18 risk of COVID-19 infection and possible death, as acknowledged by CDCR, if forced to remain in  
19 custody.

20 First, the relief requested by Petitioners extends only to persons incarcerated for the least  
21 severe offenses (*i.e.*, nonviolent, non-serious offenses), and who have minimal amounts of time  
22 remaining (*i.e.*, six months or less) before they would be released anyway. Further, the persons  
23 subject to release will not be free persons in the community, but will instead be released to approved  
24 housing arrangements and subject to supervision by parole, the most severe form of supervision in  
25 our penal system. (See Exh. A, CDCR Press Release [“To ensure public safety, those under  
26 community supervision may be remanded back to state prison for any reason to serve the remainder  
27 of their sentence.”].) In the case of Registrants, the conditions of parole are even more severe than  
28 for others, because they include GPS monitoring and a myriad of other unique restrictions to ensure

1 public safety.<sup>7</sup> These same conditions will be imposed even upon persons released for nonviolent,  
2 non-serious, non-sex offenses, because they were convicted in the past of a sex offense.

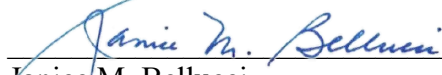
3 Second, the potential harm to Registrants of remaining in custody cannot be disputed.  
4 CDCR itself refers to the situation in its prisons as an “emergency” requiring “unprecedented  
5 changes to its operations.”<sup>8</sup> Among the most important of these changes is the early release of  
6 inmates, which will protect them and others from risk of COVID-19 infection and possible death.  
7 (*Harris v. Bd. of Supervisors* (9th Cir. 2004) 366 F.3d 754, 759, 766 [risk of infection and death are  
8 irreparable injuries]. Allowing this benefit to Registrants on the same terms as other incarcerated  
9 persons will have no demonstrable impact on public safety, whereas denying that benefit to  
10 Registrant will impose significant and grave risks upon them and others. This situation leaves only  
11 “one choice [that] can be a reasonable exercise of discretion” – the inclusion of Registrants in  
12 CDCR’s Community Supervision Program. (*Cal. Ass’n of Sanitation Agencies v. State Water Res.*  
13 *Control Bd.* (2012), 208 Cal. App. 4th 1438, 1462-63.) CDCR’s refusal to include Registrants  
14 within its early release program suggests that it stems from “the bare . . . desire to harm a politically  
15 unpopular group,” which “cannot constitute a legitimate governmental interest.” (*U.S. Dep’t of*  
16 *Agriculture v. Moreno* (1973) 413 U.S. 528, 534.)

17 **IV. CONCLUSION**

18 For all the reasons stated above, Petitioners respectfully request that the Court issue a  
19 Temporary Restraining Order and interim mandamus relief preventing CDCR from excluding  
20 persons required to register as a sex offender from CDCR’s Community Supervision Program.

21 Dated: June 25, 2020

LAW OFFICE OF JANICE M. BELLUCCI

22 By:   
23 Janice M. Bellucci  
24 Attorney for Petitioners/Plaintiffs

25 <sup>7</sup> The statutory conditions imposed upon parolees include 24-hour GPS monitoring (Cal. Penal Code  
26 §§ 3004(b), 3000.07), as well as restrictions against loitering near or entering schools, parks, and other  
27 places where children regularly gather. (Cal. Penal Code §§ 626.81, 635c, 3053.8). Parolees also  
28 face over 100 standard and special conditions of parole that limit employment and housing; forbid  
association with minors; and require periodic polygraph testing; among many other restrictions.

<sup>8</sup> CDCR, *COVID-19 Preparedness*, <https://www.cdcr.ca.gov/covid19/>

# **EXHIBIT A**

# CDCR Announces Community Supervision Program to Further Protect Inmates and Staff from the Spread of COVID-19

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**JUNE 16, 2020**

*Community supervision program will create increased capacity and space to help with inmate movement, physical distancing, and isolation efforts*

SACRAMENTO – The California Department of Corrections and Rehabilitation (CDCR) today announced the implementation of a community supervision program to eligible inmates in order to amplify actions to protect staff and inmates at the state's prisons from the spread of COVID-19.

Specifically, CDCR's community supervision plan will be for eligible inmates who have 180 days or less to serve on their sentences and are not currently serving time for domestic violence, or a violent or serious crime as defined by law, or are a person required to register as a sex offender under Penal Code 290.

The incarcerated person must also have housing plans identified before participating in the program, and they will remain under close supervision for the duration of their sentence, up to 180 days. Once an offender meets their regularly scheduled release date in the community, they will either remain on state parole supervision, transfer to county post-release community supervision, or discharge from their sentence, depending on their post-release requirements. To ensure public safety, those under community supervision may be remanded back to state prison for any reason to serve the remainder of their sentence.

The community supervision plan is scheduled to begin implementation on July 1, 2020.

Through the suspension of county jail intake, as well as the expedited parole of approximately 3,500 incarcerated persons in April, CDCR has reduced the incarcerated population by more than 8,000 since mid-March.

Before an incarcerated person is released from any institution, they will be offered testing for COVID-19 within seven days of their anticipated release. For those who test positive, CDCR will work with state and local public health and law enforcement officials to find housing where the incarcerated person can be safely isolated and monitored. They will also be released with five reusable cloth barrier masks provided by the department with appropriate precautionary measures taken during transportation.

All victim notification requirements are being met. For more information on CDCR's efforts to protect staff and inmates from COVID-19, visit here (<https://www.cdcr.ca.gov/covid19/updates/>).

###

# **EXHIBIT B**



**California Department of  
Corrections and Rehabilitation**

# **2015 Outcome Evaluation Report**

**An Examination of Offenders Released in  
Fiscal Year 2010-11**

**Office of Research  
August 2016**

You can obtain reports by contacting the Department of Corrections and Rehabilitation at the following address:

California Department of Corrections and Rehabilitation  
Office of Research, Research and Evaluation Branch  
1515 S Street, Suite 221N  
Sacramento, California 95811  
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On the internet at:

[http://www.cdcr.ca.gov/adult\\_research\\_branch/](http://www.cdcr.ca.gov/adult_research_branch/)

*CDCR Office of Research*

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This report would not have been possible without the generous support of others. Specifically, the Office of Research would like to thank the following: the Department of Justice for the data-sharing agreement that allows us to examine arrests and convictions; and Ursula Sanchez from the Office of Research for providing data quality assurance and the tables and charts provided in this report.

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## 5.2.5 Recidivism Offense for Sex Registrants

Figure 11. Recidivism Offense for Sex Registrants

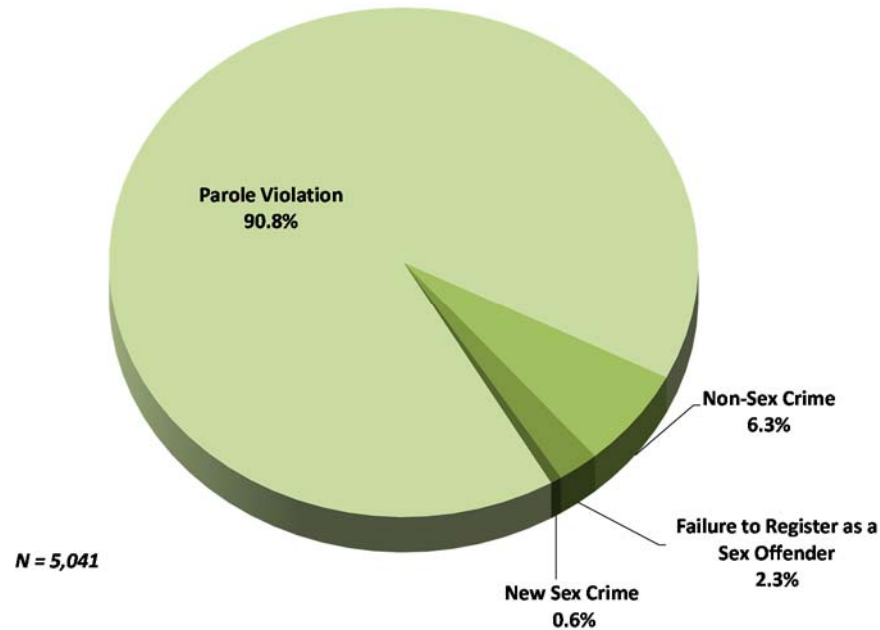


Figure 11 and Table 14 show the recidivism offense for the 5,041 sex registrants that returned to prison during the three-year follow-up period. Of the 5,041 sex registrants, the majority (4,579 offenders or 90.8 percent) returned for a parole violation, followed by 316 offenders (6.3 percent) with a new non-sex crime, and 115 offenders (2.3 percent) for failing to register as a sex offender. Thirty-one offenders (0.6 percent) were returned for a new sex crime.

Table 14. Recidivism Offense for Sex Registrants

Reason for Return-to-Prison	Returned	
	Number	Percent
Parole Violation	4,579	90.8%
New Non-Sex Crime	316	6.3%
Failure to Register as a Sex Offender	115	2.3%
New Sex Crime	31	0.6%
<b>Total</b>	<b>5,041</b>	<b>100.0%</b>

# **EXHIBIT C**



**JUNE 2019**

**Mia Bird, Justin Goss,  
and Viet Nguyen**

# Recidivism of Felony Offenders in California



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## SUMMARY

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A technical appendix to this report is available on the PPIC website.

California has undertaken numerous corrections reforms in the past decade—including public safety realignment in 2011 and Proposition 47 in 2014—in hopes of reducing the prison population, maintaining public safety, and improving persistently high recidivism rates. These reforms lowered incarceration levels, and in their aftermath, crime rates have fluctuated. Recidivism rates provide another important window into public safety and the effectiveness of correctional interventions under these policy changes.

For the first time, this report provides recidivism rates for all types of felony offenders in California—including those sentenced to prison, jail only, jail followed by probation, or probation only. Previously, statewide recidivism outcomes could only be tracked for individuals leaving prison custody. This study draws on unique data from 12 representative counties, allowing us to estimate two-year recidivism rates for felony offenders released in the four years following realignment from October 2011 to October 2015. We focus on felony offenders to provide insight into outcomes for those who have been convicted of more severe offenses.

Our analysis of recidivism relies on rearrest and reconviction rates, which are often used to capture changes in reoffending in response to a policy change. However, it is important to note that these rates may also reflect changes in the practices of criminal justice agencies. For example, if a policy change led to a shift in policing strategies, such as reduced enforcement for drug possession offenses, we may observe changes in rearrest rates even if there is no change in the underlying behavior of former offenders. We find:

- **Overall recidivism rates have declined for felony offenders.** The share of felony offenders rearrested for any offense within two years declined somewhat from 68 percent to 66 percent over the four-year period. The two-year reconviction rate for any offense dropped substantially from 41 percent to 35 percent.
- **Reductions in recidivism rates were largest for felony offenses.** The share of offenders rearrested for a felony offense decreased moderately from 56 percent to 53 percent in the four years after realignment. The felony reconviction rate dropped markedly from 30 percent to 22 percent. These reductions were concentrated in later years and may be linked to Proposition 47.
- **Rearrest rates for felony offenses increased toward the end of the period.** When we examine the last several months for which we have data, we see that 50 percent of individuals released in June 2015 were rearrested for felonies within two years, compared with 53 percent for those released in October 2015.

- **Recidivism rates fell sharply for drug offenses.** The reconviction rate for property offenses also fell, while the rearrest rate for property offenses held steady, with a slight uptick for individuals released at the end of the period. For offenses against a person—a category that includes violent offenses—there was an increase in the rearrest rate (from 19% to 20%) but no change in the reconviction rate.
- **Recidivism rates have declined for each of the four sentencing groups.** Those sentenced to prison or jail experienced large declines in rearrest and reconviction rates, when compared with those sentenced to jail followed by probation or to probation only. Individuals who received probation—with or without a jail sentence—initially experienced increases in recidivism rates under realignment but then saw decreases in later years and under Proposition 47.
- **Individuals released from prison had the highest reconviction rates.** This group also served the longest and most costly incarceration terms. This finding is consistent with previous research that has found little evidence linking more severe sanctions to lower recidivism.
- **Recidivism rates are likely to be related to multiple factors.** Offender behavior is one factor. But policy changes can also play a role in that they may affect the practices of criminal justice agents, such as police officers and district attorneys. More and better data are needed to pinpoint the relevant causes of changes in recidivism.

Additional efforts to improve our understanding of the relationships among policy, implementation, and recidivism outcomes are essential to move the state toward a more evidence-based criminal justice system. Facilitating better data connections across correctional institutions, intervention programs, and law enforcement would help further the state’s goals of improving public safety, reducing costs, and ensuring equity in its correctional systems.

# Introduction

Historically, California’s recidivism rates have been among the highest in the nation (Durose, Cooper, and Synder 2014). Three-fourths of individuals released from prison were rearrested, and about half were reconvicted for a new offense within three years. In addition to those who were reconvicted, others returned to prison through what has been called the “revolving door” of prison revocations, when released offenders are sent back to prison for parole violations (Fischer 2005; CDCR 2014). About two-thirds of individuals released from prison returned within three years.

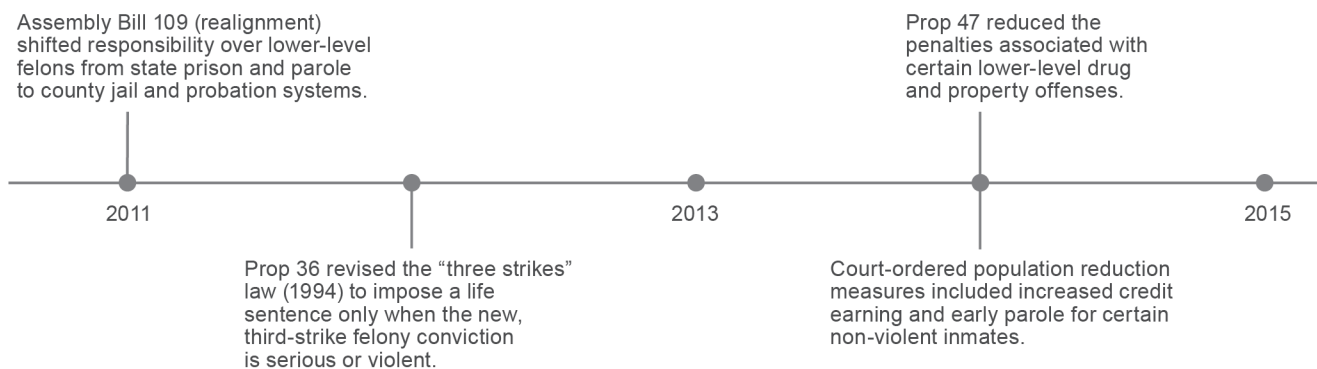
In 2011, California passed one of the most far-reaching criminal justice policy reforms in recent US history. This change, known as public safety realignment, marked a new era for corrections and rehabilitation—one that proponents hoped would lower recidivism. Realignment was undertaken in response to a Supreme Court mandate to reduce overcrowding in the state’s prisons. At the time, California faced a recessionary budget crisis, limiting its ability to build new prisons or contract out facilities to other correctional systems. Under those constraints, the state elected to shift correctional management of lower-level felony offenders from the state prison and parole system to county jail and probation systems.

New sentencing rules under realignment made non-violent, non-serious, and non-sexual offenders ineligible for prison sentences and, instead, required they be sentenced locally. In addition, by requiring that supervision violations be served in local jails for most offenders, realignment put an end to the cycle of returning people to prison for parole violations. The state’s prison population dropped by more than 27,000 in the first year of realignment (Lofstrom and Martin 2015), while the size of county jail and probation populations grew.

Numerous other reforms followed (Figure 1). Early on, in spite of reductions in the prison population under realignment and changes to California’s “three strikes” law in 2012, prisons remained overcrowded. In 2014, the state implemented court-ordered measures to address prison crowding. In addition, voters passed Proposition 47 (Prop 47) in November 2014, a ballot initiative that reduced drug possession and certain lower-level property offenses to misdemeanors. Within months, the prison population dropped below the court-mandated target. The jail population also decreased sharply, easing pressure in crowded jails and bringing the jail population close to its pre-realignment level.

## FIGURE 1

California pursued numerous correctional reforms in the years following realignment



Taken together, this series of policy reforms resulted in a dramatic reduction in incarceration levels in California (Lofstrom, Bird, and Martin 2016). Between 2011 and 2015, the incarceration rate, the number of incarcerated individuals per 100,000 residents, fell by 16 percent (from 619 to 519).

These reforms have been controversial. Proponents argue that California had long been over-incarcerating and misallocating funds toward incarceration rather than treatment interventions, resulting in inequities and low cost-effectiveness within the criminal justice system. However, opponents voice public safety concerns, citing that incarceration prevents crime by removing potential offenders from society and that long sentences deter crime.

Along with crime rates, recidivism rates provide a window into the effects of these policy changes on public safety. They also offer an indicator of the effectiveness of our correctional interventions. In previous work we have examined the effects of realignment and Prop 47 on the recidivism outcomes of the specific offender populations targeted by these policy changes (Bird, Grattet, and Nguyen 2017; Bird et al. 2018). In our analysis of the first two years of realignment, we found evidence of small reductions in recidivism—particularly reconviction rates—for some groups but small increases for other groups. In our study of Prop 47, we found evidence of declines in rearrest and reconviction for those who served sentences for Prop 47 offenses. These findings help identify the effects of those specific policy reforms on the recidivism rates of certain populations, but they do not provide a broad sense of how recidivism rates are changing in the state.

This report takes a broader look at recidivism. We offer the first statewide picture of recidivism outcomes for all felony offenders—including those sentenced to prison and those sentenced locally—released in 12 counties representing 60 percent of the state population. Drawing on a new data source, we examine how recidivism rates have changed for all felony offenders released over the four years following realignment. In addition to changes over time, we investigate how recidivism outcomes compare across felony offenders who receive different types of sentences: prison, jail only, jail and probation, or probation only. We focus on felony offenders because these individuals have been convicted of more severe offenses and generally require more correctional resources than misdemeanor offenders.

This report begins by describing our unique data source, the BSCC–PPIC Multi-County Study, and how we measure recidivism outcomes. Next, we provide an overview of the demographic and criminal history characteristics of felony offenders in California, before analyzing how their recidivism outcomes have changed over time, including recidivism trends for various kinds of offenses and for different sentencing groups. We then compare recidivism outcomes and reconviction offenses across different sentencing groups, giving us a sense of not only how often individuals reoffend but also the gravity of those offenses. Finally, we discuss possible interpretations and implications of our findings.

## BSCC–PPIC Multi-County Study

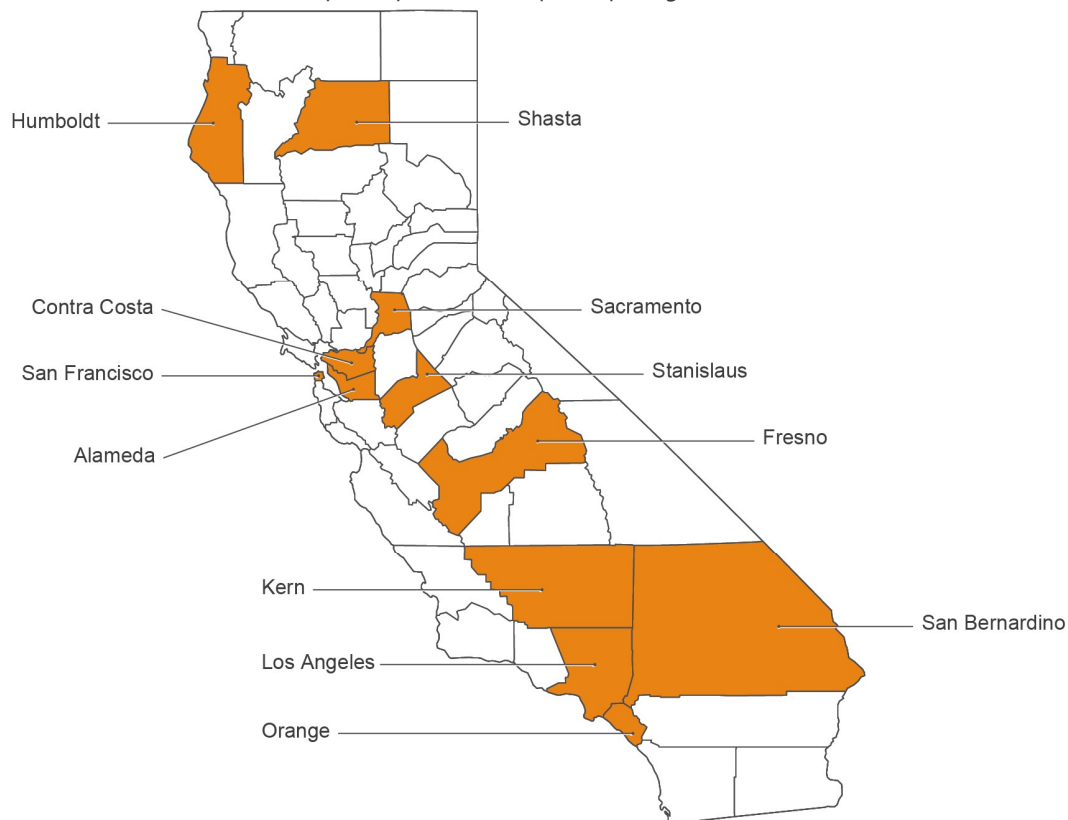
The BSCC–PPIC Multi-County Study (MCS) is a collaborative effort between PPIC and the California Board of State and Community Corrections (BSCC). The MCS was established in the wake of public safety realignment with the goal of bringing together the data needed to rigorously evaluate the statewide effects of this policy reform and identify the most effective recidivism-reduction interventions at the local level.

To achieve these goals, the MCS project team identified a group of counties to represent the state. These counties agreed to participate in the project, allowing us to bring together data capturing individuals moving through local

jail and probation systems in the wake of realignment. Figure 2 shows the 12 MCS counties: Alameda, Contra Costa, Humboldt, Fresno, Kern, Los Angeles, Orange, Sacramento, San Bernardino, San Francisco, Shasta, and Stanislaus.

## FIGURE 2

The BSCC–PPIC Multi-County Study includes 12 participating counties



SOURCE: BSCC–PPIC Multi-County Study.

NOTE: These were the only 12 counties approached by the MCS team. No counties were approached and declined to participate.

Taken together, the MCS counties comprise about 60 percent of the state population. These counties were chosen to broadly reflect the demographic, economic, and geographic characteristics of the state. [Table A1 in Technical Appendix A](#) summarizes the characteristics of the MCS counties relative to the California statewide population. While quite similar overall, the MCS counties as a group are more urban and have a higher share of African Americans, Asian Americans, and Latinos. In addition, poverty and unemployment rates are slightly higher among the MCS counties.

The California Department of Justice (DOJ) and the California Department of Corrections and Rehabilitation (CDCR) also provide essential data to fill out the state-local picture. The MCS county data offer information about individual characteristics as well as custody and supervision at the local level, while the state data offer additional information on individual characteristics, custody spells in prison, criminal history, and statewide recidivism outcomes. The MCS data used in this study includes individuals released from prison or jail during the four years following realignment, from October 2011 through October 2015, and follows their recidivism outcomes for two years post-release.

Prior to the creation of the MCS, there was no available data source to allow the state to estimate recidivism outcomes for individuals sentenced locally. Recidivism estimates for the full felony population in California had been based on the outcomes of the population sentenced to and released from prison. This study fills a gap by estimating the recidivism rates of the full population of felony offenders released in the 12 MCS counties during the four years following realignment.

## Measuring Recidivism

Recidivism—defined here as reoffending after being convicted and sentenced for an offense—is important for the criminal justice system because it indicates the effectiveness of our correctional interventions at improving public safety. However, recidivism is notoriously hard to measure because we do not have perfect information about reoffending behavior. Instead, we typically rely on indicators of recidivism, such as rates of rearrest, reconviction, and return to custody.

Prior to realignment, CDCR relied on the three-year return-to-prison rate as its primary recidivism metric. This rate was calculated as the percentage of offenders released from prison that returned—due to either a parole violation or a new conviction—within three years. In the decade leading up to realignment, nearly two-thirds of individuals released from prison returned within three years (CDCR 2014). In contrast, this rate was much lower in other large states: 43 percent in New York, 36 percent in Texas, and 25 percent in Florida (New York DOCCS 2017; Texas Legislative Budget Board 2017; Florida DOC 2018).

Due to recent reforms, it is now difficult to compare California’s recidivism rates to those of other states. Because realignment sharply altered which offenders would be sentenced to prison and effectively dismantled the system of returning offenders to prison for supervision violations, the rate of return to prison ceased to be a useful metric for assessing recidivism outcomes for individuals leaving prison.

Following realignment, CDCR adopted the three-year reconviction rate—the share of individuals reconvicted of a new offense within three years of release from prison custody—as its primary measure of recidivism. CDCR reports the three-year reconviction rate was 54 percent for individuals released from prison during the first year of realignment and fell to 46 percent for individuals released during the third year of realignment, the most recent group for which data are available (CDCR 2018). However, reconviction rates reported by CDCR are not adjusted for changes over time in the characteristics of individuals released from prison. Given new sentencing rules under realignment, we would expect the underlying characteristics of this population to vary over time.

This study relies on rearrest and reconviction rates to measure recidivism in the post-realignment period for all felony offenders. The MCS rearrest and reconviction data currently extend through October 2017. Therefore, we report two-year rates, allowing us to compare recidivism outcomes for four full years of individuals released after realignment. For example, for individuals released during the first month of realignment in October 2011, we track recidivism outcomes through September 2013, prior to the implementation of Prop 47. In comparison, for those released in October 2013, we track outcomes through September 2015, meaning this group spends about half of their two-year “recidivism window” in the pre-Prop 47 period and about half in the post-Prop 47 period. The most recent group of individuals included in this study were released in October 2015 and followed through September 2017. This study is not designed to test the causal effects of any one policy change on recidivism, but rather, to take a broad look at how recidivism patterns have changed over time for felony offenders.

**TABLE 2**

Rates and counts of reconviction offenses vary across sentencing groups

Reconviction Offense	Rates				Counts			
	Prison	Jail	Jail and probation	Probation	Prison	Jail	Jail and probation	Probation
<b>Crimes against persons</b>								
Homicide	0.1%	0.1%	<0.1%	<0.1%	89	24	32	30
Rape	<0.1%	<0.1%	<0.1%	<0.1%	17	2	14	2
Other sex offense	0.5%	0.2%	0.4%	0.2%	471	83	437	165
Assault	3.6%	3.8%	2.6%	2.6%	3,129	1,329	2,728	2,069
Robbery	1.0%	1.0%	0.8%	0.8%	841	349	789	626
<b>Property offenses</b>								
Burglary	2.8%	4.4%	2.8%	3.1%	2,435	1,534	2,895	2,428
Theft	1.4%	2.7%	1.4%	1.6%	1,185	929	1,481	1,228
Motor vehicle theft	2.2%	4.5%	2.2%	2.3%	1,909	1,576	2,293	1,838
Other property offense	2.6%	4.7%	2.2%	3.4%	2,244	1,635	3,023	2,657
<b>Drug and other offenses</b>								
Drug offense	8.8%	12.2%	7.9%	13.4%	7,712	4,230	8,102	10,592
DUI	0.2%	0.1%	0.2%	<0.1%	162	48	161	59
Weapon offense	3.1%	3.2%	1.9%	2.2%	2,693	1,095	2,013	1,777

SOURCE: Author calculations based on data from BSCC–PPIC Multi County Study (MCS).

## Discussion

A key question following the recent series of public safety reforms in California, including realignment and Prop 47, has been whether the state’s persistently high recidivism rates have improved. In previous studies, we examined the effects of specific reforms on the populations they targeted (Bird, Grattet, and Nguyen 2017; Bird et al. 2018). In this report, we take the first broad look at how recidivism rates have changed for the felony population as incarceration levels have declined substantially.

Because criminal justice data are held separately in state and county systems in California, it has historically been challenging to assess recidivism levels for locally sentenced individuals. Leading up to realignment, the state was only able to determine recidivism rates for offenders who were released from prison. For the first time in California, the BSCC–PPIC Multi-County Study allows for recidivism analyses for individuals convicted and sentenced to serve time at both state and county levels. We draw on this unique data source to assess two-year recidivism outcomes for individuals released over the four-year period following realignment in 12 counties representative of the state.

We find that rearrest and reconviction rates have declined for felony offenders released from October 2011 to October 2015. Overall, the rearrest rate declined by 3 percent and the reconviction rate declined by 15 percent for individuals released during the four-year period. The largest reduction occurred in the felony reconviction rate, which dropped by 27 percent.

Trends in recidivism rates varied across offense types. While rearrests and reconvictions for drug and property offenses declined, we find small increases in recidivism for crimes against a person (a category that includes

violent crimes and non-violent crimes such as harassment and stalking) and other offenses (such as driving under the influence and weapons possession). These small increases—particularly in crimes against persons—raise public safety concerns and highlight the importance of examining trends in the type of recidivism, in addition to overall rates.

Declines in recidivism rates were particularly strong for those sentenced to prison or jail. For some groups—those sentenced to jail followed by probation or probation only—recidivism rates initially increased during the early years following realignment and decreased later on. In spite of overall declines, we do see evidence of an increase in rearrest rates toward the end of the four-year period for all felony offenders—driven by those sentenced to jail followed by probation. Again, this finding demonstrates the need to assemble additional data so that we can continue to track recidivism rates and better understand long-term trends in these outcomes following policy reforms.

It is important to note that changes in recidivism rates may reflect changes in reoffending behavior, changes in how the criminal justice system responds to offending, or both. One possible interpretation of declines in recidivism rates later in the period is that Prop 47 played a substantial role in reducing recidivism through greater emphasis on drug treatment interventions. Another potential interpretation is that the reduction in sanctions for drug possession under Prop 47 sent a signal to law enforcement to prioritize more serious offenders, which could in turn drive reductions in rearrests for drug offenses. In an environment where incentives are changing for both felony offenders and the criminal justice systems tasked with securing public safety, it is difficult to precisely determine why recidivism rates are declining.

These findings are also consistent with the possibility that recidivism rates decreased over time as counties were able to adapt and improve their implementation of realignment. Realignment emphasized the use of evidence-based interventions at the local level, but counties had little time to prepare for those interventions. To the extent that the use of program and service interventions is getting better over time—both at the county and state levels—we would hope to see reductions in recidivism.

In addition to examining changes in recidivism over time, we also explore how recidivism outcomes differ across felony sentencing groups. We find rearrest rates were highest for those sentenced to probation and lowest for those sentenced to jail and released without any form of supervision. These findings are consistent with other research that suggests supervision can result in higher rearrest rates—even when reoffending levels are similar—due to increased monitoring of misconduct (Petersilia and Turner 1993; Grattet and Lin 2014).

When we compare reconviction outcomes across sentencing groups, we find that those sentenced to prison—the most costly correctional sanction—had the highest rates of reconviction. For the felony offenders included in this analysis, those sentenced to prison served an average of 980 days—almost three years—compared with 256 days for those sentenced to jail, and 71 days for those sentenced to a combination of jail and probation. Despite serving the fewest average days in jail, those sentenced to a combination of jail and probation had the lowest reconviction rates—with an overall reconviction rate that was 5 percentage points lower and a felony reconviction rate that was 6 percentage points lower, compared to the group sentenced to prison. These findings are consistent with previous studies that have found little evidence of a relationship between more severe sanctions and better recidivism outcomes (Cullen and Gendreau 2000; Smith, Goggin, and Gendreau 2002).

It is tempting to draw conclusions about the relative effectiveness of these different felony sentences, especially given large differences in the associated correctional costs. But there are two key concerns. First, there may be differences that are hard to observe in the underlying characteristics of individuals sentenced to prison relative to locally sentenced groups. This means that other factors unrelated to the correctional sanction could be driving

differences in recidivism rates. Second, true levels of reoffending are frustratingly hard to capture. We have imperfect information about reoffending behavior and typically rely on rearrest and reconviction rates as the best available measures of recidivism. However, these measures capture both individual offender behavior and the way our criminal justice system responds to that behavior. For example, if prosecutors are more likely to charge and pursue convictions in cases involving individuals who were released from prison, we may find higher rates of reconviction for that group even if they were not actually reoffending at a higher rate.

Nevertheless, our findings suggest that recidivism rates may have improved under recent policy changes. Despite challenges in accurately measuring reoffending behavior and precisely estimating differences in recidivism rates, enhancing our understanding of the relationship between policy change and recidivism outcomes is essential. If the state hopes to improve public safety, reduce costs, and ensure equity, it will be necessary to facilitate the linking of data to better capture the characteristics of offenders, the correctional sanctions and programmatic interventions they receive, and their reoffending behavior. These steps will help move California toward a more data-driven and evidence-based criminal justice system.