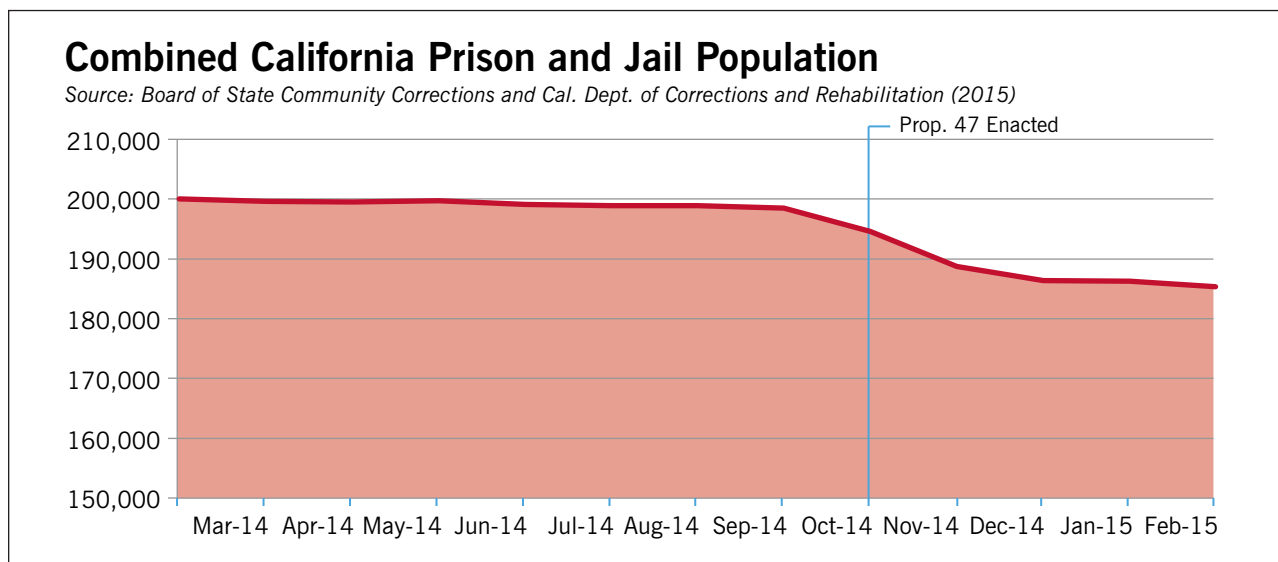


Proposition 47 Progress Report: Year One Implementation

October 2015

KEY FINDINGS

Since the enactment of Proposition 47 on November 14, 2014, the number of people incarcerated in California's prisons and jails has decreased by approximately 13,000 inmates, helping alleviate crowding conditions in those institutions¹. Proposition 47 has also reduced the number of jail inmates released from custody early due to overcrowding² and should generate over \$150 million in state savings this fiscal year³. County governments stand to save even more money: over \$200 million annually, in aggregate.⁴



- According to the Legislative Analyst's Office, prior to Proposition 47 approximately 40,000 people per year received felony sentences for the drug and property crimes targeted by the initiative. Those offenses are now punished as misdemeanors, significantly reducing sentence lengths and costs for incarceration, litigation and law enforcement.⁵
- According to the Department of Corrections, 4,454 state prisoners have been released under Proposition 47 as of September 30, 2015.⁶ In addition, the state will incarcerate an estimated 3,300 fewer prisoners every year because these offenders will receive misdemeanor jail sentences under Proposition 47 rather than new prison terms.⁷ In February, the prison population dropped below the capacity level ordered by the U.S. Supreme Court in *Plata v. Brown*, one year ahead of schedule.⁸

ACKNOWLEDGEMENTS

The Stanford Justice Advocacy Project (formerly the Three Strikes Project) was involved in the drafting of Proposition 47 and currently assists its implementation, including litigation on behalf of individual prisoners seeking reduced sentences under the new law.

This report was made possible in part by financial support from the Tides Foundation.

- According to the Board of State Community Corrections, the total statewide jail population has dropped by almost 9,000 inmates since the enactment of Proposition 47.⁹ Early releases from county jails due to overcrowding are down approximately 35 percent statewide.¹⁰
- Financial savings to the state from reduced prison costs under Proposition 47 is estimated at over \$156 million this fiscal year.¹¹ Long term annual savings are estimated at \$93.4 million.¹² These savings will be directed to the Safe Neighborhoods and Schools Fund to support mental health and drug treatment, K-12 public schools, and services for crime victims.¹³ In May, the Governor cut over \$70 million dollars from the state prison budget because of population reductions from Proposition 47.¹⁴
- Fewer than five percent of state prisoners released early under Proposition 47 have been convicted of a new crime and returned to prison.¹⁵ Although law enforcement officials in some jurisdictions have recently complained about increasing crime rates, there is no evidence that state prisoners released early under Proposition 47 are committing those crimes. Statewide data on crime rates is not currently available, making it impossible to measure any impact on crimes rates by Proposition 47.¹⁶

PROPOSITION 47 OVERVIEW

On November 4, 2014, California voters enacted Proposition 47, the Safe Neighborhoods and Schools Act, with 60 percent of the statewide vote.¹⁷ The legislation contains four main provisions:

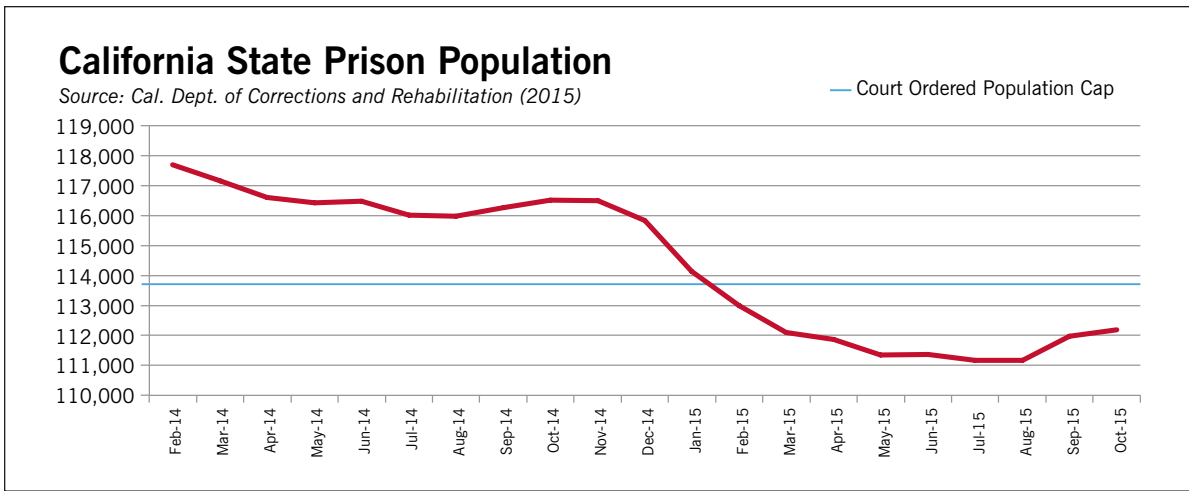
- Reduces the punishment for six common nonviolent property and drug felonies to misdemeanors, with exceptions for people previously convicted of murder and certain sex offenses.
- Provides that inmates serving felony sentences for these crimes may have their punishments reduced to misdemeanors. A judge may deny an inmate's request for resentencing if the judge determines that the inmate poses an unreasonable risk of danger to public safety.
- Directs financial savings realized from reduced state costs into a new state fund to treat mental illness and drug addiction, reduce truancy, expand diversion and support crime victims.
- Allows individuals with old felony convictions for the specified crimes to amend past criminal records to remove the felony and reflect that the crime is now a misdemeanor.

This report addresses implementation of the first three provisions.

PRISON OVERCROWDING

According to the Department of Corrections, as of September 30, 2015, 4,455 state prisoners have been released under Proposition 47, pursuant to new Penal Code Section 1170.18.¹⁸ In addition, Department of Corrections data indicates that the state will incarcerate an estimated 3,300 fewer prisoners per year.¹⁹ These prisoners will receive misdemeanor jail sentences rather than new prison terms. In February, the state's prison population fell below the constitutional threshold ordered by the United States Supreme Court in *Plata v. Brown* one year ahead of schedule.²⁰

In 2011, the United States Supreme Court ruled in *Plata v. Brown* that California prisons were unconstitutionally overcrowded and ordered that the state prison population be reduced to 137.5 percent of the total original design capacity of the state's prison facilities (approximately 113,720 inmates).²¹ At the time the case was filed, the state prison population was over 200 percent of the prison capacity.

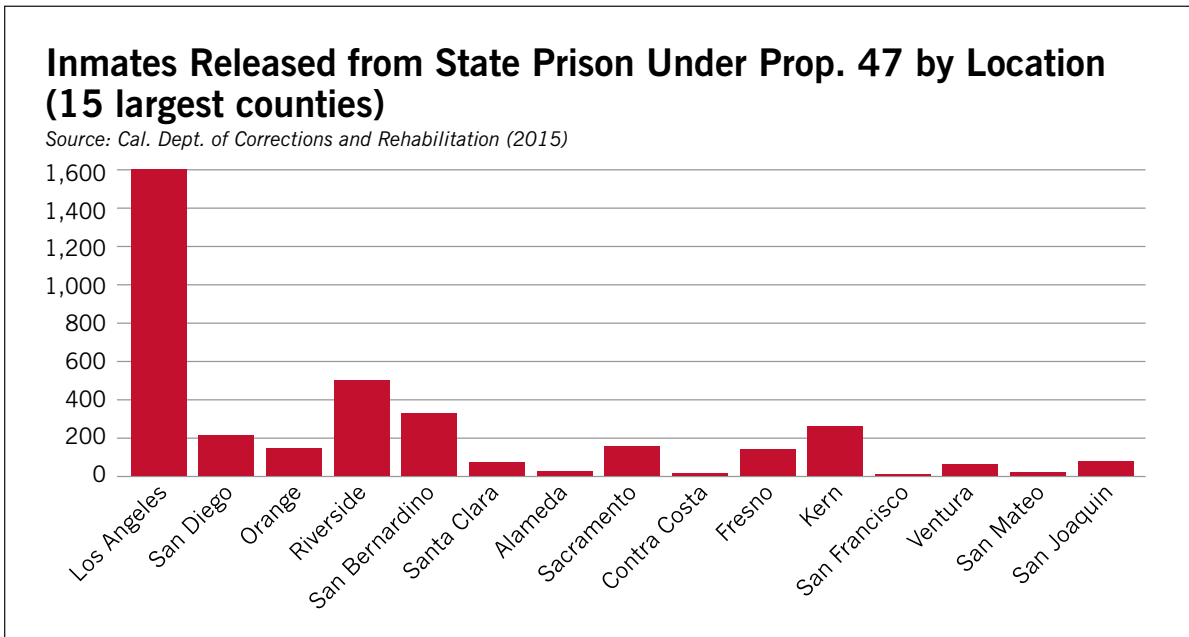


Following *Plata*, California enacted several reforms to its sentencing laws, including the Public Safety Realignment Act of 2011, which began a substantial reduction of the state prison population. This was accomplished in large part by housing prisoners in county jails rather than state prisons.

Still, the state prison population remained above the constitutional cap imposed by the Supreme Court in *Plata*.²² Furthermore, the state prison population began to gradually increase in 2014. On February 10, 2014, three-judge panel of federal judges responsible for implementing *Plata* order gave state officials until February 2016 to meet the prison population cap of 137.5 percent of design capacity.²³

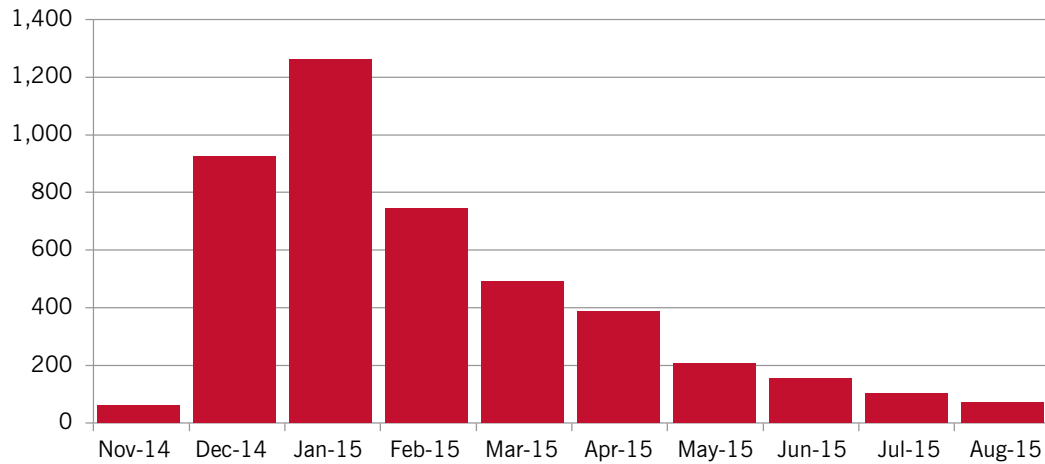
Proposition 47 became effective immediately after voter approval on November 4, 2014, and resulted in the swift and dramatic release of prisoners. Most inmates freed under Proposition 47 were released in the first months of 2015.²⁴ By February 11, 2015, Department of Corrections officials announced that the prison population fell below the constitutional threshold established in *Plata*.²⁵

According to the Department of Corrections, as of September 30, 2015, the total state prison population is 111,967 inmates.²⁶ An additional 12,263 California prisoners are incarcerated in prisons located in other states or in private facilities.²⁷ Although the current in-state prison population is below the population cap set by the Supreme Court in *Plata*, the state prison population remains over 30 percent above capacity.²⁸



Inmates Released from State Prison Under Prop. 47 by Month

Source: Cal. Dept. of Corrections and Rehabilitation (2015)



COUNTY JAIL OVERCROWDING

Proposition 47 has had an even larger impact on county jails. Within three months of the passage of Proposition 47, the combined population of all county jails in California dropped by almost 9,000 prisoners due to resentencing of jail inmates under new Penal Code Section 1170.18 and fewer new felony admissions.²⁹

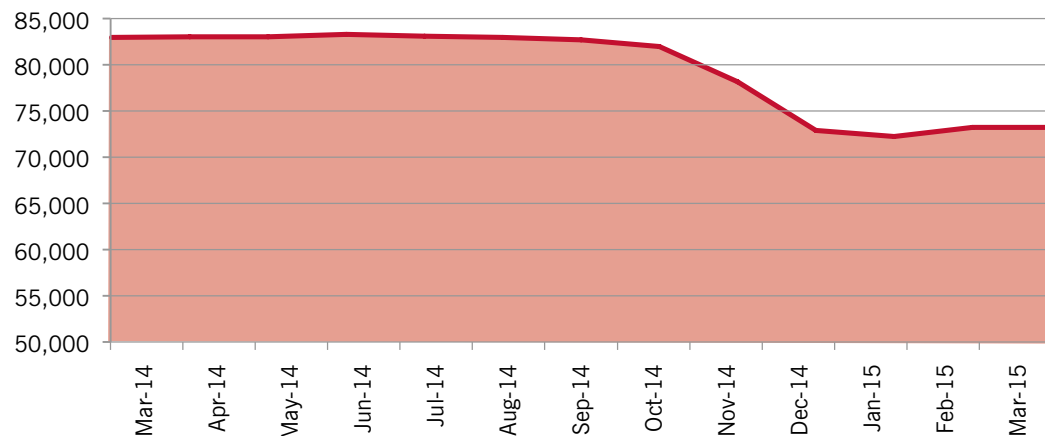
California county jails remain overcrowded. Over 20 county jail systems are under court orders limiting the number of inmates who may be housed at any given facility.³⁰ As a result, officials in these jurisdictions release thousands of inmates early. According to the Board of State Community Corrections, the number of jail inmates

released early due to jail crowding dropped from a high of 14,868 inmates released early in August 2014 to a low of 8,820 early jail releases in December 2014 (a decrease of approximately 35 percent).³¹

Prior to Proposition 47, the total statewide jail population exceeded the combined rated capacity of the state's jails by over 2,000 prisoners.³² Following Proposition 47, the total jail population dropped below the combined rated capacity of the state's jails.³³

Combined Statewide County Jail Population (2015)

Source: Board of State Community Corrections



FINANCIAL SAVINGS

Proposition 47 directs the Department of Finance to calculate the savings that accrued to the state from the implementation of Proposition 47.³⁴ Those savings will be transferred into a newly created Safe Neighborhoods and Schools Fund to support mental health and drug treatment, K-12 public schools, and services for crime victims.³⁵ The Department of Finance must complete its calculations by June 30, 2016,³⁶ although the exact method for calculating savings has not yet been determined.

Pursuant to new Government Code Section 7599.2, savings transferred to in the Safe Neighborhoods and Schools Fund shall be allocated as follows: 65 percent of the funds shall be distributed to mental health and drug treatment programs that are designed to reduce recidivism and reduce crime; 25 percent of the funds shall be distributed to programs designed to reduce truancy and dropouts among K-12 grade students; and 10 percent of the funds shall fund victim services.

Based on data provided by the Department of Corrections and Department of Finance, the estimated net annual savings to the state budget generated by Proposition 47 should be over \$90 million.³⁷ If past trends hold, the state should receive an estimated 3,300 fewer prisoners annually. These prisoners should now receive misdemeanor jail sentences rather than new prison terms.³⁸ The current marginal cost of a state prison inmate is \$28,300, according to the Department of Finance.³⁹

Estimated Annual Financial Savings to the State

Sources: Cal. Dept. of Corrections and Rehabilitation and the Department of Finance

| | |
|---|-----------------------|
| Estimated annual reduction of prison sentences under Prop. 47 | 3,300 |
| Estimated average annual marginal cost of prison inmate | \$28,300 |
| Estimated long-term prison savings | \$93.4 Million |

Estimated Annual Financial Savings to County Jails

Sources: Cal. Dept. of Justice, Board of State Community Corrections and Office of the State Comptroller

| | |
|---|----------------------|
| Estimated annual reduction of jail sentences under Prop. 47 | 10,000 |
| Estimated average annual marginal cost of jail inmate | \$20,300 |
| Estimated aggregate jail savings | \$203 Million |

The state will realize additional savings in the first fiscal year following the enactment of Proposition 47. Not only will the state prisons receive approximately 3,300 fewer inmates this year, but also over 4,400 state prisoners have been released from custody, reducing their sentence by an average of 6 months.⁴⁰ Thus, this year only, the state prison system should realize a total reduction in the equivalent of 5,500 prisoners as a result of Proposition 47. In sum, for this fiscal year, Proposition 47 should generate savings up to \$156 million.⁴¹ Some of these savings will be offset by one-time costs associated with the implementation of Proposition 47, including increased court costs and parole supervision expenses.

Savings to county jail systems should be larger in aggregate than savings to the state system because most inmates sentenced for crimes impacted by Proposition 47 are sentenced to county jail, rather than state prison, following the Public Safety Realignment Act of 2011 (AB 109).⁴²

Counties will incur temporary costs in processing Proposition 47 petitions and other one time expenses. The Legislative Analyst's Office anticipates net savings to county governments of "several hundred million dollars annually".⁴³

If current trends hold, county governments should realize over \$200 million annually from reduced jail costs.⁴⁴ Based on data from the California Department of Justice, county jails in aggregate should receive a reduction in average daily population of 10,000 inmates annually as a result of Proposition 47.⁴⁵ According to data collected from the Office of the State Controller and Board of State Community Corrections, the average marginal cost of a jail inmate is \$20,300.⁴⁶

County savings may be reduced if sheriffs change early release policies, shifting savings from Proposition 47 to other incarceration costs. The estimates provided here do not account for savings to county probation offices, Superior Courts, District Attorneys and Public Defenders—all of whom should see reduced workloads. Unlike the state Safe Neighborhoods and Schools Fund, county governments do not currently track or capture the savings for distribution into other projects.

RECIDIVISM

By any measure, the recidivism rate of prisoners whose sentences were reduced under Proposition 47 is exceptionally low.

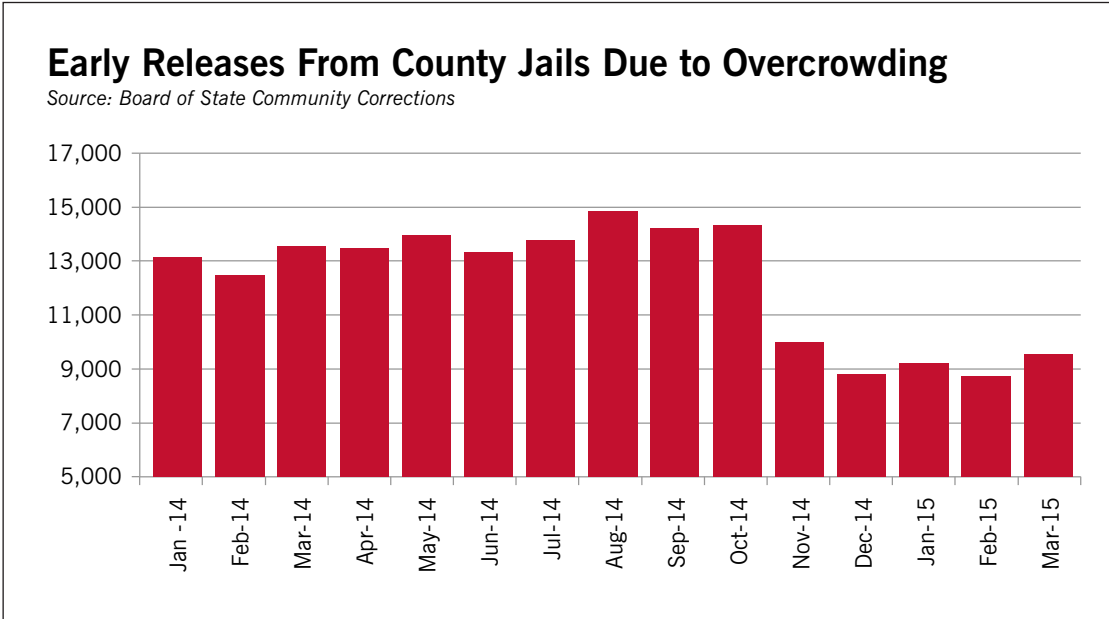
According to the Department of Corrections, to date 159 of 4,454 state prisoners awarded reduced sentences under Proposition 47 and released early have been returned to state prison for new crimes.⁴⁷ A prison return rate below 5 percent indicates that any increase in crime over the past year should not be attributed to inmates freed from prison under Proposition 47.

According to the latest recidivism data released by the Department of Corrections, 42 percent of all inmates released from state prison were convicted of a new crime and returned to prison within one year.⁴⁸ However this data

reflects recidivism prior to Proposition 47, which reduced several common felonies to misdemeanors and has resulted in fewer new prison sentences.

Furthermore, recidivism may be measured in many different ways (e.g. new arrests or new probation violations). The recidivism data provided here—new convictions that result in returns to state prison—is the only statewide recidivism measure available in California.

More current prison recidivism data necessary for a closer comparison to the return rate of prisoners released under Proposition 47 was not available from the Department of Corrections within the timeframe of this report. County jails do not report recidivism rates at all.



IMPACT ON WOMEN PRISONERS

Proposition 47 has had a greater proportional impact on female prisoners compared to male prisoners.⁴⁹ Approximately 8 percent of prisoners released under Proposition 47 have been women. Women comprise 4 percent of the state's prison population.⁵⁰

LEGAL ISSUES

A number of court cases have significantly impacted the implementation and scope of Proposition 47. Some of the most important issues include:

Does Proposition 47 apply to juveniles?

Immediately after the enactment of Proposition 47, the San Diego District Attorney's Office challenged the new law's applicability to juvenile offenders.⁵² Prosecutors argued that Proposition 47 did not apply to juvenile offenders because the ballot measure relied on language used in the adult criminal system rather than the juvenile system. More specifically, prosecutors maintained that the new law reduced punishments for adult "convictions" but said nothing about juvenile violations, which are formally called "adjudications." Because Proposition 47 was silent about juvenile "adjudications," the prosecutors argued that the initiative's reforms did not apply to juvenile offenders.

The San Diego District Attorney's Office maintained that it was the voters' intent to exclude juvenile offenders from the benefits of Proposition 47 and that juveniles should continue to face the equivalent of felony punishments for low level drug possession and theft crimes, while adult offenders receive only misdemeanors.

In July, the Fourth District Court of Appeals decided the case of *Alejandro N. v. Superior Court of San Diego County*, rejecting the prosecutors' arguments and holding that Proposition 47 applies equally to juvenile offenders. On August 31, the District Attorney of San Diego petitioned the California Supreme Court to review and overturn the Court of Appeal's decision. Earlier this month the Supreme Court denied the prosecutors' petition.

Still, women's prisons remain among the most overcrowded in the state, housing a combined 5,268 inmates in facilities designed to hold 3,800 prisoners (or 138 percent of design capacity).⁵¹

Does Proposition 47 apply to plea bargains?

Proposition 47 allows prison and jail inmates serving felony sentences for certain drug possession and theft convictions to petition for a reduction of sentence.⁵³ Courts are required to grant the petition and reduce the inmate's sentence to a misdemeanor unless the court finds that the inmate remains an unreasonable risk of danger to public safety.⁵⁴

The District Attorney of Contra Costa County has argued that the sentence reduction provisions of Proposition 47 should not apply to felons convicted by plea bargain (which represents over 90 percent of all felony cases). Prosecutors maintained that sentences negotiated by plea bargain prior to the enactment of Proposition 47 could not be reduced by the initiative because any reduced sentence would be less than prosecutors agreed to during plea negotiations and deprived the District Attorney its "benefit of the bargain" and right to due process. In January, the Contra Costa County Superior Court agreed with the District Attorney and ordered that Proposition 47 could not reduce sentences negotiated by plea agreement.

In April, the First District Court of Appeal reversed the Superior Court decision, holding in *Tre W. v. Superior Court of Contra Costa County* that the sentence reduction provisions enacted by voters in Proposition 47 expressly permitted the reduction of sentences negotiated by plea agreement and that the District Attorney was not denied any contractual or constitutional rights by their application. The Court of Appeal issued a writ of mandate ordering the Contra Costa Superior Court to begin granting Proposition 47 sentence reduction petitions in plea bargain cases.

Does Proposition 47 apply to Proposition 36?

In 2012, voters enacted Proposition 36, amending portions of California's "Three Strikes" law and permitting some inmates serving life sentences for nonviolent crimes to petition for a reduced sentence. Proposition 36 provided that courts should grant the sentence reduction petitions unless the inmate-petitioner remained an "unreasonable risk of danger to public safety."⁵⁵ The initiative did not define the precise meaning of this phrase.

Proposition 47 includes a similar resentencing provision and provides an explicit definition of "unreasonable risk of danger to public safety." Under Proposition 47, "unreasonable risk of danger to public safety" means a risk to commit any one of a list of very serious crimes provided by statute, including murder, rape and child molestation.⁵⁶ Proposition 47 provides further that this definition shall apply "[a]s used throughout this Code."⁵⁷

Prisoners seeking reduction of their Three Strikes sentences under Proposition 36 argued that the new dangerousness standard provided in Proposition 47 applied to them because the definition applied "throughout this Code"—meaning throughout the Penal Code.⁵⁸ The Proposition 47 standard is more favorable to prisoners seeking sentence reductions because it refers to a discrete list of violent offenses whereas the dangerousness standard in Proposition 36 remained undefined and could encompass a risk to commit any serious crime.

Several courts of appeal have considered the issue and all have concluded that the definition provided in Proposition 47 does not apply to Proposition 36 cases. In February, the California Supreme Court granted petitions to review the issue in a pair of cases, *People v. Chaney* and *People v. Valencia*. The lower court decisions are suspended pending resolution of the matter by the Supreme Court. A decision is expected next year.

ENDNOTES

- 1 See Board of State and Community Corrections, *Jail Profile Survey, Fourth Quarter Calendar year 2014* (available at: www.bscc.ca.gov/downloads/2014_4th_Qtr_JPS_Full_Report.pdf); Board of State and Community Corrections, *Jail Profile Survey, First Quarter Calendar year 2015* (available at: www.bscc.ca.gov/downloads/2015_1st_Qtr_JPS_Full_Report.pdf); and data provided by the California Department of Corrections and Rehabilitation (available upon request).
- 2 See Board of State and Community Corrections, *Jail Profile Survey, Third Quarter Calendar year 2014* (available at: www.bscc.ca.gov/downloads/2014_3rd_Qtr_JPS_Full_Report.pdf); and Board of State and Community Corrections, *Jail Profile Survey, Fourth Quarter Calendar year 2014* (available at: www.bscc.ca.gov/downloads/2014_4th_Qtr_JPS_Full_Report.pdf).
- 3 Calculations based on data provided by the California Department of Corrections and Rehabilitation (available upon request); and California Department of Finance.
- 4 Calculations based on data provided by the California State Controller, *Counties Annual Report* (January 28, 2014) (available at: www.sco.ca.gov/Files-ARD-Local/LocRep/counties_reports_1112counties.pdf); Board of State and Community Corrections, *Jail Profile Survey, Third Quarter Calendar year 2011* (available at: www.bscc.ca.gov/downloads/2011_3rd_Qtr_JPS_full_report.pdf); Board of State and Community Corrections, *Jail Profile Survey, Fourth Quarter Calendar year 2011* (available at: www.bscc.ca.gov/downloads/2011_4th_qtr_JPS_full_report.pdf); Board of State and Community Corrections, *Jail Profile Survey, First Quarter Calendar year 2012* (available at: www.bscc.ca.gov/downloads/2012_1st_Qtr_JPS_full_report.pdf); Board of State and Community Corrections, *Jail Profile Survey, Second Quarter Calendar year 2012* (available at: www.bscc.ca.gov/downloads/2012_2nd_Qtr_JPS_full_report.pdf); and California Department of Justice, *Crime in California 2014* (available at: oag.ca.gov/sites/all/files/agweb/pdfs/cjisc/publications/candd/cd14/cd14.pdf?).
- 5 Legislative Analyst's Office, *Proposition 47 Ballot Analysis* (November 4, 2014) (available at: www.lao.ca.gov/ballot/2014/prop-47-110414.aspx).
- 6 Calculations based on data provided by the California Department of Corrections (available upon request).
- 7 *Ibid.*
- 8 See Attorney General's Brief, *Brown v. Plata, Defendants' February 2015 Status Report in Response to February 10, 2014 Order* (available at: www.cdcr.ca.gov/News/docs/3JP-Feb-2015/February-2015-Status-Report.pdf).
- 9 See Board of State and Community Corrections, *Jail Profile Survey, Fourth Quarter Calendar year 2014* (available at: www.bscc.ca.gov/downloads/2014_4th_Qtr_JPS_Full_Report.pdf); and Board of State and Community Corrections, *Jail Profile Survey, First Quarter Calendar year 2015* (available at: www.bscc.ca.gov/downloads/2015_1st_Qtr_JPS_Full_Report.pdf).
- 10 *Ibid.*
- 11 See FN 3.
- 12 Calculations based on data provided by the California Department of Corrections and Rehabilitation (available upon request); and the California Department of Finance (available upon request).
- 13 See Cal. Government Code Sections 7599.1 and 7599.2.

- 14 See California Department of Finance, California 2015-16 State Budget (available at: www.ebudget.ca.gov/2015-16/pdf/Enacted/BudgetSummary/PublicSafety.pdf).
- 15 Data provided by the California Department of Corrections and Rehabilitation (available upon request).
- 16 Most recent statewide crime data (2014) available at California Department of Justice, *Crime in California 2014* (available at: <https://oag.ca.gov/sites/all/files/agweb/pdfs/cjsc/publications/candd/cd14/cd14.pdf?>).
- 17 See California Secretary of State, *The Statement of Vote November 4, 2015* (available at: elections.cdn.sos.ca.gov/sov/2014-general/pdf/88-ballot-measures.pdf); and California Secretary of State, *Official Voter Information Guide November 4, 2014* (available at: vig.cdn.sos.ca.gov/2014/general/pdf/text-of-proposed-laws1.pdf#prop47).
- 18 Data provided by the California Department of Corrections and Rehabilitation (available upon request).
- 19 See FN 6.
- 20 See FN 8.
- 21 *Brown v. Plata*, 563 US 493 (2011).
- 22 See California Department of Corrections and Rehabilitation, *Weekly Report of Population* (available at: www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/WeeklyWed/Weekly_Wednesday_Tpop1a_Archive.html).
- 23 See *Brown v. Plata*, *Order Granting in Part and Denying in Part Defendants' Request for Extension of December* (E.D.C.A. February 10, 2014).
- 24 Data provided by the California Department of Corrections and Rehabilitation (available upon request).
- 25 See FN 8.
- 26 See California Department of Corrections and Rehabilitation, *Weekly Report of Population, September 30, 2015* (available at: www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/WeeklyWed/TPOP1A/TPOP1Ad150930.pdf).
- 27 *Ibid.*
- 28 *Ibid.*
- 29 See FN 9.
- 30 Public Policy Institute of California, *Just the Facts: California's County Jails* (April 2015) (available at: www.ppic.org/main/publication_show.asp?i=1061).
- 31 See FN 9.
- 32 See Board of State and Community Corrections, *Jail Profile Survey, Third Quarter Calendar year 2014* (available at: www.bscc.ca.gov/downloads/2014_3rd_Qtr_JPS_Full_Report.pdf).
- 33 See State and Community Corrections, *Jail Profile Survey, First Quarter Calendar Year 2015* (available at: [BSCC www.bscc.ca.gov/downloads/2015_1st_Qtr_JPS_Full_Report.pdf](http://www.bscc.ca.gov/downloads/2015_1st_Qtr_JPS_Full_Report.pdf)).
- 34 Cal. Government Code Section 7599.1.

- 35 Cal. Government Code Sections 7599.1 and 7599.2.
- 36 Cal. Government Code Section 7599.1.
- 37 See FN 12.
- 38 See FN 7.
- 39 Data provided by Department of Finance (available upon request).
- 40 Data provided by the California Department of Corrections and Rehabilitation (available upon request).
- 41 See FN 3.
- 42 *Assembly Bill 109 (Committee on Budget), Chapter 15, Statutes of 2011-12.*
- 43 Legislative Analyst's Office, *Proposition 47 Ballot Analysis* (November 4, 2014) (available at: www.lao.ca.gov/ballot/2014/prop-47-110414.aspx).
- 44 See FN 4.
- 45 California Department of Justice, *Crime in California 2014* (available at: oag.ca.gov/sites/all/files/agweb/pdfs/cjsc/publications/candd/cd14/cd14.pdf?).
- 46 See FN 3.
- 47 Data provided by the California Department of Corrections and Rehabilitation (available upon request).
- 48 California Department of Corrections Rehabilitation, Office of Research, *2013 Outcome Evaluation Report* (available at: www.cdcr.ca.gov/Adult_Research_Branch/Research_Documents/ARB_FY_0809_Recidivism_Report_02.10.14.pdf).
- 49 Data provided by the California Department of Corrections and Rehabilitation (available upon request).
- 50 California Department of Corrections and Rehabilitation, *Weekly Report of Population, October 21, 2015* (available at: www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/WeeklyWed/TPOP1A/TPOP1Ad151021.pdf).
- 51 Attorney General's Brief, *Brown v. Plata, Defendants' October 2015 Status Report in Response to February 10, 2014 Order*, Exhibit A (October 15, 2015).
- 52 *Alejandro N. v. Superior Court*, 238 Cal. App. 4th 1209 (2015).
- 53 Cal. Penal Code Section 1170.18(a).
- 54 Cal. Penal Code Section 1170.18(b)(3).
- 55 Cal. Penal Code Section 1170.126(f).
- 56 Cal. Penal Code Section 1170.18(c).
- 57 *Ibid.*
- 58 See *People v. Chaney*, 231 Cal. App. 4th 1391 (2014), *People v. Valencia*, 232 Cal. App. 4th 514 (2014).