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State Corrections in the Wake of California's Criminal Justice Reforms: Much Progress, More Work to Do

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California Budget & Policy Center

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Acknowledgments

Scott Graves prepared this chartbook.



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California Has Substantially Reformed Its Criminal Justice Policies in Recent Years



For Decades, California Took a “Tough-on-Crime” Approach to Criminal Justice

- **Over many years, state policymakers and the voters adopted harsh, one-size-fits-all sentencing policies, such as the 1994 “Three Strikes and You’re Out” law.**
 - This tough-on-crime approach emphasized punishment over rehabilitation and lengthened prison sentences.
- **As a result, the number of adults incarcerated at the state level (which excludes people housed in *local jails*) grew much faster than the state’s overall population.**
 - From 1978 to 2007 – when state-level incarceration reached its peak – the number of incarcerated adults increased by 740%; California’s population rose by just 60% during this same period.



California Has Advanced Major Criminal Justice Reforms Over the Past Decade

- **In recent years, California has fundamentally reformed its approach to criminal justice. These reforms:**
 - Have aimed to reduce incarceration, promote more effective pathways to rehabilitation, prevent crime, and spend tax revenues more wisely.
 - Largely came in response to lawsuits filed against the state on behalf of incarcerated adults. As part of this litigation, a panel of federal judges ruled in 2009 that prison overcrowding was the main reason the state was unable to provide constitutionally adequate medical and mental health care to prisoners. This three-judge court ordered the state to reduce overcrowding to 137.5% of the prison system's design capacity. This order was upheld by the US Supreme Court in 2011.



Key Criminal Justice Reforms Imposed on California by the Federal Court

- **In 2014, the court overseeing the prison-overcrowding litigation *required* California policymakers to implement several measures to reduce the prison population. These measures, which are still in effect today, include:**
 - Allowing people convicted of nonviolent, “second-strike” offenses to be considered for parole once they serve half of their sentence.
 - Creating an “elderly parole” process for certain prisoners who are age 60 or older and have served at least 25 years of continuous incarceration.
 - Expanding the state’s “medical parole” process, through which certain prisoners with serious health conditions are released to a licensed health care facility in the community.



Additional Key Criminal Justice Reforms Adopted by State Policymakers

- **Senate Bill 678 (2009):** Created financial incentives for counties to decrease the number of adult felony probationers sent to prison, including by reducing recidivism through the use of evidence-based supervision practices.
- **Assembly Bills 109 and 117 (2011):** Transferred – or “realigned” – to counties the responsibility for managing adults convicted of certain “lower-level” felonies. (This change took effect on October 1, 2011.) Counties receive funding from the state to carry out these responsibilities. This funding is projected to exceed \$1.4 billion in 2018-19, the fiscal year that began on July 1, 2018.



Additional Key Criminal Justice Reforms Adopted by State Policymakers (cont.)

- **Senate Bill 1010 (2014):** Reduced the penalty for possession for sale of “crack” (cocaine base) to equal that for powder cocaine.
- **Senate Bill 180 (2017):** Scaled back a sentencing enhancement that applies to certain people convicted of drug-related offenses.
- **Senate Bill 620 (2017):** Gave judges discretion to strike a sentencing enhancement related to the use of a firearm.
- **Assembly Bill 1308 (2017):** Expanded the parole hearing process – created in 2014 – for certain people convicted of crimes as juveniles or young adults.



Criminal Justice Reforms Adopted by California Voters at the Ballot Box

- **Proposition 36 (2012):** Shortened prison sentences for many people who receive a “third strike” for a nonviolent, nonserious felony.
- **Prop. 47 (2014):** Reduced, to misdemeanors, penalties for several nonserious, nonviolent drug and property crimes.
- **Prop. 57 (2016):** 1) Created a new parole consideration process for prisoners serving a sentence for a nonviolent felony offense; 2) gave state officials broad new authority to award sentencing credits to reduce the time that people spend in prison; and 3) required juvenile court judges to decide whether a youth should be tried in adult court.



California's Criminal Justice Reforms Have Reduced Incarceration Without Compromising Public Safety

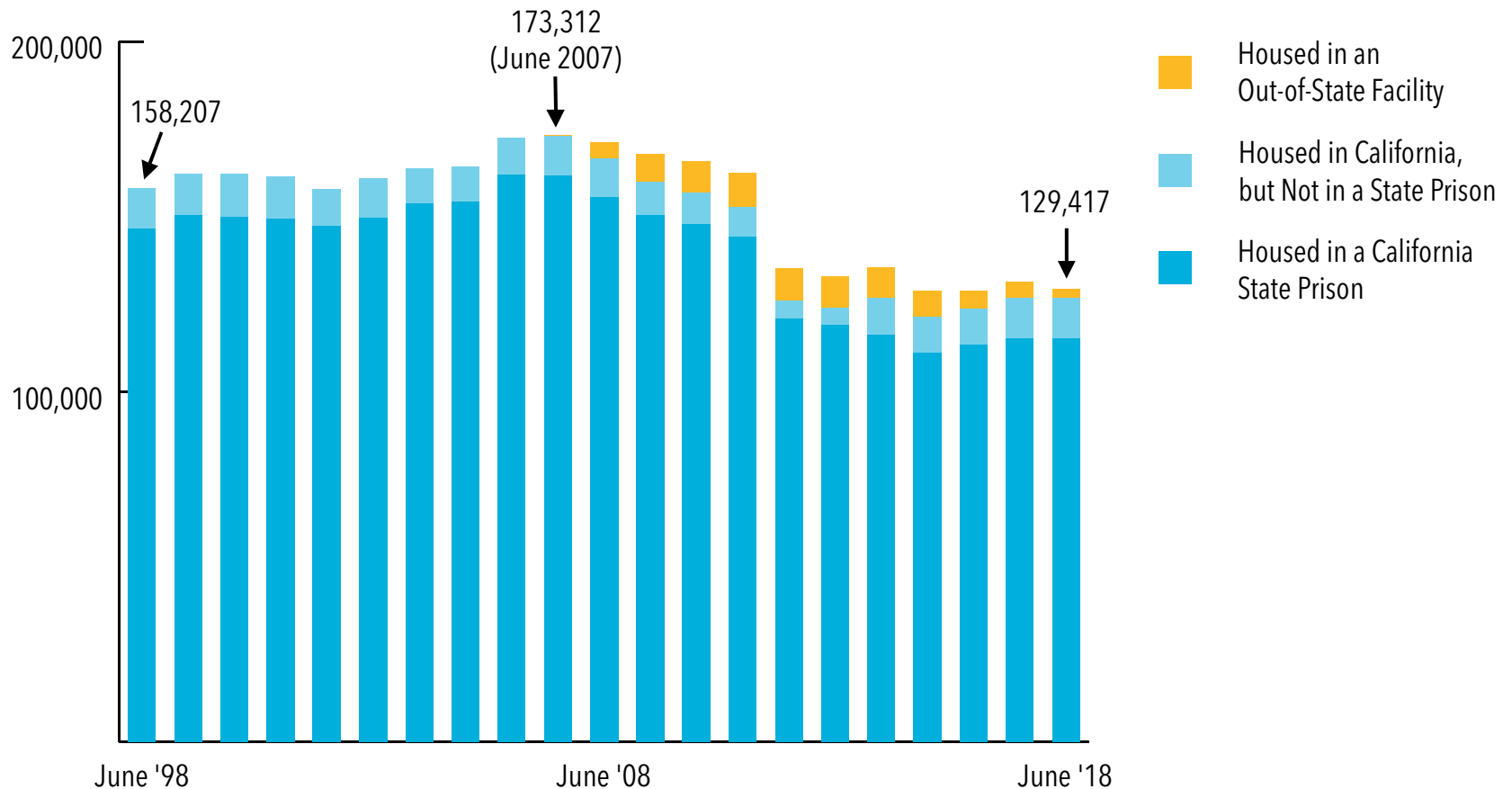


The Number of Adults Incarcerated by the State Has Declined Substantially

- **Adults who are incarcerated by the state fall under the jurisdiction of the California Department of Corrections and Rehabilitation (CDCR).**
 - Around 9 in 10 incarcerated adults are housed in the state's 34 prisons. The rest are housed in other locations, including in-state and out-of-state "contract facilities."
- **In 2007, the number of adults incarcerated by the state peaked at over 173,000. By June 2018, following years of criminal justice reforms, this number was down by about one-quarter, to 129,417.**
 - Still, even with this significant reduction, the number of incarcerated adults remains much higher than in the 1970s, 1980s, and early 1990s.



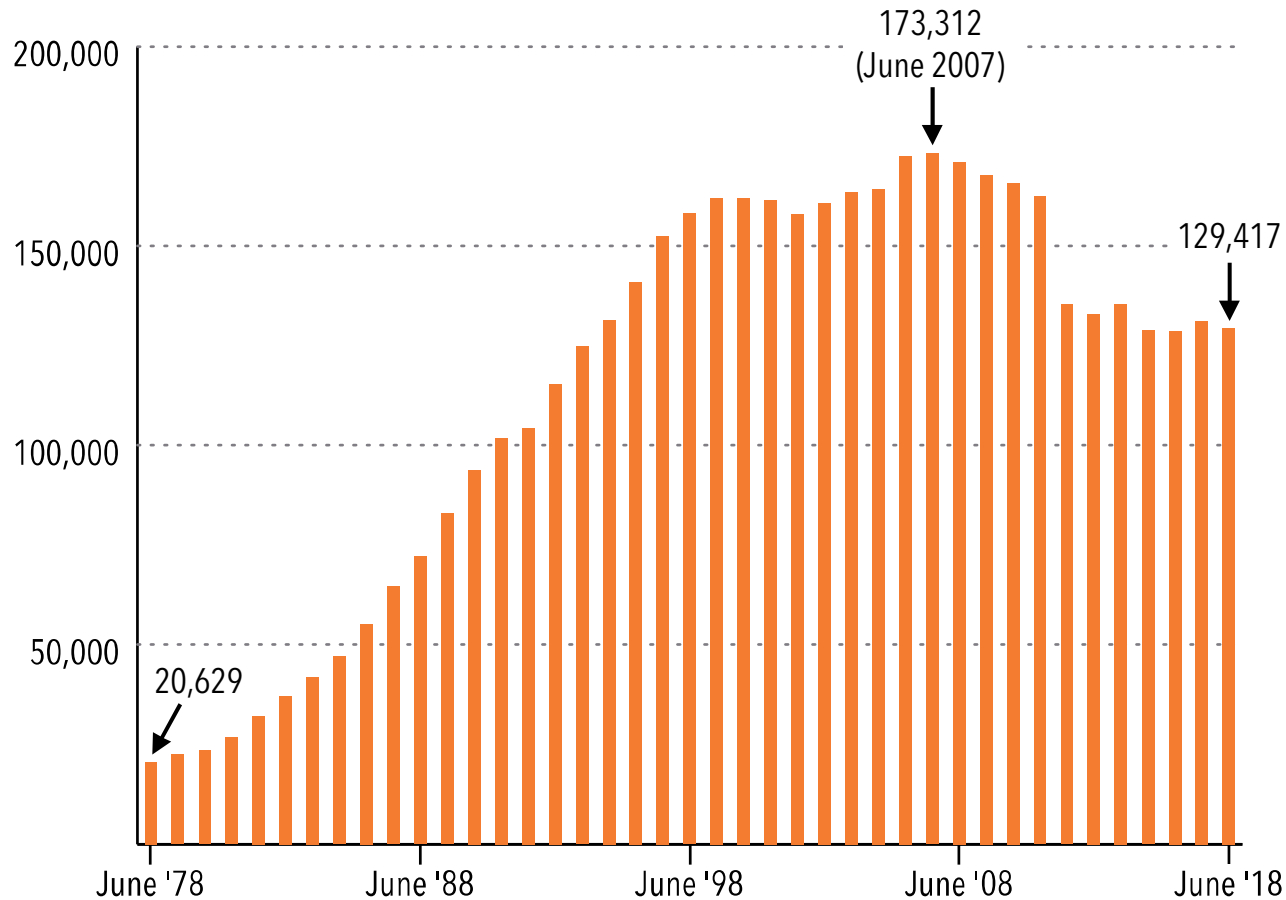
Since Peaking in 2007, the Number of Adults Incarcerated by the State Has Declined by About One-Quarter



Note: Figures are as of June 30 of each year.
Source: California Department of Corrections and Rehabilitation



Despite the Recent Drop, the Number of Incarcerated Adults Exceeds the Levels of the 1970s, 1980s, and Early 1990s



Note: Reflects adults housed in state prisons as well as in other facilities in and outside of California. Figures are as of June 30 of each year.

Source: California Department of Corrections and Rehabilitation



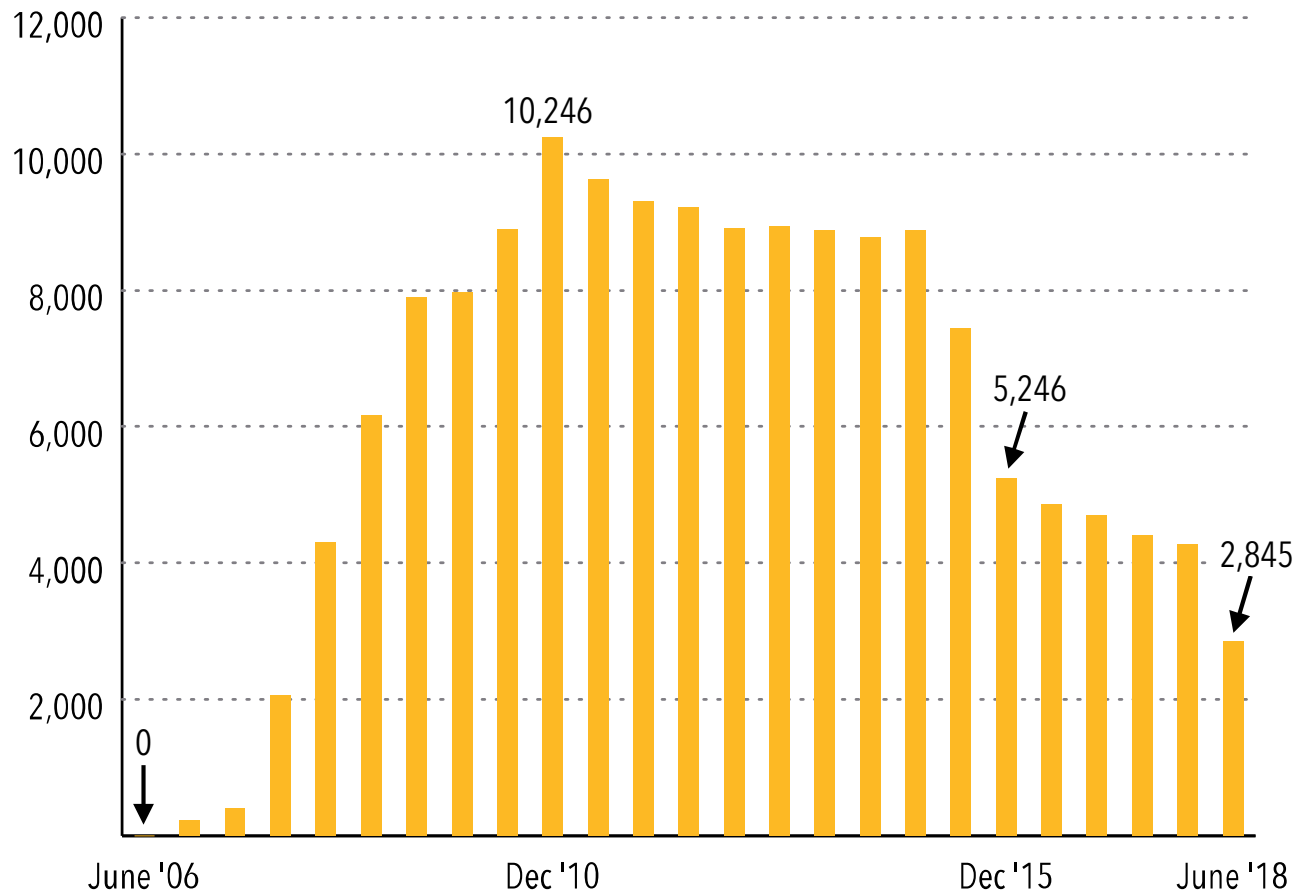
With Incarceration Down, California Plans to End Its Use of Out-of-State Prisons

- **Because of reduced incarceration, California has been able to scale back its reliance on out-of-state prisons – and plans to end its use of these facilities by early 2019.**
 - In 2006, California began transferring prisoners to facilities in other states in order to help address severe overcrowding in state prisons.
 - Since peaking at over 10,000 in the early 2010s, the number of California prisoners housed outside of the state has declined to less than 3,000, as Governor Brown’s administration has pursued a policy that aims to end the use of contract facilities in other states.
 - The 2018-19 state budget package anticipates that California will end its use of out-of-state facilities by the end of January 2019.



The Number of Californians Incarcerated Out of State Due to Insufficient Prison Capacity Continues to Decline

Californians Housed in Out-of-State Facilities as of June 30 and December 31 of Each Year



Note: The 2018-19 state budget package assumes that California will end the use of out-of-state contract facilities by the end of January 2019.

Source: California Department of Corrections and Rehabilitation



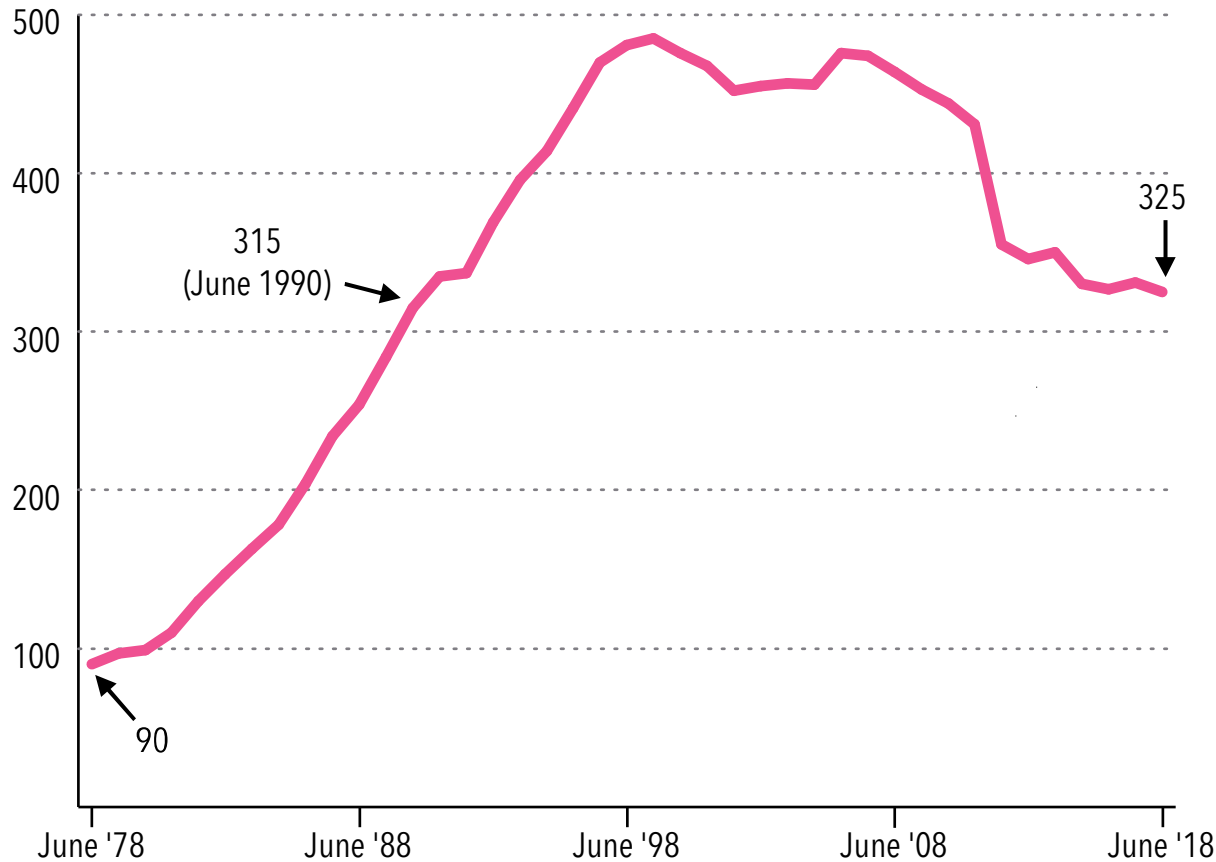
California's Incarceration Rate Has Fallen to a Level Last Seen in the Very Early 1990s

- **As California has implemented criminal justice reforms, the incarceration rate – the number of adults incarcerated by the state per 100,000 residents – has plummeted.**
 - California's state-level incarceration rate dropped to 325 per 100,000 in June 2018, down by nearly one-third (32%) from the recent peak of 476 per 100,000 in June 2006.
 - The June 2018 incarceration rate – 325 per 100,000 – is nearly equal to the June 1990 level (315).
 - Yet, incarceration remains high compared to earlier years. For example, in the late 1970s the state incarcerated fewer than 100 people for every 100,000 residents.



As California Has Rolled Out Criminal Justice Reforms, the Incarceration Rate Has Fallen to Nearly the June 1990 Level

Number of Adults Incarcerated by the State Per 100,000 Californians



Note: Reflects adults housed in state prisons as well as in other facilities in and outside of California. Figures are as of June 30 of each year.

Source: Budget Center analysis of data from the California Department of Corrections and Rehabilitation and the Department of Finance



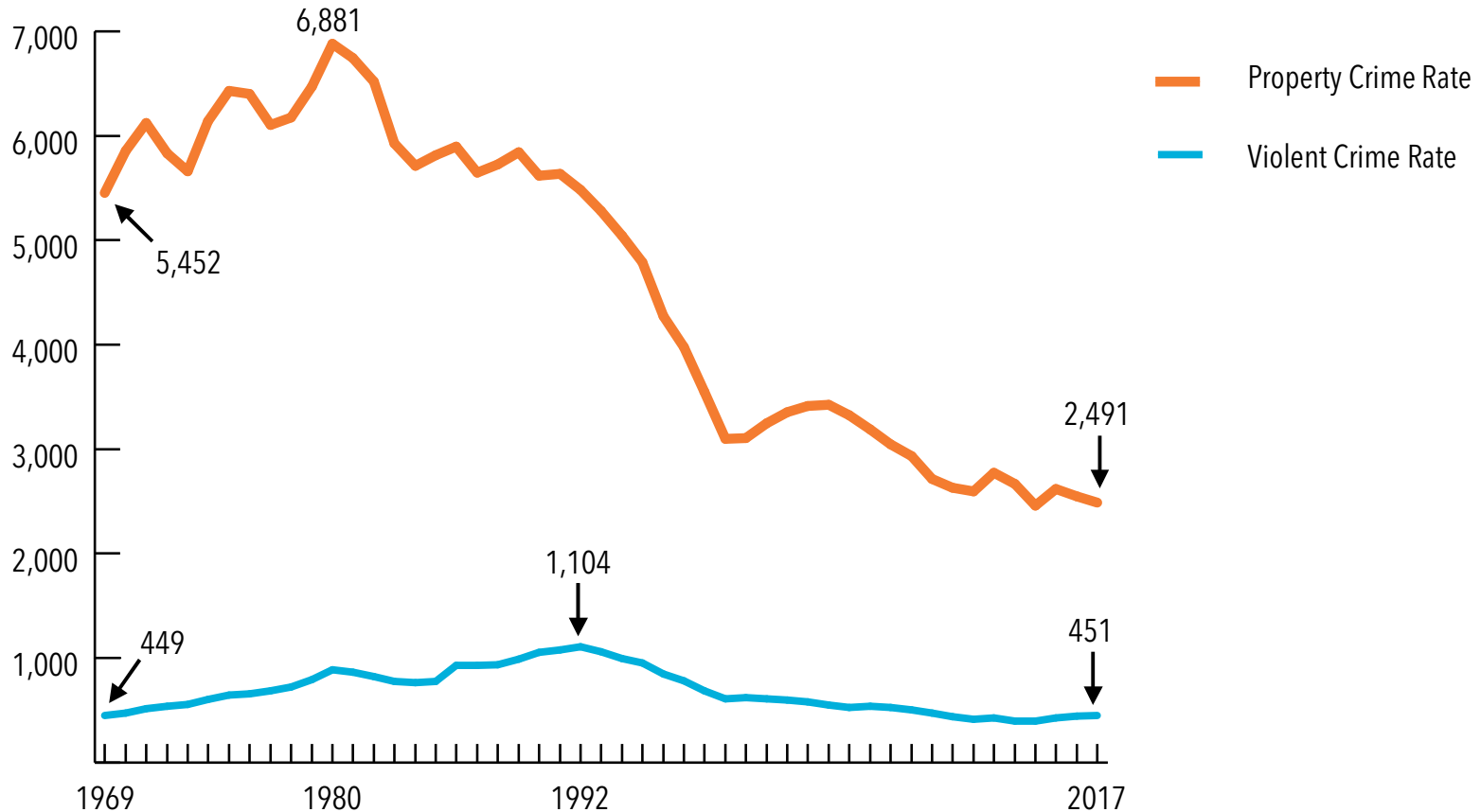
Meanwhile, Property and Violent Crimes Remain at Historic Lows

- **California's property crime rate – the number of property crimes per 100,000 residents – was 2,491 per 100,000 in 2017, far below the peak of 6,881 in 1980.**
 - This rate is only slightly (1.3%) above the five-decade *low* of 2,459 per 100,000 in 2014.
- **The violent crime rate was 451 per 100,000 in 2017, less than half the peak of 1,104 in 1992.**
 - This rate has ticked up from a low of 393 in 2014, but still nearly equals the 1969 rate (449 per 100,000).
 - Technical factors “related to crime classification and reporting” have contributed to the recent rise in violent crime rates, according to the Public Policy Institute of California (Bird et al., 2018).



Property and Violent Crime Rates in California Remain Well Below the Peaks of the Past Five Decades

Property and Violent Crimes Per 100,000 Californians



Note: Property crimes consist of burglary, motor vehicle theft, and larceny theft, which includes both felony and misdemeanor larceny theft. Violent crimes consist of homicide, rape, robbery, and aggravated assault. Figures are rounded to the nearest whole number.

Source: California Department of Justice



Incarceration *and* Crime in California Are Down Substantially Since the Mid-2000s

- **California's incarceration and crime rates are *all* down substantially compared to their 2006 levels.**
 - The state-level incarceration rate dropped by 30% from June 2006 (the recent peak) to June 2017.
 - During roughly the same period (2006 to 2017), California's property crime rate fell by 22% and the violent crime rate declined by 16%.
- **These statistics contradict the common, yet unsubstantiated, claim that reducing incarceration will cause crime rates to spike.**



California's State-Level Incarceration Rate and Crime Rates Are All Down Substantially From the Mid-2000s

Percent Change in Incarcerated Adults and Crimes Per 100,000 Californians, 2006 to 2017



* Change in incarceration rate is based on the number of adults incarcerated by the state in June 2006 compared to June 2017.

Source: Budget Center analysis of data from the California Department of Corrections and Rehabilitation, the California Department of Justice, and the Department of Finance



Research Shows That Incarceration Has Only a Marginal Impact on Crime

- **California's experience and a large body of research point to the weak link between incarceration and crime.**
 - "There is a very weak relationship between higher incarceration rates and lower crime rates," according to one review of the research (Stemen, 2017).
 - This weak association "applies almost entirely to property crime"; research "consistently shows that higher incarceration rates are not associated with lower violent crime rates," according to Stemen.
 - Moreover, higher incarceration delivers diminishing returns: "Research shows that each additional increase in incarceration rates will be associated with a smaller and smaller reduction in crime rates," Stemen notes.



Even With California's Criminal Justice Reforms, State Prisons Remain Overcrowded

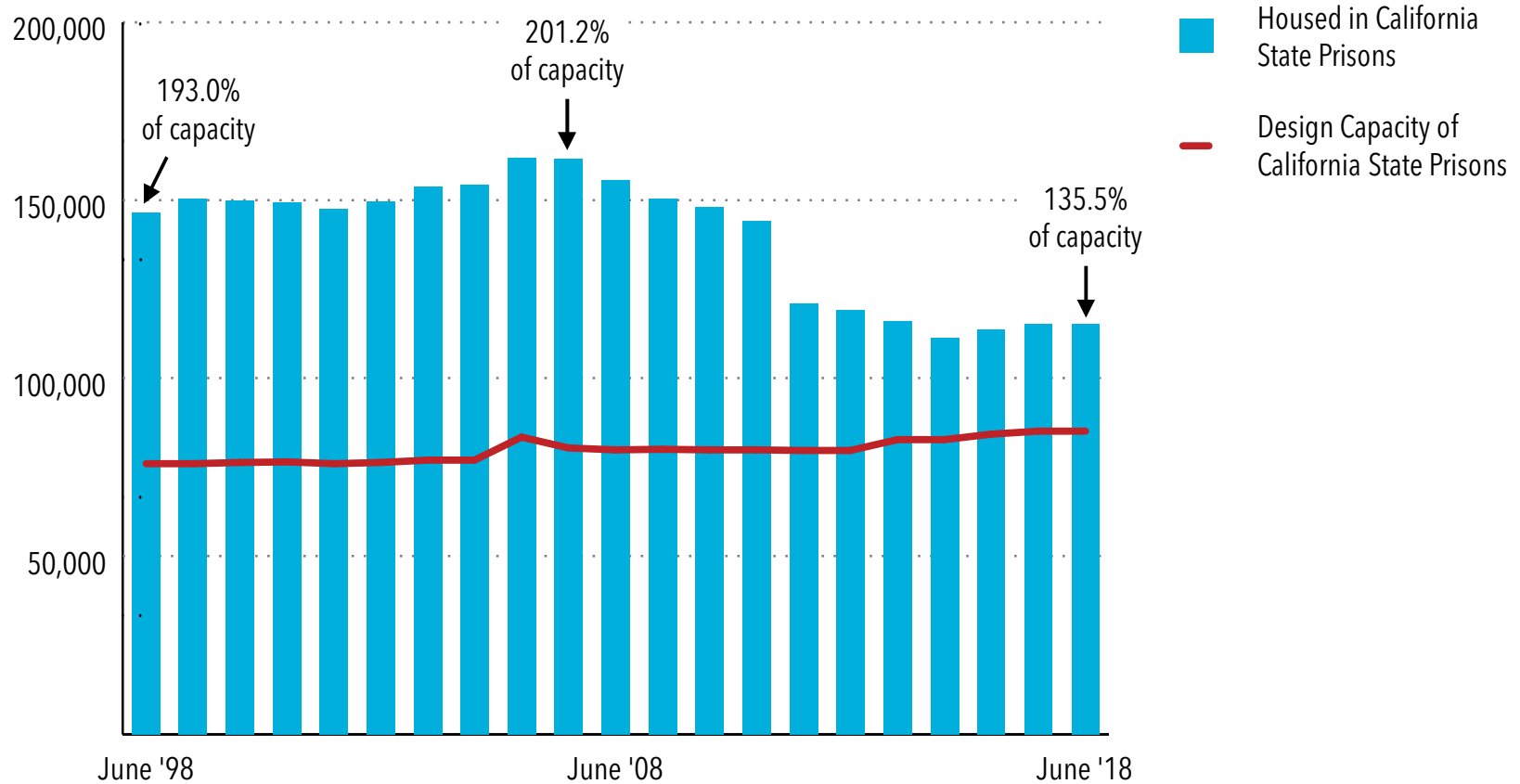


State Prisons Are Operating at About 136% of the Prison System's Design Capacity

- **State prisons continue to be overcrowded.**
 - In June 2018, roughly 115,300 adults were housed in state prisons designed to hold about 85,100, putting the prison population at around 136% of capacity.
 - Prior to the adoption of criminal justice reforms, prison overcrowding approached or exceeded 200% of capacity.
- **Since 2015, the California prison population has been below the court-ordered limit – 137.5% of the system's design capacity – but with little room to spare.**
 - In June 2018, the prison population was about 1,700 *below* the limit set by the court (116,989, based on the prison system's current design capacity).



The Number of Adults Incarcerated in State Prisons Continues to Far Exceed the System's Design Capacity

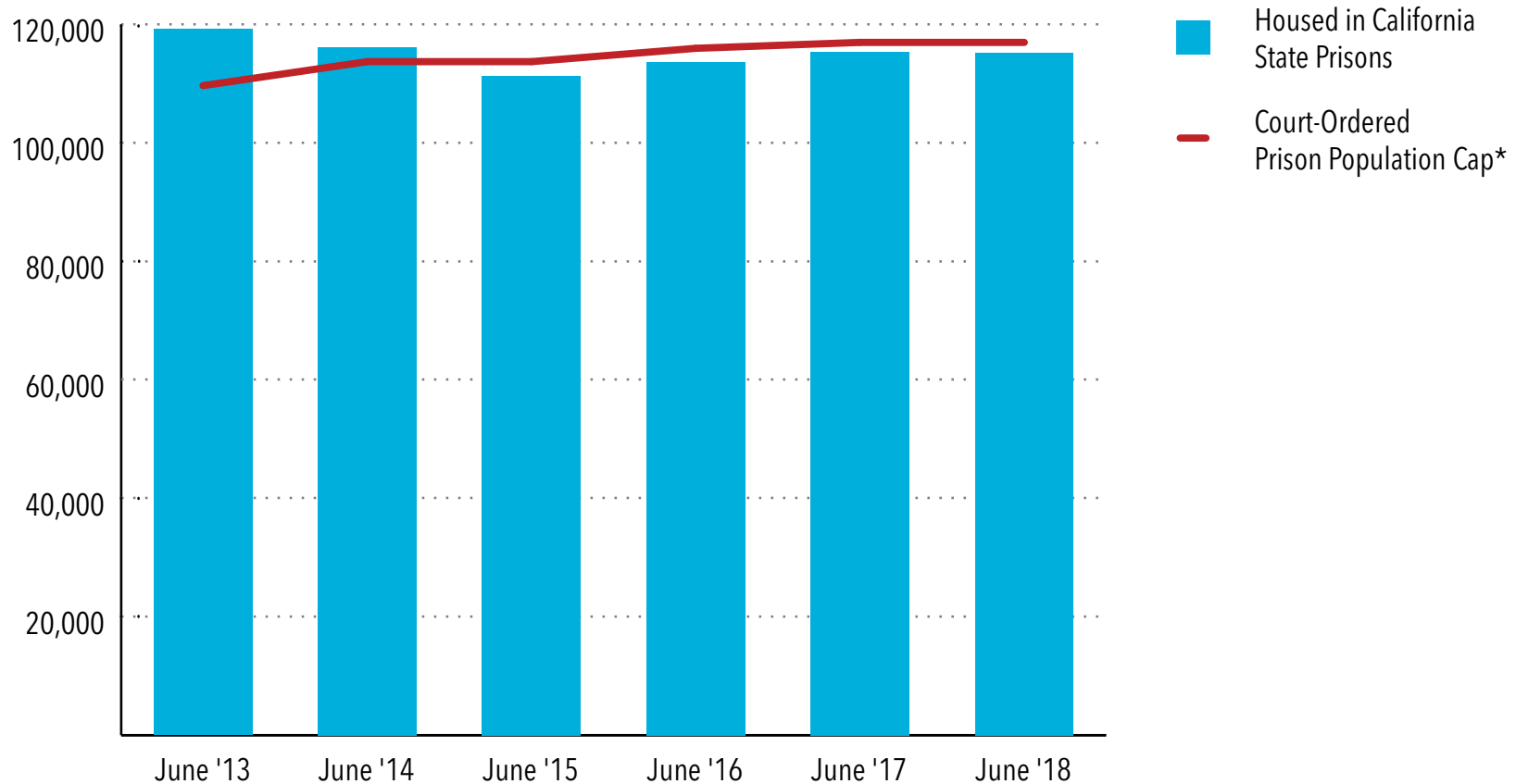


Note: Figures are as of June 30 of each year.
 Source: California Department of Corrections and Rehabilitation



The State Prison Population Is Currently Below the Court-Ordered Cap, but With Very Little Room to Spare

Population Cap Is Equal to 137.5% of the State Prison System's Design Capacity



* This cap was established by a federal court in 2009 and upheld by the US Supreme Court in 2011. The deadline for complying with this cap was ultimately extended to February 28, 2016.

Note: Figures are as of June 30 of each year.

Source: California Department of Corrections and Rehabilitation



Even With California's Criminal Justice Reforms, Spending on State Corrections Remains High



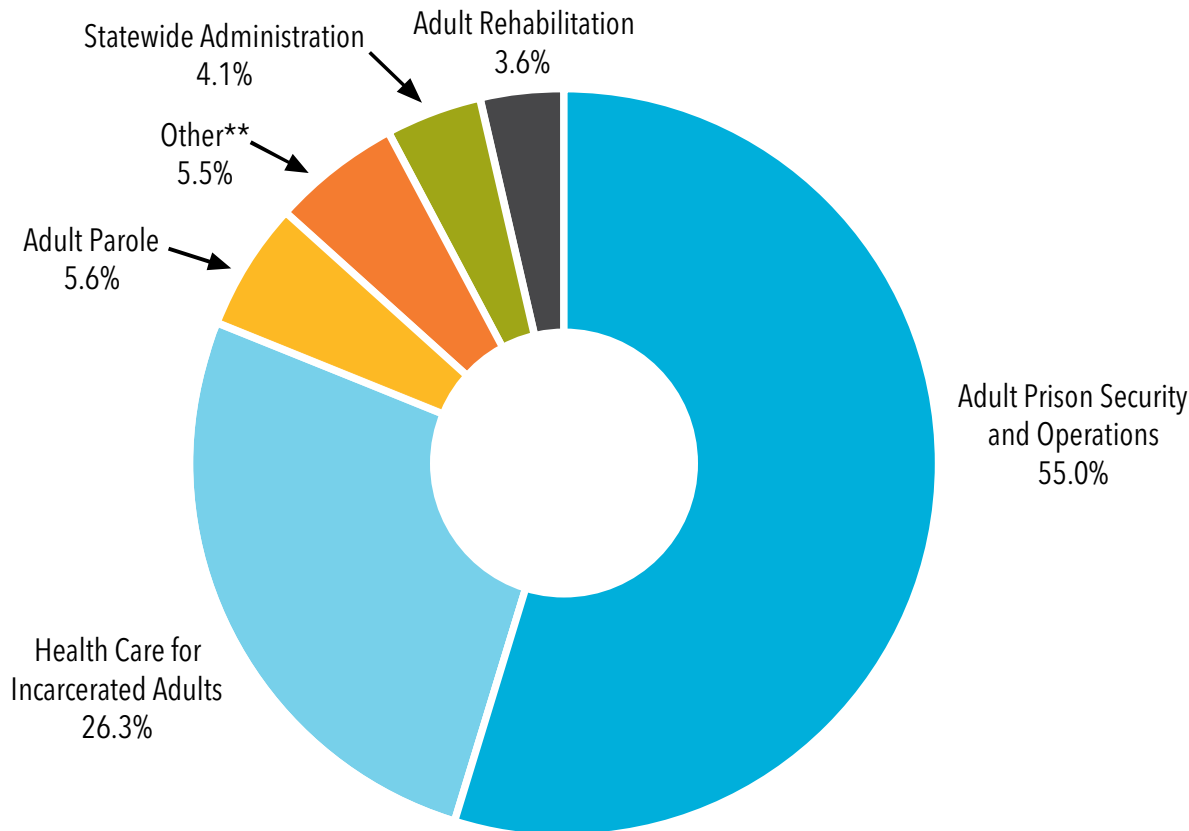
Most Spending on State Corrections Goes to Prison Security or Health Care

- **As used in this report, spending on “state corrections” reflects all funds budgeted through the CDCR and the Board of State and Community Corrections (BSCC) for state operations and local assistance.**
 - The 2018-19 state budget – which took effect on July 1, 2018 – provides \$12.4 billion for the CDCR and the BSCC. This excludes 1) capital outlay, 2) debt-service payments on corrections-related infrastructure bonds, and 3) state funds provided to counties as part of the criminal justice “realignment” enacted in 2011.
 - More than 80% of this \$12.4 billion supports adult prison security and operations (55%) or health care for incarcerated adults (26%).



More Than 80% of Spending on State Corrections Goes to Prison Security and Operations or Health Care

Spending on State Corrections in the Enacted 2018-19 State Budget = \$12.4 Billion*



* For state operations and local assistance budgeted through the Board of State and Community Corrections (BSCC) and the California Department of Corrections and Rehabilitation (CDCR).

** Reflects the BSCC as well as adult contract facilities, state-level youth correctional operations and services, and California Department of Justice legal services provided on behalf of the CDCR.
Source: Budget Center analysis of Department of Finance data



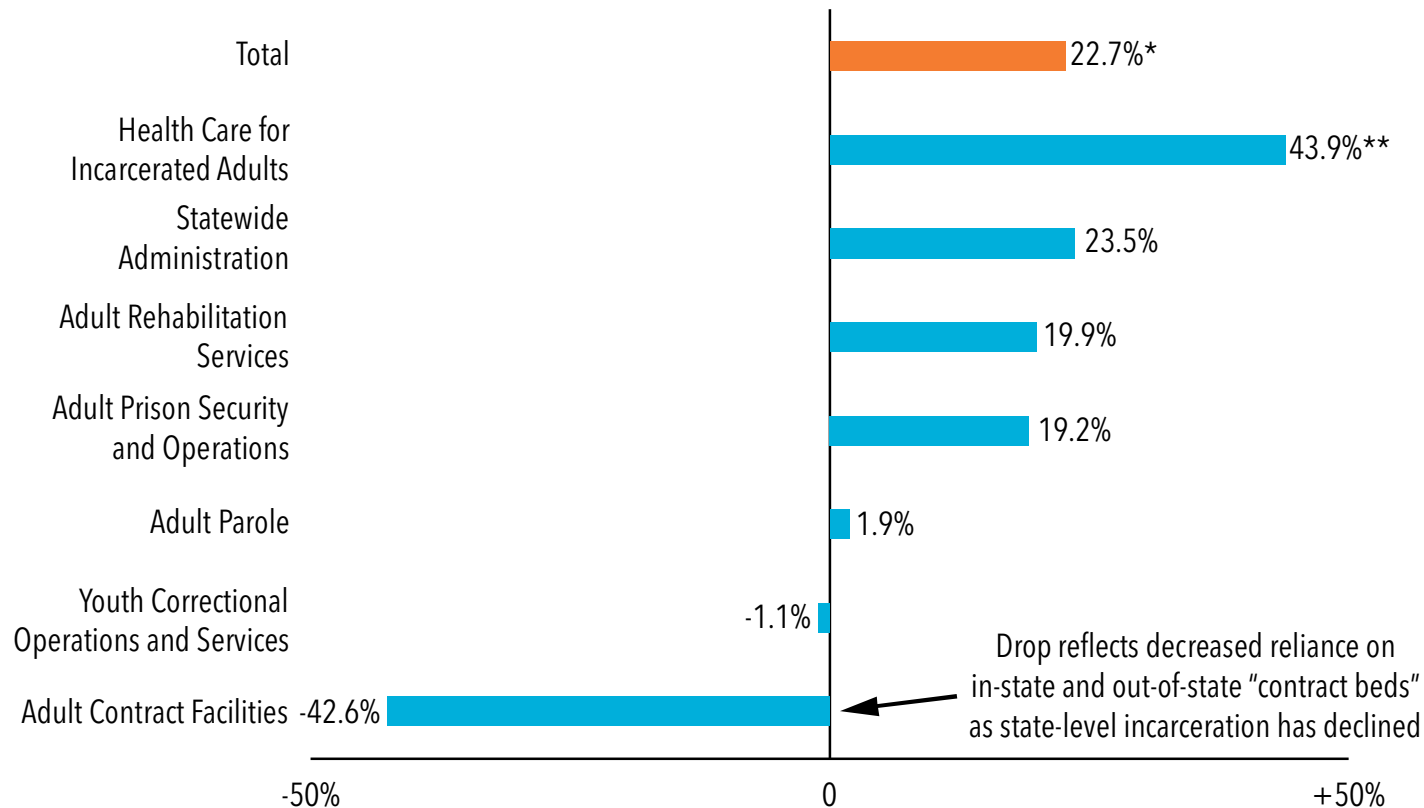
Annual Spending on State Corrections Is Up by More Than \$2 Billion Since 2012-13

- **Annual spending on state corrections is up by \$2.3 billion since 2012-13, after adjusting for inflation.**
 - California spent \$10.1 billion on state corrections in 2012-13, compared to \$12.4 billion in the 2018-19 state budget.
- **This spending growth generally reflects increases that have outpaced inflation, including for:**
 - Prison health care (up by 44%, or \$997 million);
 - CDCR statewide administration (up by 24%, or \$97 million); and
 - Prison security and operations (up by 19%, or \$1.1 billion), which includes the cost of salaries and benefits for correctional officers.



Spending on State Corrections Is Up Substantially, Including for Health Care, Rehabilitation Services, and Prison Security

Percent Change in Expenditures, 2012-13 to 2018-19 Enacted, Inflation-Adjusted



* Includes relatively small expenditures for California Department of Justice legal services and the Board of State and Community Corrections, which are not reflected in any other category above.

** Increase partially reflects a shift of roughly \$270 million from the Department of State Hospitals to the California Department of Corrections and Rehabilitation effective July 1, 2017.

Source: Budget Center analysis of Department of Finance data



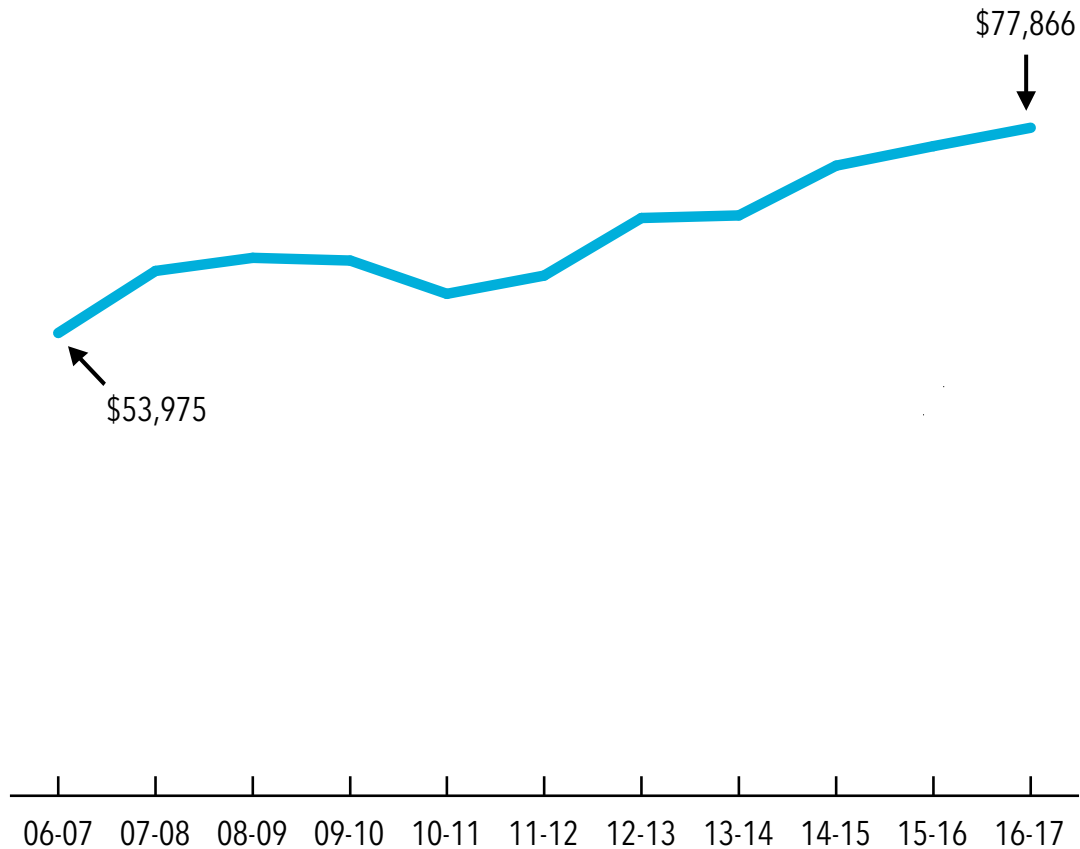
Spending Per Prisoner Increased by More Than 40% From 2006-07 to 2016-17

- **In 2006-07, the inflation-adjusted per capita cost of operating state prisons was around \$54,000. By 2016-17, this had risen to nearly \$78,000 – a 44% increase.**
- **Spending per prisoner is up because the state’s prison infrastructure has not shrunk even though the number of incarcerated adults has dropped in recent years.**
 - The decline in incarceration has not been large enough to allow California to close state prisons and still comply with the court-ordered prison population cap. (Reducing prison capacity would cause the state to exceed the cap.) This means the rising costs of the prison system are being “spread across” fewer incarcerated adults, driving up the cost per prisoner.



Spending Per Incarcerated Adult Increased by More Than 40% From 2006-07 to 2016-17

Per Capita Cost for Adults Housed in State Prisons, Inflation-Adjusted*



* All years include the cost of fire camps. 2016-17 also includes the cost of the California City Correctional Facility, which is not a state prison but is staffed with California Department of Corrections and Rehabilitation (CDCR) employees. All dollar values are shown in 2018-19 dollars.
Source: Department of Finance



Even With California's Criminal Justice Reforms, Racial and Ethnic Disparities Persist

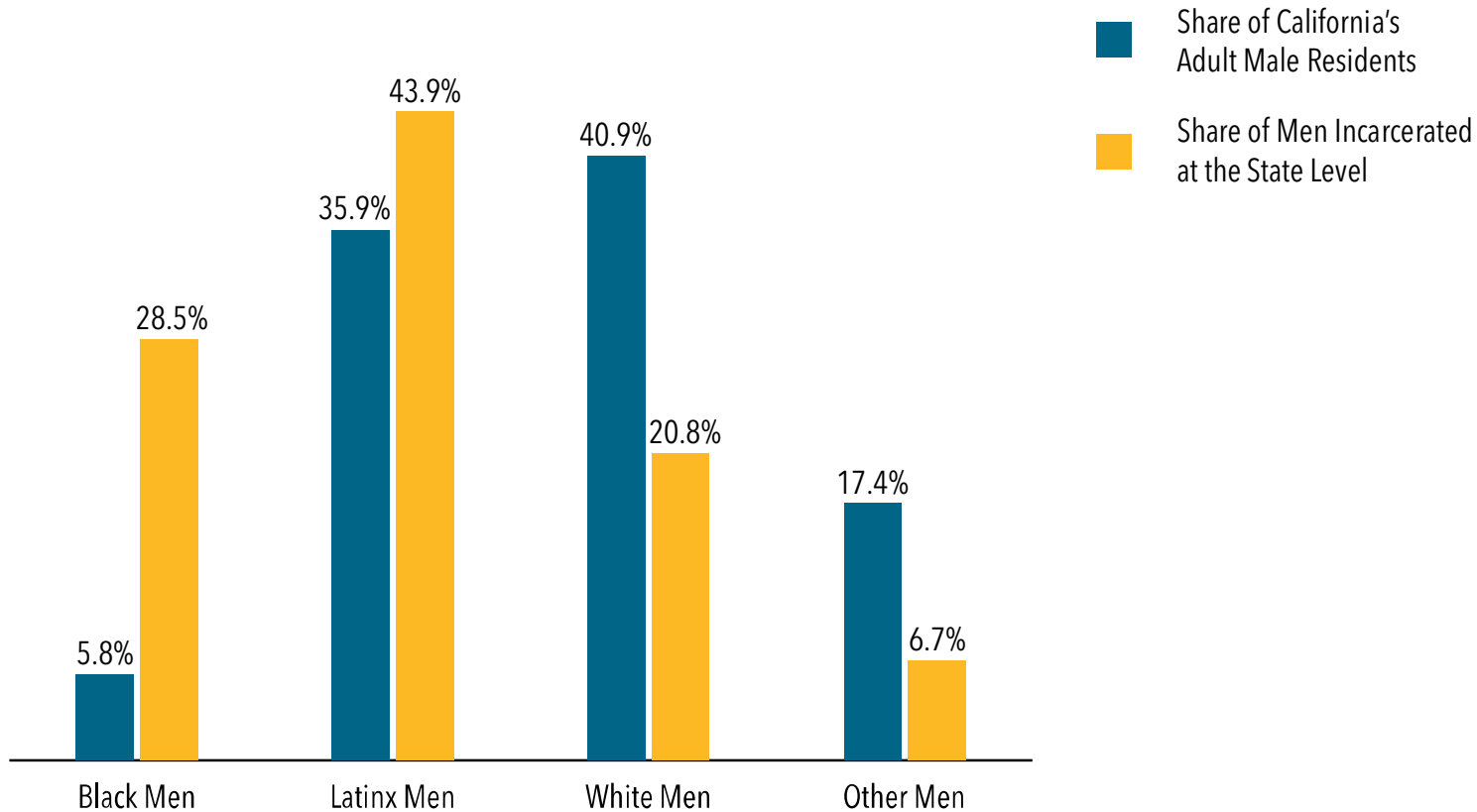


Black Men Are Severely Overrepresented in California's State Prison System

- **Black men make up more than one-quarter (29%) of men incarcerated by the state – almost five times higher than their share of California's adult male population (6%).**
- **Latinx men are also overrepresented in the prison system, but to a much lesser degree than black men.**
 - Latinx men comprise 44% of all men incarcerated by the state, compared to 36% of all adult males in California.
- **In contrast:**
 - White men and other men comprise *smaller shares* of male state prisoners compared to their shares of all men in California.



In California, Black Men Are Severely Overrepresented Among Men Incarcerated at the State Level



Note: All data reflect Californians age 18 or older. California population estimates are as of July 1, 2017; state-level incarceration data are as of December 31, 2017. Subtotals may not sum to 100 due to rounding.

Source: Budget Center analysis of California Department of Corrections and Rehabilitation and US Census Bureau data

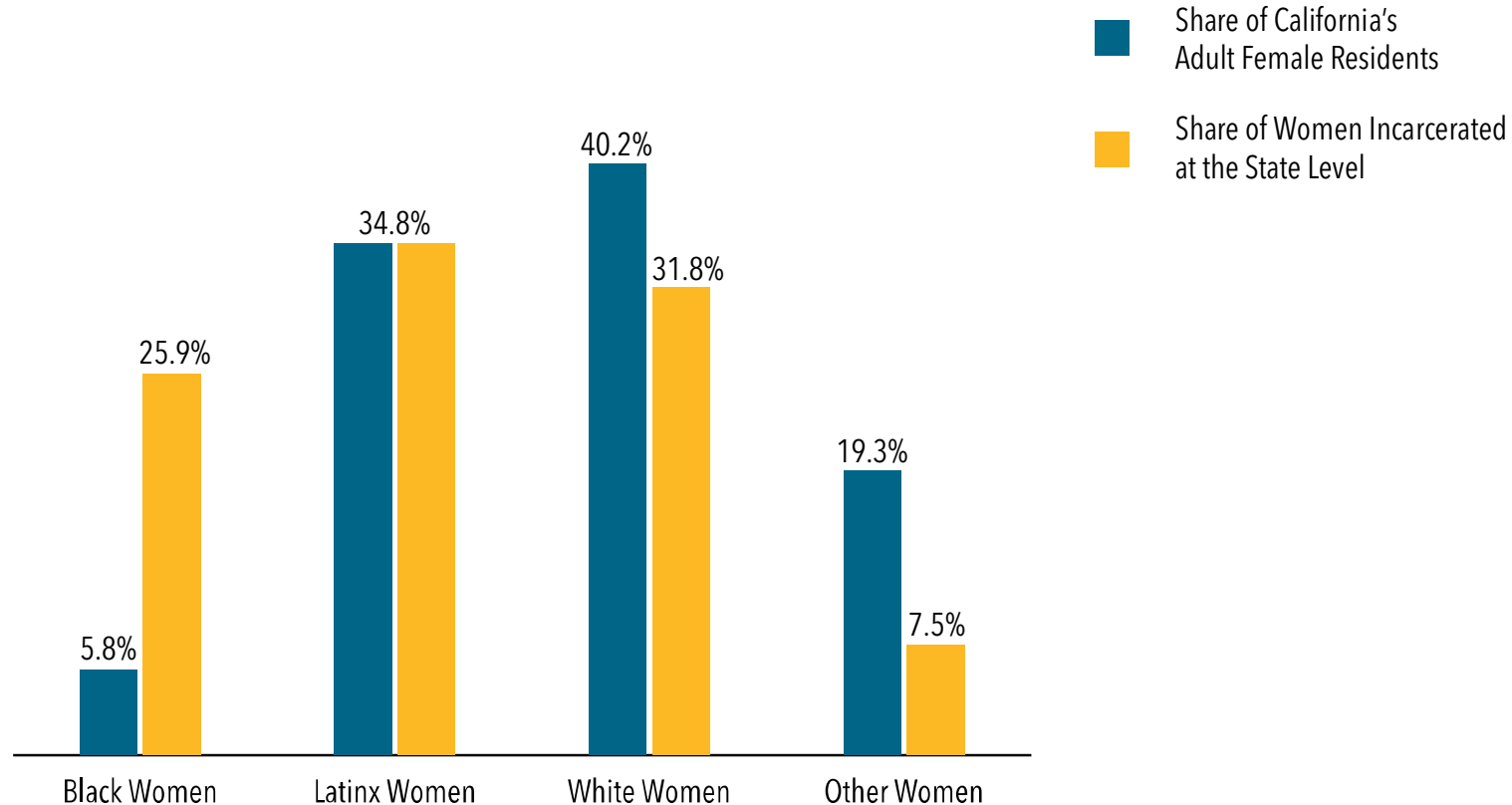


Black Women Are Severely Overrepresented in California's State Prison System

- **Black women make up more than one-quarter (26%) of women incarcerated by the state – over four times higher than their share of California's adult female population (6%).**
- **In contrast:**
 - Latinx women as a share of female state prisoners (35%) is *equal to* their share of the state's adult female population.
 - White women and other women comprise *smaller shares* of female state prisoners compared to their shares of all women in California.



In California, Black Women Are Severely Overrepresented Among Women Incarcerated at the State Level



Note: All data reflect Californians age 18 or older. California population estimates are as of July 1, 2017; state-level incarceration data are as of December 31, 2017. Subtotals may not sum to 100 due to rounding.

Source: Budget Center analysis of California Department of Corrections and Rehabilitation and US Census Bureau data



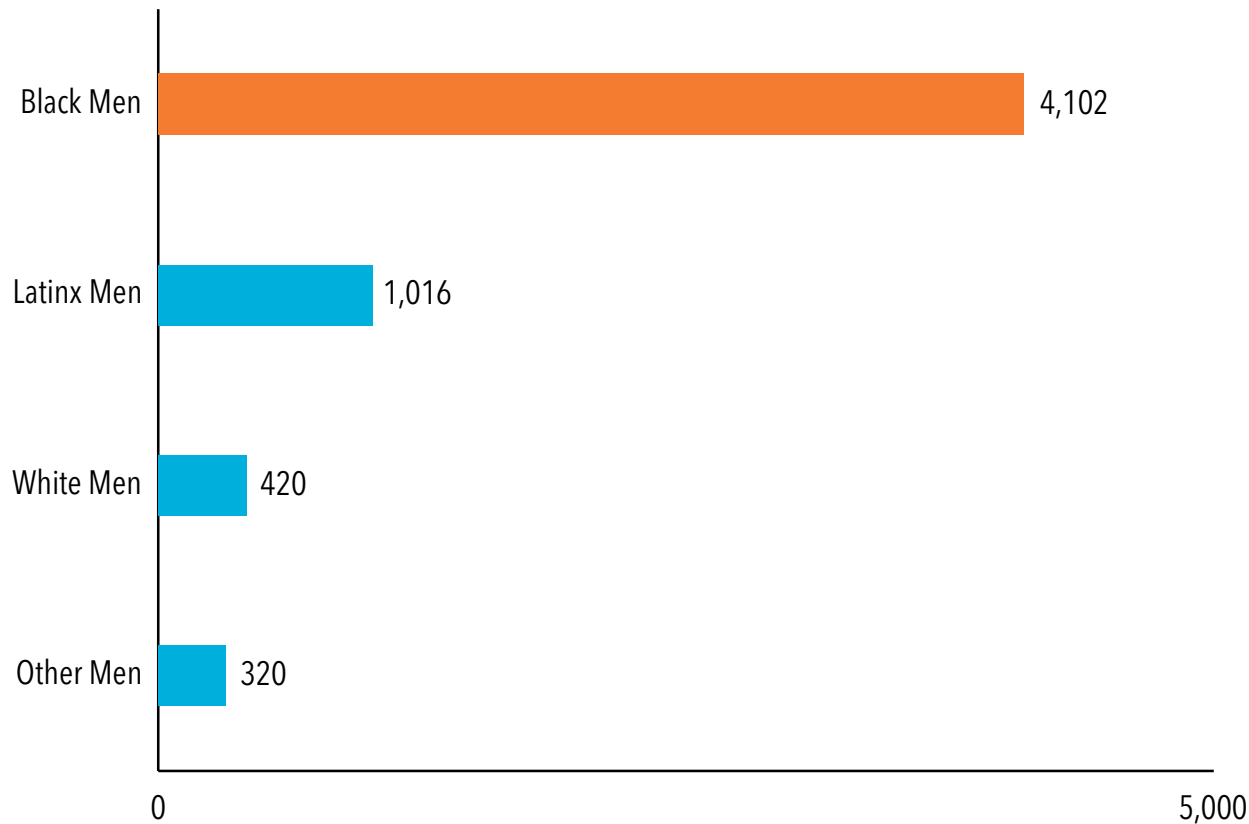
Incarceration Rates for Black Men and Women Are Much Higher Than for Others

- **The incarceration rate for black men in California is 4,102 per 100,000 black adult males. Incarceration rates for other groups of men are significantly lower (though still relatively high for Latinx men):**
 - Latinx men: 1,016 per 100,000
 - White men: 420 per 100,000
 - Other men: 320 per 100,000
- **The incarceration rate for black women in California is 170 per 100,000 black adult females. Incarceration rates for other groups of women are significantly lower:**
 - Latinx women: 38 per 100,000
 - White women: 30 per 100,000
 - Other women: 15 per 100,000



The Incarceration Rate for Black Men Is Much Higher Than for Latinx, White, and Other Men in California

Number of Men Incarcerated by the State Per 100,000 Men in Each Racial/Ethnic Group



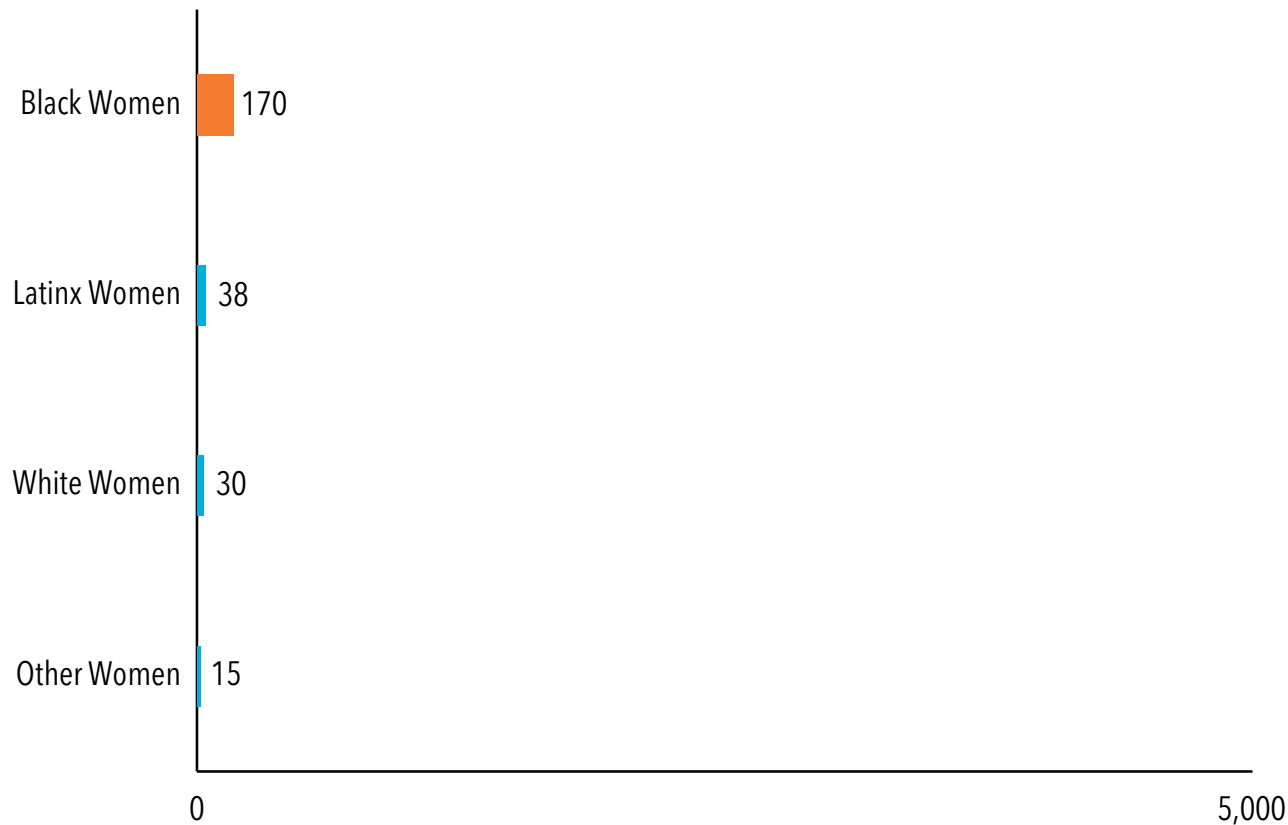
Note: All data reflect Californians age 18 or older. California population estimates are as of July 1, 2017; state-level incarceration data are as of December 31, 2017.

Source: Budget Center analysis of California Department of Corrections and Rehabilitation and US Census Bureau data



The Incarceration Rate for Black Women Is Much Higher Than for Latinx, White, and Other Women in California

Number of Women Incarcerated by the State Per 100,000 Women in Each Racial/Ethnic Group



Note: All data reflect Californians age 18 or older. California population estimates are as of July 1, 2017; state-level incarceration data are as of December 31, 2017.

Source: Budget Center analysis of California Department of Corrections and Rehabilitation and US Census Bureau data



Several Factors Drive Racial and Ethnic Disparities in the Criminal Justice System

- **These factors generally fall into three categories:**
 - **Policies and practices** that disproportionately affect communities of color, such as policing practices, rules around pretrial detention, and sentencing processes (Nellis, 2016).
 - **Implicit racial bias**, which “refers to the unconscious stereotypes and attitudes that we associate with racial groups” (Richardson, 2017). Implicit racial bias pervades the criminal justice system, according to an extensive body of research (Smith, Levinson, and Robinson, 2015).
 - **Structural disadvantages**, including growing up in communities with high levels of poverty, which expose people “to risk factors for both offending and arrest” (Hinton, Henderson, and Reed, 2018).



Further Reforms Are Needed to Downsize California's Costly Prison Infrastructure

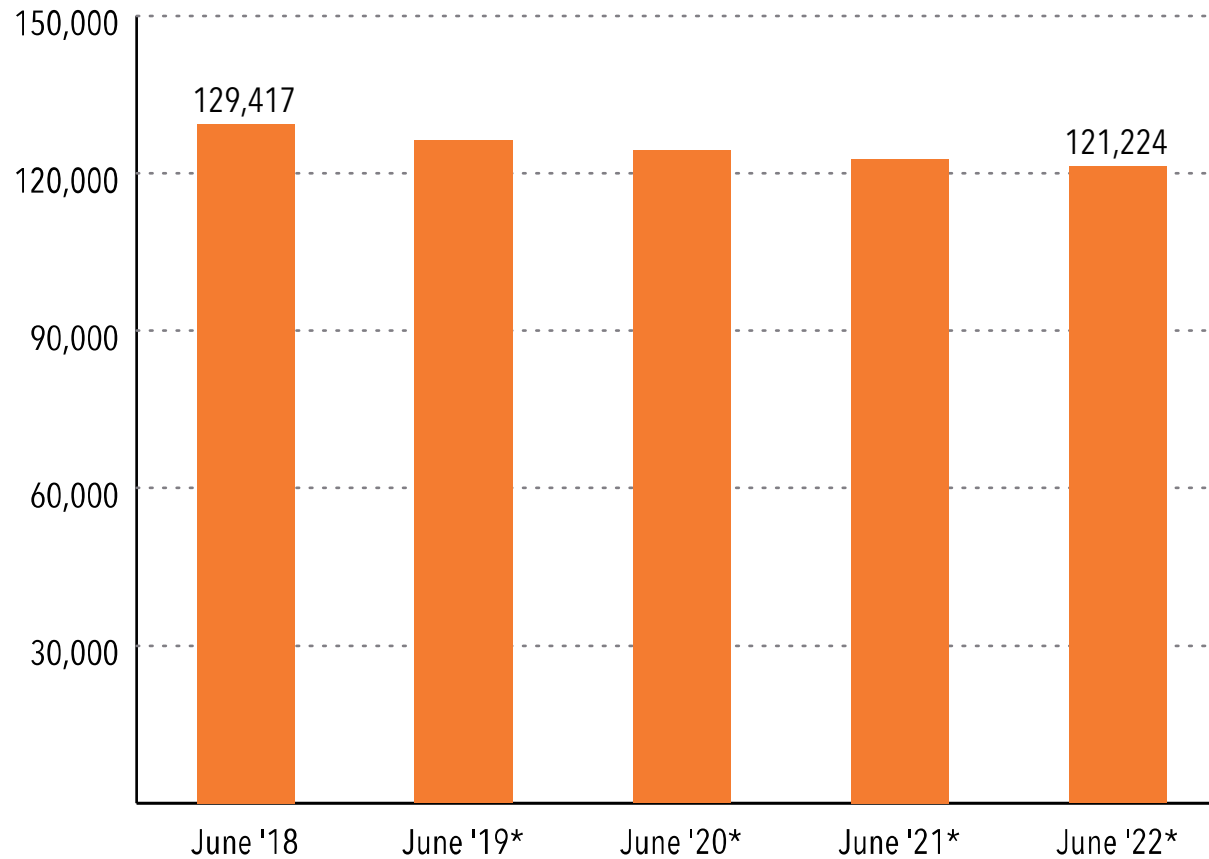


Prior Reforms May Soon Allow *Some* In-State Correctional Facilities to Be Closed

- **Due to the ongoing impact of prior criminal justice reforms, the number of adults incarcerated by the state is projected to decline to 121,224 by June 2022 – 6.3% below the June 2018 level (129,417).**
- **This decline – if it materializes – would allow California to close a small number of in-state correctional facilities. Assembly Bill 1812, signed in June 2018, establishes a road map for closing such facilities.**
 - Top priority for closure: Private facilities that house men and that are primarily staffed by non-CDCR employees.
 - Secondary priority: Reducing the capacity of state prisons *or* in-state leased or contract facilities, taking into account potential state savings and other factors.



The Number of Californians Incarcerated by the State Is Projected to Continue Declining Through June 2022



* Projected

Note: Reflects adults housed in state prisons as well as in other facilities in and outside of California. Figures are as of June 30 of each year.

Source: California Department of Corrections and Rehabilitation



Significantly Scaling Back the State's Prison Infrastructure Will Require Further Reforms

- **To *substantially* decrease spending on state corrections, California needs to reduce incarceration to a level that will allow *multiple* state-owned prisons to be closed.**
- **Achieving this goal will require 1) adopting further reforms to California's sentencing laws and 2) creating new opportunities for people to be considered for early release from prison, consistent with public safety.**
 - For example, policymakers could create a commission to evaluate the state's sentencing laws and recommend evidence-based reforms, with the goal of ensuring that sentences are proportionate to the seriousness of the crimes as well as to the risk that a person will reoffend.



Downsizing the Prison System Would Be Challenging, but Would Have a Big Payoff

- **California's corrections infrastructure has been built up over several decades; downsizing it would be challenging, requiring strong leadership and careful planning.**
 - A change of this magnitude and complexity will not happen overnight, but it can be done, and the payoff would be significant.
- **Shrinking the size of the corrections "footprint" on the state budget would free up substantial state tax revenues that could be redirected to key priorities.**
 - These state savings could go to support a range of public services and systems that can help to promote rehabilitation, reduce poverty, and strengthen families and communities.



Further Reforms Are Needed to Address Racial and Ethnic Disparities



Addressing Racial and Ethnic Disparities Will Require Wide-Ranging Reforms

- **Changes to sentencing laws can help to reduce disparities.**
 - For example, one study found that Prop. 47 of 2014 narrowed racial disparities in criminal case outcomes in San Francisco (MacDonald and Raphael, 2017).
- **However, fully addressing racial and ethnic disparities will require a broader set of changes.**
 - Reforms, including policies that aim to reduce implicit bias, are needed across the criminal justice system (Nellis, 2016; The Sentencing Project, 2008).
 - Solutions also must address the structural disadvantages, such as poverty and lack of opportunity, “that impact people of color long before they encounter the criminal justice system” (Nellis, 2016).



Additional Criminal Justice Resources



Key California Budget & Policy Center Analyses

- Graves, Scott. *Since 2007-08, Spending Per State Prisoner Has Increased More Than Twice as Fast as Spending Per K-12 Student* (California Budget & Policy Center: April 2018).
- Graves, Scott. *Proposition 57: Should Voters Provide State Officials With New Flexibility to Reduce the Prison Population?* (California Budget & Policy Center: October 2016).
- Graves, Scott. *Governor's Estimate of State Savings From Proposition 47 Raises Questions* (California Budget & Policy Center: February 2016).
- Graves, Scott. *What Would Proposition 36 Mean for California?* (California Budget & Policy Center: October 2012).



Key California Budget & Policy Center Analyses (cont.)

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- Graves, Scott, and Steven Bliss. "Want to Reduce the Number of People in Prison? Stop Sentencing So Many People to Prison," *The Nation* (June 22, 2018).
- Teji, Selena. *Sentencing in California: Moving Toward a Smarter, More Cost-Effective Approach* (California Budget & Policy Center: December 2015)
- Teji, Selena. *Proposition 47: Should California Reduce Penalties for Drug and Property Crimes and Invest in Treatment?* (California Budget & Policy Center: September 2014).



Analyses Focused on Sentencing Policy, Incarceration, and/or Crime

- Austin, James. *How Much Time Should Prisoners Serve?* (American Correctional Association: February 2013).
- Austin, James, Lauren-Brooke Eisen, James Cullen, and Jonathan Frank. *How Many Americans Are Unnecessarily Incarcerated?* (Brennan Center for Justice: December 2016).
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Analyses Focused on Sentencing Policy, Incarceration, and/or Crime (cont.)

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- Gelb, Adam, Ryan King, and Felicity Rose. *Time Served: The High Cost, Low Return of Longer Prison Terms* (The Pew Center on the States: June 2012).
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- Krivo, Lauren J., Ruth D. Peterson, and Danielle C. Kuhl. "Segregation, Racial Structure, and Neighborhood Violent Crime," *American Journal of Sociology* 114 (May 2009).



Analyses Focused on Sentencing Policy, Incarceration, and/or Crime (cont.)

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- Raphael, Steven, and Michael A. Stoll. *A New Approach to Reducing Incarceration While Maintaining Low Rates of Crime* (The Hamilton Project: May 2014).
- Travis, Jeremy, Bruce Western, and Steve Redburn (eds.). *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (Washington, DC, The National Academies Press: 2014).
- Stemen, Don. *The Prison Paradox: More Incarceration Will Not Make Us Safer* (Vera Institute of Justice: July 2017).



Analyses Focused on Racial and Ethnic Disparities in the Justice System

- Alexander, Michelle. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York, New Press: 2010).
- Bennett, Mark W. "The Implicit Racial Bias in Sentencing: The Next Frontier," *The Yale Law Journal Forum* (January 31, 2017).
- Californians for Safety and Justice. *Latino Voices: The Impacts of Crime and Criminal Justice Policies on Latinos* (June 2014).
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