



**Testimony of Taina Vargas-Edmond**

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**Before the United States House of Representatives**  
Committee on the Judiciary  
Subcommittee on Crime, Terrorism, and Homeland Security

**Hearing on**  
California Criminal Justice Reform: Potential Lessons for the Nation

FAME Renaissance Center  
1968 West Adams Boulevard  
Los Angeles, California 90018

**July 13, 2019**

## **Introduction**

Good morning Chair and members of the subcommittee. My name is Taina Vargas-Edmond, Founder & Executive Director of Initiate Justice, an organization that works to end mass incarceration by activating the power of those who are directly impacted by it. We organize currently incarcerated people, formerly incarcerated people, and their loved ones to fight for policy change that brings people home from prison and keep our communities safe. Our leadership staff, board, and members are all directly impacted by incarceration, and our policy campaigns and strategy are informed by our more than 15,000 incarcerated members.

Over the last few years, Initiate Justice has been part of the broader reform movement in California that has succeeded in precipitously reducing our prison population and reducing recidivism rates. Thanks to various legislative reforms, the California state prison population has reduced from 167,832 in 2009 to 126,990 in 2019.<sup>1</sup> Similarly, recidivism rates have been steadily dropping, down from a three-year reconviction rate of 49.5% to 46.1% over the same time period.<sup>2</sup>

These reductions in incarceration can be attributed to three categories of policy reform: Realignment, retroactive sentencing reforms, and increased credit earning opportunities. Although other factors, such lower crime rates, also play a role in the decreasing prison population, I will focus my testimony on the impact that de-carceration policy reforms have had on initiating and end to mass incarceration in our state. I will also offer recommendations on how we can further this progress and move toward a more restorative accountability model that truly keeps our communities safe.

## **Realignment**

As a result of a federal lawsuit alleging that California's overcrowded prisons resulted in "cruel and unusual punishment", the state legislature passed AB 109 in 2011, which shifted the responsibility of housing thousands of people convicted of non-violent, non-serious, non-sexual offenses from the state prisons to the county jails. This policy, referred to as "Realignment", resulted in a 16.7% state prison population reduction in the year it was

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<sup>1</sup> CDCR. "Spring 2019 Population Projections". <<https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2019/06/Spring-2019-Population-Projections.pdf>> Retrieved 11 July 2019.

<sup>2</sup> CDCR. "CDCR Releases Back-to-Back Recidivism Reports". <<https://www.cdcr.ca.gov/news/2017/10/10/cdcr-releases-back-to-back-annual-recidivism-reports/>> Retrieved 11 July 2019.

implemented, and thousands of people who were transferred to the county jails were released early as a result of overcrowding or credit earning opportunities at the local level.<sup>3</sup> Although critics argued that realignment would result in an increase in crime, violent crime has precipitously decreased over that time period, and there have only been minor increases in certain property crimes that have not been adequately linked to AB 109.<sup>4</sup> Overall, Realignment forced the state and local jurisdictions to reduce its reliance on incarceration, increasing community supervision and diversion programs for many low-level offenses in order to keep the prison population down.<sup>5</sup>

## **Retroactive Sentencing Reforms**

Realignment on its own was not sufficient to reduce the prison population below the federal mandate. Several other policy reforms that were retroactive, meaning they reduced sentences for currently incarcerated people, were also necessary. While many policy changes played a role, I will highlight three of the more significant ones.

### *Proposition 47*

In November 2014, voters approved Proposition 47, which reduced six felonies to misdemeanors and allowed for currently incarcerated people to petition the courts for resentencing and/or release. In the year following Prop 47's passage, 7,800 people were released from state prison (or made to serve their time in county jails), and almost 10,000 people in county jails were released.<sup>6</sup> The passage of Prop 47 is credited with the reduction of the prison population that ultimately brought the California Department of Corrections and Rehabilitation (CDCR) in compliance with the federal mandate.

### *Youth Offender Parole*

The California Legislature has taken steps in recent years to acknowledge that age should be taken into consideration when determining the length of a person's incarceration. Legislative bills SB 260 (2013), SB 261 (2015), and AB 1308 (2017) offered early parole opportunities for people who were sentenced under the ages of 18, 23, and 26, respectively after serving a predetermined amount of time in prison. Additionally, SB 394 (2017) allowed people

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<sup>3</sup> CDCR. "Spring 2019 Population Projections". <<https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2019/06/Spring-2019-Population-Projections.pdf>> Retrieved 11 July 2019.

<sup>4</sup> Public Policy Institute of California (September 2015). "Public Safety Realignment: Impacts So Far." <<https://www.ppic.org/publication/public-safety-realignment-impacts-so-far/>> Retrieved 11 July 2019.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

sentenced to life without the possibility of parole (LWOP) under the age of 18 to be eligible for these Youth Offender parole hearings as well.

Youth Offender parole hearings are also conducted differently than general parole hearings – the person’s age and cognitive development at the time of the offense must also be taken into consideration as the parole board makes its decision. This process has been overwhelmingly successful - people released under Youth Offender Parole have the lowest recidivism rate of any group. According to CDCR as of May 2019, people released under Youth Offender Parole had a 0% 1-year recidivism rate, a 0% 2-year recidivism rate, and a 2.2% 3-year recidivism rate for the year 2014-2015. The overall recidivism rate for the same time period was 46.1%.<sup>7</sup>

### SB 1437

In 2018, legislation was passed to amend California’s felony murder rule, meaning that people could no longer be charged with murder if they were not the actual killer or otherwise acted with the intent to kill.<sup>8</sup> The bill, SB 1437, was also implemented retroactively, meaning that people serving life sentences for murders they did not commit are able to apply for resentencing and release. District Attorneys in various counties across the state have challenged the constitutionality of the bill and have halted some releases pending California Supreme Court review; however, dozens of people have been released in the last seven months since the law took effect, and hundreds more are awaiting a hearing and anticipate release soon.

SB 1437 is significant because it is one of the first pieces of legislation to successfully see currently incarcerated people convicted of violent offenses – indeed, murder - have their sentences modified. Many previous reforms have focused on lesser offenses, which is important, but nowhere impactful enough to truly put an end to our over-incarceration crisis.

## **Increased Credit-Earning Opportunities**

Proposition 57, approved by voters in November 2016, granted CDCR the “authority” to expand credit earning opportunities for currently incarcerated people beyond their existing scope. Accordingly, CDCR developed regulations pursuant to Prop 57 that expanded credit earning for good behavior, completion of educational and rehabilitative programs, and

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<sup>7</sup> CDCR Office of Research. (Obtained by Public Records Act Request, 6 May 2019).

<sup>8</sup> Legislative Information, SB 1437. <

[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180SB1437](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1437)> Retrieved 11 July 2019.

participation in self-help groups, to name a few. These regulations indicated that credit earned “shall advance an inmate's release date if sentenced to a determinate term or advance an inmate's initial parole hearing date...if sentenced to an indeterminate term with the possibility of parole”.<sup>9</sup>

The only incarcerated people excluded from these expanded credit-earning opportunities are those serving Life Without the Possibility of Parole (LWOP) or currently on Death Row – meaning that 96% of all people in the state prison system are now offered additional incentives to participate in educational and rehabilitative programming in exchange for earlier release. This represents an important policy shift from a punitive to a more restorative model, where people who have caused harm are offered opportunities to invest in their rehabilitation and transformation.

Of course, many implementation impediments still exist, such as lack of access to programs at certain facilities, lockdowns that impede programming, and failing to apply credits to the earliest possible release dates for those eligible for Youth Offender parole; however, thousands of incarcerated people have been able to reduce their sentences while being given the tools to help them reenter society successfully. This is a critical initial step in our paradigm shift.

## **Recommendations**

While the recent progress of prison reform policy in California has been promising, there are lessons we can learn as we consider future reforms that build on this success:

1. We must close prisons. Despite our decreasing prison population, the California corrections budget has continued to soar. This is in part due to increasing medical and mental health costs for incarcerated people, but mostly due to the fact that the prisons have continued to be in operation even as the population has decreased. More significant reductions will be necessary, and then facilities must be closed to eliminate their operating costs.
2. We must implement more inclusive reforms. Many proposed reforms target politically low-hanging fruit: people convicted of non-serious or non-violent offenses, or more egregious cases of extreme sentencing. In order to seriously and sustainably reduce our prison population, we must develop transformative solutions that offer hope of release and healing to those who have committed violent offenses.

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<sup>9</sup> Prop 57 - CA Courts - State of California. <<http://www.courts.ca.gov/documents/BTB24-5H-1.pdf>>

3. We must expand restorative justice practices. Our existing criminal justice system is punitive, rather than restorative, in nature. When people cause harm, they are punished without given true opportunities for redemption, healing, or transformation. Victims and survivors of harm are often left out of the process as well, and only included if their participation can promise harsher sentencing. We must expand restorative justice programs in local jurisdictions as an alternative to incarceration and make restorative justice a practice inside of prisons and jails themselves.
4. We must end sentence enhancements. Sentence enhancements are meant to act as a deterrent to prevent crimes from occurring; however, they have been grossly ineffective as the average person is not versed in criminal justice law well enough to understand the complexity of the potential consequences for their actions. California has hundreds of sentence enhancements in place (including the Three Strikes Law, gun and gang enhancements, or other enhancements for prior offenses) that result in egregious sentences that offer no public safety benefit.
5. We must ensure people impacted by incarceration are leading reform efforts. People directly impacted by incarceration are the experts of our own experiences, but we are often viewed as part of the problem and rarely included in proposing solutions. We have a direct understanding of what social conditions should change to prevent incarceration and have ideas on how to safely reduce the prison population. Most of us come from communities that are disproportionately impacted by social ills such as poverty, drug abuse, and violence; therefore, we understand what must change and can offer unique insight on how to change it. Therefore, the right to vote must be restored to all currently and formerly incarcerated individuals, and all proposed policy changes must be led by those directly harmed by mass incarceration.

## **Conclusion**

As a representative of an organization led by people directly impacted by incarceration who fight for policy change, I have witnessed many victories in de-carceration policy in recent years. California is in the midst of a paradigm shift where our leaders are beginning to recognize that social ills cannot be cured by punitive justice and being “tough on crime”. As we move toward ending mass incarceration, we must expand on existing reforms and fight for bold, courageous change that is rooted in solutions to harm rather than punishment. Ending mass incarceration will require that we address root causes of harm, shift our culture to one that embraces transformation, and follow the lead of those directly impacted by the criminal legal system.