Prison Reform, Proposition 47 &

The California Shell Game



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By Nancy A. Heitzeg and Kay Whitlock, [www.truth-out.org](http://www.truth-out.org/news/item/29242-prison-reform-prop-47-and-the-california-shell-game)
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In the deep fog of the yard at [Central California Facility for Women](http://www.cdcr.ca.gov/Facilities_Locator/CCWF.html) (CCFW), the bright shiny headlines declaring California Proposition 47 (which reclassifies certain property and drug felonies as minor, non-prison time offenses) [the beginning of the end](http://thinkprogress.org/justice/2014/10/30/3586226/california-proposition-47/) of mass incarceration seem so very far away. As women go throughout their daily grind of toxic drudgery at pennies per hour – cooking acrylic over outdated Bunsen Burners in unventilated rooms to make dentures for other state prisoners and[MediCal](http://www.medi-cal.ca.gov/) patients, sewing jail jumpsuits and flags for the state of California in 10-hour stints – reform seems impossible.

The lieutenant who guides our university class visit seems to sense this, too. Despite his preliminary promises to us of remaining “politically correct,” his contempt for these women is soon revealed – in stories of the closing of “unused” family visiting rooms to make way for a drug-sniffing dog kennel, in his celebration of an American sniper who surveyed all from a gun turret over-looking the solitary unit, in the unchecked assumption that every cry for assistance was thin cover for a scam. A loud speaker alert of an “unresponsive inmate down on the yard” was shrugged off with, “Well, somebody must not want to report to work today.”

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As we passed, groups of women shouted out their grievances to us, especially noting lack of adequate medical care. “Don’t bother,” The lieutenant sneered, and then alluded, in shorthand, to authorities from the capital who occasionally come to check prison compliance with any number of court-ordered reforms: “They *aren’t* Sacramento.”

But what would it matter if we were?

**The Golden Gulag: Excessive, Unconstitutional and Entrenched**

It is [California](http://criticalmassprogress.com/2013/01/30/ci-the-pic-old-schoolnew-school-2/) - the [Golden Gulag](http://www.ucpress.edu/book.php?isbn=9780520242012) - that brings us the expansion of the modern prison industrial complex. California engineered a prison-building and filling project that is the “[biggest in the history of the world](http://prospect.org/article/prison-state).” California’s prison population is among the largest in the nation, with an annual [budget of more than $12.5 billion.](http://curbprisonspending.org/gov-brown-backslides-on-corrections-budget-no-substantial-reductions-to-the-prison-population-except-costly-expansion/)This transformation took less than 30 years.

Ruth Wilson Gilmore’s [*Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California*](http://www.ucpress.edu/book.php?isbn=9780520242012) offers the most comprehensive analysis of the rise of the PIC in California. Eschewing the usual simplistic explanations, Gilmore links the expansion to a [complex interaction](http://nicolemarie.umwblogs.org/2009/04/11/golden-gulag-the-final-word-on-americas-prison-boom/) with a host of other developments: changes in the labor market; expectations of how state apparatuses will interact with the poor and those deemed “surplus labor”; what industries and economic growth systems government is prepared to subsidize; shifts in tax structures; and relationships between different races and classes over the decades.

Beginning in the 1980s, public policy shifts, dictated by both economic factors and political mood, resulted in expansion of criminal law - [1,200 new criminal justice-related laws](http://www.indybay.org/newsitems/2007/07/25/18437311.php) in the decades during the penal expansion – the first and most restrictive[three strikes law](http://www.slate.com/articles/news_and_politics/jurisprudence/2012/11/california_three_strikes_law_voters_wanted_to_reform_the_state_s_harsh_law.html), the proliferation of [gang legislation](http://www.nationalgangcenter.gov/Legislation/California). These were accompanied by a state-sponsored boom in prison building and new jobs in depressed agricultural regions, correctional spending that far [outstripped educational investments](http://www.mintpress.net/feeding-into-the-prison-industrial-complex-school-spending-declines-corrections-department-funding-increases/), the growing influence of [private correctional profit interests](http://www.policymic.com/articles/24142/the-number-of-people-in-private-prisons-has-grown-by-1-664-in-the-last-19-years), and the escalating political power of the state’s prison guards union, the California Correctional Peace Officers Association ([CCPOA](http://ordinary-gentlemen.com/blog/2011/06/the-role-of-the-prison-guards-union-in-californias-troubled-prison-system/)), which plays a significant role in advocating pro-incarceration policies in California.

**An average of one inmate per week was dying as a result of malpractice or neglect.**

The result was a heavily crowded and racialized correctional population. In California, blacks are [incarcerated at a rate](http://www.sentencingproject.org/map/statedata.cfm?abbrev=CA&mapdata=true)6.5 times greater than whites and Latino/as at nearly two times the rate of whites, rates higher than national patterns of racial disparity. Collectively, people of color comprise more than two-thirds of the state’s outsized prison population. At the peak of overcrowding, the system was at [200 percent](http://www.nytimes.com/2013/01/22/us/22prisons.html?_r=0) of capacity. Prisoners were triple bunked in gyms, hallways, any extra nook or cranny. This overcrowding was/still is especially excessive at Central California Women’s Facility (CCWF), the world’s largest prison for women.

Nearly four years ago, the Supreme Court ruled that the California system [was so overcrowded](http://www.nytimes.com/2011/05/24/us/24scotus.html?_r=0) that it amounted to cruel and unusual punishment. [The case](http://www.supremecourt.gov/opinions/10pdf/09-1233.pdf), *Edmund G. Brown, Jr., Governor of California, et al., Appellants v. Marciano Plata et al.,*centered on shortage of health care and de facto denial of mental and physical treatment. An average of one inmate per week was dying as a result of malpractice or neglect. The Supreme Court affirmed a federal decree requiring state officials to reduce the prison population (then 168,000) by 30,000, which is 137.5 percent of the system’s capacity. California has until [July 2016](http://www.prisonlaw.com/pdfs/Population%2CJan2015.pdf) to reduce population by another[10,000](http://www.nytimes.com/2012/08/06/us/in-california-prison-overhaul-county-jails-face-bigger-load.html?pagewanted=all) prisoners.

**The tendency, however, has been continued incarceration rather than release.**

Despite the legal mandate to reduce overcrowding, California, under the[leadership of Governor Brown](http://criticalmassprogress.com/2013/10/30/ci-prison-privatization-part-1-another-cautionary-tale-from-california/), has stonewalled every step of the way. Prisoner reduction has primarily resulted, not from actual release, but from a [massive prisoner-shifting shell game](http://truth-out.org/opinion/item/27275-confidence-men-and-prison-reform).

One of the solutions, Assembly Bill 109, referred to as [“prison realignment,”](http://blog.bi.com/industry-news/ab-109-what-is-it-and-what-does-it-mean-to-california-counties) primarily moves state prisoners into county jails. The overcrowding, then, is largely being shifted from the state to county level. Counties, already strained under a population of 80,000-plus, have a variety of options for dealing with these additional prisoners, including referrals to the new [privatized profit-driven](http://truth-out.org/opinion/item/27555-community-corrections-profiteering-corruption-and-widening-the-net) community correctional complex. The tendency, however, has been continued incarceration rather than release. Seventeen counties are already under separate court-orders to [reduce](http://prospect.org/article/prison-state%22%20%5Ct%20%22_blank)populations, and the recent pressures have led many counties to build larger jails. Since jails are meant for short-term detention, their [amenities](http://www.nytimes.com/2012/08/06/us/in-california-prison-overhaul-county-jails-face-bigger-load.html?pagewanted=all), as it were, are even fewer than those offered in prison. So, statewide problems are simply exacerbated at the county level.

**A second shell game used to reduce state prison numbers – on paper – is the increased use of out-of-state private prisons.**

A second shell game used to reduce state prison numbers – on paper – is the increased use of out-of-state private prisons. Brown recently signed two separate deals with[private prison providers](http://www.huffingtonpost.com/2013/10/25/california-private-prison_n_4157641.html) CCA and GEO Group to house additional prisoners, making California one of the nation’s leaders in its reliance on private prisons. In addition to the nearly 8,000 prisoners housed in out-of-state private facilities, new privatized prisons in California would accommodate another [4,000 prisoners](http://www.huffingtonpost.com/2013/10/25/california-private-prison_n_4157641.html), including [260 women at a new GEO prison](http://truth-out.org/news/item/24173-california-turns-to-private-prison-to-address-overcrowding-and-medical-care) in Bakersfield.

Perhaps the most dangerous aspect of this new privatization scheme is the [collusion with old opponents.](http://www.huffingtonpost.com/2013/10/25/california-private-prison_n_4157641.html) Previously, in California and elsewhere, private prison expansion has been stymied by correctional officers’ unions that resisted because of CCA and GEO’s reliance on nonunion labor. But not anymore, since California’s deal with the CCA and GEO Group requires the use of [unionized](http://www.huffingtonpost.com/2013/10/25/california-private-prison_n_4157641.html) California Correctional Peace Officers Association guards. Opponents of mass incarceration fear this partnership is a harbinger of additional expansion of the prison industrial complex.

It is within this context of resistance to decarceration and increasing entrenchment of private profit interests that we must evaluate the most recent efforts at “reform.”

**Propositions 36 and 47: The Promise and the Reality of Reform**

California voters – for reasons both sociopolitical and fiscal – began to tire of endless incarceration before elected officials did and so sought change via ballot measures. While both Proposition 36 and 47 are widely touted as actually or potentially making a significant dent in California’s prison population, at closer look, the impact may be other than hoped.

The Three Strikes Reform Act of 2012 ([Proposition 36)](http://ballotpedia.org/California_Proposition_36%2C_Changes_in_the_%22Three_Strikes%22_Law_%282012%29) rewrote the harsh 1994 law that mandated life imprisonment for a third felony conviction, even if the third strike was a nonviolent crime. Strongly supported by Democrats and liberal nonprofits, and opposed by the GOP and law enforcement/corrections lobbies, Prop 36 passed by a wide margin. Under the revisions, a life sentence for the third strike is available only if the crime is “serious or violent.” Approximately [4,000 nonviolent third-strike](http://www.stanforddaily.com/2011/11/29/three-strikes-project-drafts-ballot-initiative/) lifers (out of nearly 9,000 sentenced under 1994 provisions) became eligible for resentencing. This is not automatic, but requires a legal process that grants release to eligible prisoners only after they are deemed no risk to “public safety.”

**It is within this context of resistance to decarceration and increasing entrenchment of private profit interests that we must evaluate the most recent efforts at “reform.”**

Since passage, slightly over [2,000 prisoners](http://www.nytimes.com/2015/02/27/us/california-convicts-are-out-of-prison-after-third-strike-and-staying-out.html?ref=topics&_r=1&gwh=D47F1251D14AADA9043D4B85C9A6E402&gwt=pay&assetType=nyt_now)have been released after legal review. This is certainly progress – and of immeasurable value to those released – but it has hardly produced a dent in California’s bloated prison system. Beyond the first tier of cases, difficulties in obtaining further releases are related to scrutiny of prisoner’s [disciplinary](http://www.latimes.com/local/california/la-me-three-strikes-reform-20141117-story.html%22%20%5Cl%20%22page%3D1%22%20%5Ct%20%22_blank)records, [prosecutorial resistance](http://www.escholarship.org/uc/item/4wr31376#page-24), and associated [gaps between counties](http://www.mercurynews.com/ci_23172736/ap-exclusive-new-3-strikes-law-varies-by) in considering release.

Most recently, California Proposition 47, the [Reduced Penalties for Some Crimes Initiative](http://ballotpedia.org/California_Proposition_47%2C_Reduced_Penalties_for_Some_Crimes_Initiative_%282014%29), was passed by voters with a degree of “bipartisan” support. Referred to by supporters as the [Safe Neighborhoods and Schools Act,](https://flyingoverwalls.wordpress.com/2014/11/03/a-few-views-on-prop-47/)the bill reduced several theft and forgery crimes and possession of small amounts of most illegal drugs from felonies to misdemeanors. Prop 47 also allows for the retroactive resentencing of possibly 10,000 prisoners (including some Three-Strikers) serving time for offenses now reclassified as misdemeanors. One of the major selling points of the bill (and one of its potential perils) involves the establishment of a fund to [allocate saved monies](https://flyingoverwalls.wordpress.com/2014/11/03/a-few-views-on-prop-47/) to reduce truancy, support trauma centers and provide mental health and substance abuse treatment.

**There is no indication that police or prosecutors, who have long relied on these laws as plea-bargaining and punishment tools, will not imagine new ways to overcharge defendants to achieve their desired result.**

Prop 47 was[supported](http://votersedge.org/california/ballot-measures/2014/november/prop-47/endorsements#.VNFSNMZnRJM)by the ACLU, NAACP, most labor unions, many prominent Democrats, and a host of [Right on Crime](http://www.latimes.com/opinion/op-ed/la-oe-0917-gingrich-prop--47-criminal-justice-20140917-story.html)associates. (This should raise eyebrows, since [Right on Crime](http://truth-out.org/opinion/item/27275-confidence-men-and-prison-reform) represents a distillation of right-wing thinking about reform: removing corporations from criminal scrutiny, promoting states’ rights, and pushing an aggressive agenda of corrections privatization.) It was[opposed](http://californiansagainst47.com/endorsements/)by the California GOP, a few law and order Democrats, and the usual associations of sheriffs, police, prosecutors and crime victims – with the [exception](http://theconversation.com/californias-proposition-47-softer-on-crime-32464) of the powerful California Corrections and Peace Officers Association, which along with Governor Brown and Attorney General Kamala Harris, remained silent (This should raise more eyebrows still). The prominent progressive coalition Californians United for a Responsible Budget ([CURB](http://curbprisonspending.org/gov-brown-backslides-on-corrections-budget-no-substantial-reductions-to-the-prison-population-except-costly-expansion/)) remained neutral as well, out of respect for the complexities of the question and the varying positions of coalition members. Several grassroots prison abolitionist groups, such as [Justice Now](http://www.jnow.org/) and [Critical Resistance](http://www.jnow.org/), opposed the proposition, citing many of the reasons detailed below.

**“Justice reinvestment” here, as elsewhere, will not mean reinvestment in community, but instead, continued investment in law enforcement and corrections.**

Despite the claim of reduced incarceration, several concerns have been raised regarding the ultimate impact of Prop 47 on California’s carceral landscape. The[promised savings of $150-250 million](http://www.truth-out.org/news/item/28087-the-perils-of-criminal-justice-reform-and-the-promise-of-abolition) are just that – promised but not guaranteed. Prop 47 was partly intended to reign in prosecutorial discretion by reclassifying many crimes known as “[wobblers”](http://alumni.berkeley.edu/california-magazine/just-in/2014-11-14/crimes-and-misdemeanors-california-reverses-course-its-lock) (i.e. offenses that could be prosecuted as either felonies or misdemeanors). There is no indication that police or prosecutors, who have long relied on these laws as plea-bargaining and punishment tools, will not imagine new ways to overcharge defendants to achieve their desired result. [Such approaches](http://www.latimes.com/local/politics/la-me-ff-pol-proposition47-20141106-story.html#page=1) are already being considered. There are preliminary signs, too, that, in yet another shell game, costs saved in felony prosecutions at the county level will be[shifted down to the cities](http://www.latimes.com/local/lanow/la-me-ln-prop-47-attorneys-funding-20141201-story.html), which now face an additional influx of misdemeanor cases.

**There are legitimate concerns that it could easily mean more police/Security Resource Officers (SROs) patrolling the hallways, more surveillance, more funneling of at-risk students into the school to prison pipeline.**

Even if there are savings, [“justice reinvestment”](https://flyingoverwalls.wordpress.com/2014/11/03/a-few-views-on-prop-47/) here, as elsewhere, will not mean reinvestment in community, but instead, continued investment in law enforcement and corrections. Most of the purported savings will be [funneled directly back](http://www.truth-out.org/news/item/27881-prop-47-immigration-reform-and-more-the-contradictory-road-of-reforming-mass-incarceration) into corrections, through a fund managed by the Board of State and Community Corrections ([BSCC](http://www.bscc.ca.gov/)), known for expanded prison and jail construction under[realignment](http://www.cdcr.ca.gov/realignment/). Given the current push toward privatization, it is easy to imagine new opportunities for profiteering under Prop 47, via contracts to provide mental health and [mandatory substance use treatment](http://truth-out.org/opinion/item/27108-mandatory-rehab-is-just-the-newest-front-in-the-flawed-war-on-drugs)and for case management of misdemeanants, now under community supervision.

It is important to note, as just one example, that [Sentinel Offender Services](http://www.sentrak.com/home/), infamous for their (mis)handling of [private probation in Georgia,](https://www.prisonlegalnews.org/news/2014/jan/15/controversy-litigation-and-performance-problems-plague-private-probation-services/)is based in California. Sentinel is already under contract with several large California counties to provide GPS tracking and monitoring services for so-called community-based corrections. They have provided private probation services to [Los Angeles County](http://www.sentrak.com/files/CaseHistory_LA.pdf) for more than 20 years. Prop 47 creates the possibility for still more clients.

**For more than 20 years, the State of California has deflected, coopted or subverted any legislative, voter-driven or judicial mandates for “prison reform.”**

One of the more troubling aspects of Prop 47 funding involves the 25 percent of “saved” monies that are earmarked for use by the Department of Education. While the pro-Prop 47 rhetoric suggested that educational benefits were central to the measure, the [actual text](http://www.gurwitzlaw.com/blog/wp-content/uploads/2014/07/Proposition-47-Text.pdf)specifies funding for grant programs that address “K-12 truancy, students at high-risk of dropping out, or school victims of crime.” How does that translate? There is no guarantee that this might mean more social workers, teachers or restorative/transformative justice programing, and there are legitimate concerns that it could easily mean more police/Security Resource Officers (SROs) patrolling the hallways, more surveillance, more funneling of at-risk students into the school-to-prison pipeline. [Eric A. Stanley](http://thenewinquiry.com/features/the-carceral-state/), coeditor of [*Captive Genders: Trans Embodiment and the Prison Industrial Complex*](http://www.akpress.org/captivegenders.html), suggests that if the funding choices favor police in the hallways “as a response to the infamous overcrowding of California’s prisons, this is something we know would re-imprison 10,000 people, even if 10,000 people are released.”

**The prison industrial complex is a profit-driven morass that swallows any efforts at reform and spits them back in expansion.**

Finally, all efforts at reform, including Proposition 36 and 47 reify the law and order frame; they require our continued acceptance of and reliance on state violence. These reforms insist that we center “public safety” and fear of victimization by a dangerous, irredeemable class of law-breakers/prisoners. Proponents of both ballot measures promoted passage, as Cookie Concepcion, Justice Now board member and prisoner at Central California Women’s Facility, points out in “[The High Cost of Prop 47](https://flyingoverwalls.wordpress.com/2014/11/03/a-few-views-on-prop-47/),” by arguing to “stop the warehousing of petty, nonviolent criminals in prisons, while boasting to keep violent criminals locked up.” Such rhetoric and resultant “reforms” insist that we distinguish between those who can be salvaged and those who we choose to consign to a perpetual cage.

**Coda**

In the fog of the yard at CCWF, one thing is crystal clear. Attempts at reforming the monstrous machine that is the PIC are futile. For more than 20 years, the state of California has deflected, coopted or subverted any legislative, voter-driven or [judicial mandates](http://www.prisonlaw.com/cases.php) for “prison reform.”

A few examples: California passed [SB 1399](http://www.californiahealthline.org/articles/2010/9/29/governor-signs-bill-to-allow-medical-parole-for-incapacitated-inmates), legally allowing for compassionate release and medical parole, but five years later, continues to ignore the requisite paperwork as prisoners die behind bars. The state responded to a court case brought by prisoners over [unhealthy food](http://www.aele.org/law/2007JBJUL/2007-07MLJ301.pdf) by routinely serving everyone a cold lunch of peanut butter and jelly on moldy bread, sour sunflower seeds and an old apple. The California Department of Rehabilitation and Corrections ([CDRC](http://www.cdcr.ca.gov/Facilities_Locator/CCWF.html)), in an attempt to quell a statewide prisoner [hunger strike,](http://ccrjustice.org/pelican-bay) claimed it would review demands regarding gang validation protocols and conditions of solidarity confinement; the result, a “reform” of procedures that actually [expands](https://prisonerhungerstrikesolidarity.wordpress.com/2014/10/04/ca-prisoner-reps-say-all-people-have-the-right-to-humane-treatment-with-dignity/) the definitions of gang affiliation and increases use of solitary.

In response to a lawsuit requiring [prison compliance](http://www.scpr.org/news/2015/02/03/49637/judge-says-california-violates-rights-of-disabled/) with The Americans with Disability Act guidelines, various prisons across the state moved prisoners in need of said accommodations into isolation cells. In 2010, California created an [Alternative Custody Program](http://www.cdcr.ca.gov/Parole/ACP.html) that allows nonviolent prisoners to complete sentences in community settings. In addition to sparking a new set of [Federal court challenges](http://www.sacbee.com/news/local/crime/article2604175.html) for discriminating against men, the state has released women to these venues at a mere snail’s pace. Instead, efforts are made to persuade eligible prisoners, like many at CCWF, to transfer to the new private prison because there are, in the words of The Lieutenant, “microwaves with toasters.”

The prison industrial complex, in California and everywhere, is a profit-driven morass that swallows any efforts at reform and spits them back in expansion. There is no indication (and much to the contrary) that Propositions 36, 47, and the next or the one after that will fare much better than previous efforts. There is no escaping the[classist and racist roots](http://truth-out.org/opinion/item/27795-the-fallacy-of-right-wing-appeals-to-race-in-criminal-justice-reform) of this machinery, and every indication that “reforms” will, not only expand options for state control and private profit, but also simultaneously harden egregious race/class gaps. This cannot be “fixed”; it is feature not a bug. As Angela Davis rightly notes – in the book that poses the question, we must now grapple with, [*Are Prisons Obsolete*](http://catalog.sevenstories.com/products/are-prisons-obsolete)*?* - “Our most difficult and urgent challenge to date is that of creatively exploring new terrains of justice where the prison no longer serves as our major anchor.” ​

To paraphrase Justice Harry A. Blackmun, in that moment he finally saw the futility of death penalty reform, let us no longer tinker with this [machinery of death](http://www.nytimes.com/1994/02/23/us/death-penalty-is-renounced-by-blackmun.html). Let us seek another path.

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