



Prop. 57 and Recidivism: Unveiling the Reality Behind CDCR Claims

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Summary

Recidivism rates are an important measure in evaluating whether the programs implemented following Proposition 57 are actually performing as promised. The California Department of Corrections and Rehabilitation (CDCR) recently published updated recidivism outcomes for people released from state prison during fiscal year 2017-2018.¹ In an accompanying press release, the CDCR Secretary Jeff Macomber claimed that the enhanced “credit-earning opportunities ... is [sic] having a positive impact to improve public safety.”² This claim of demonstrated positive impact is overstated and misleading. While the data showed a slight decrease in three-year re-conviction rates, the report does not systematically evaluate Prop. 57’s effectiveness in the way that could justify a conclusion that the decrease was caused by the enhanced credits. Therefore, we find Macomber’s conclusory statements about Prop. 57’s effectiveness to be premature, and we caution against taking them at face value.

Introduction

The proponents of California’s Proposition 57, The Public Safety and Rehabilitation Act of 2016, promised to invest in evidence-based rehabilitation programs to reduce inmate reoffending. Recidivism rates are an important measure in evaluating whether these programs are actually performing as promised. The California Department of Corrections and Rehabilitation (CDCR) recently published updated recidivism outcomes for people released during fiscal year 2017-18, i.e. between July 1, 2017, and June 30, 2018.³ In an accompanying press release, CDCR Secretary Jeff Macomber claimed that the enhanced “credit-earning opportunities ... is [sic] having a positive impact to improve public safety.”⁴ Unfortunately, this claim of demonstrated positive impact is overstated and misleading.

The recent data release is the first to examine recidivism outcomes after the implementation of Prop. 57. Noting a slight decrease in three-year

re-conviction rates, Macomber claimed that the data show evidence of the law’s effectiveness. However, a closer look reveals that the CDCR report does not rigorously evaluate Prop. 57’s effectiveness as a formal research study would. Macomber’s claim is a crude overstatement of what the data actually show.

The recidivism report is a routine statistical report that the CDCR produces annually. Its main purpose is to present findings on the recidivism rates of released offenders in an understandable manner that is accessible to a wide audience. While these reports provide valuable insights, it is essential to exercise caution and consider limitations of the data before drawing conclusory statements based on them.

A formal research study uses a systematic method for investigating a specific question, such as whether prison rehabilitation programs reduce recidivism. To come up with an answer, the re-

search method must be strong enough to sufficiently establish cause and effect. Achieving this requires extensive planning, which increases the precision and confidence in the findings. Statistical reports do not test a specific hypothesis or idea, they simply present information without rigorous examination.

In the current paper, we explain how the statistical report does not back up Macomber's claims. We caution against taking his claims at face value.

Proposition 57

In November 2016, California voters approved Proposition 57, titled by its proponents The Public Safety and Rehabilitation Act of 2016. Among other provisions, the proposition authorized a new parole procedure for persons convicted of a "nonviolent felony offense," which it did not define, and authorized CDCR to "award credits for good behavior and approved rehabilitative or educational achievements."⁵

From 1976 to 2016, most felonies in California were punished by determinate terms, with a fixed sentence that could be reduced only by credits, which were defined and limited by statutes enacted by the Legislature. Parole was limited to felons sentenced to indeterminate terms up to life in prison, most of which were for murder or for felons sentenced under the "three strikes" law. The new parole provision under Prop. 57 allows parole for determinately sentenced prisoners after serving the full term for the primary offense, providing an avenue of escape from sentences for additional crimes and from sentence enhancements imposed for certain factors, such as, inflicting great bodily injury, use of a gun, or prior convictions.

The new credit provision is interpreted by CDCR as allowing it to issue regulations which abrogate limits on credits imposed by statutes. Among other changes, CDCR has authorized good conduct credit (GCC) for violent felons up to one-third of their sentence, even though such credits are capped by law at 15%.⁶ This interpretation is disputed and is presently the subject of litigation.⁷

Credit-Earning Opportunities

Expanded credit earning under Proposition 57 regulations went into effect in May 2017 and were further expanded in May 2021. These changes allow CDCR to award additional sentence credits for rehabilitation, good behavior, or educational achievements. CDCR's regulations increased the amount of credits that inmates convicted of violent crimes or sentenced under the three strikes law could earn through the existing Good Conduct Credit (GCC) and Milestone Completion Credit (MCC) programs. It also permitted the use of credits to advance the minimum eligible parole dates of inmates sentenced to determinate terms to a much greater extent than prior law. Further, the regulations added two new types of credit-bearing opportunities: the Educational Merit Credit (EMC) program and the Rehabilitative Achievement Credit (RAC) program. The various types of credits will be explored in more detail in a subsequent report. For the present, it is sufficient to note that credits and the opportunity to substantially shorten sentences are greatly increased under these regulations.

Recidivism

Inmates can earn credits by participating in certain rehabilitation programs which are designed to reduce recidivism or relapse into criminal behavior.⁸ There is no broadly agreed-upon definition for recidivism, and much contention regarding the "best" way to measure it. Typically, recidivism rates are calculated by using administrative data on arrests, convictions, or returns to prison. Unfortunately, these measures can be skewed due to inconsistencies in the criminal justice system, such that different measures can yield different answers. For example, COVID-related interruptions might delay court proceedings to secure a conviction despite there already being an arrest. Differences in the recidivism follow-up periods can also create inconsistent answers, with lengthier follow-up periods often capturing higher recidivism rates.

In California, return-to-prison rates are not a reliable indicator of recidivism. In recent years, too many policy changes have reduced prison

admissions for certain crimes, creating a natural decrease in prison admissions. Thus, a decrease in re-incarceration rates may not reflect reduced recidivism; it may reflect a policy change. The re-conviction rate is a preferable measure, but it is also contingent on discretion regarding whether to or not to prosecute and the capacity of the courts to process the cases. Re-arrest rates are probably the most comprehensive way to measure recidivism, as they require a lower burden of proof, but they still don't account for violent crimes that remain unreported⁹ or unsolved.¹⁰

In 2016, the CDCR changed their primary definition of recidivism from the three-year re-incarceration rate to the three-year re-conviction rate to remain consistent with the definition provided by the California Board of State and Community Corrections.¹¹ This definition also allows for supplemental measures of recidivism including new arrests and returns to custody. CDCR's most recent report uses three-year re-conviction rates as

the primary measure of recidivism, and data on re-arrests and re-incarceration are provided as supplemental measures. The graph below, taken from the report, shows the recidivism rates across different release cohorts. Macomber's major claim that recidivism is on a downtrend stems from a comparison between the 2016-17 release cohort (before Prop. 57) and the 2017-18 cohort (after Prop. 57). From 2012-15, three-year re-conviction rates were fairly stable at 46%. This dropped to 44.6% for the 2015-16 release cohort, but rose back up to 47.6% for the 2016-17 cohort. Finally, in 2017-18, it fell back to 44.6%—exactly where it was in 2015-16.

Macomber's claim of a downtrend places too much weight on minor fluctuations in the data. It is clear that recidivism actually increased slightly before decreasing for the current cohort, such that a small decrease in recidivism could simply be a "give-back" of the previous period's increase. In order to declare a trend, reductions

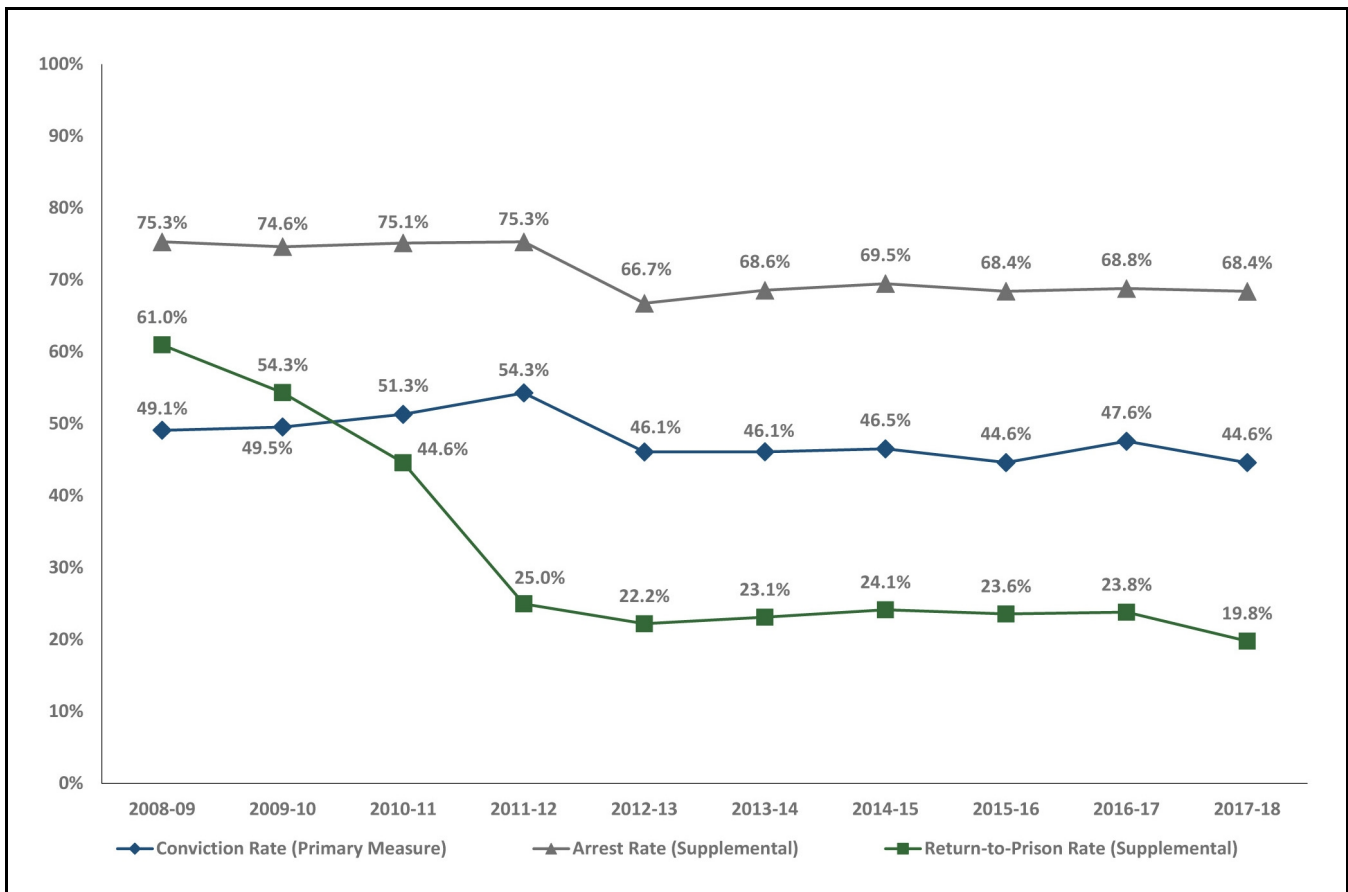


Figure 1. CDCR, Recidivism Report for Offenders Released from the California Department of Corrections and Rehabilitation in Fiscal Year 2017-18 (Apr. 2023), fig. 3, page 6.

would need to be observed for a longer period of time. There are many factors that fluctuate over time when it comes to criminal justice, and long-standing trends are more meaningful than minor fluctuations that quickly revert back toward the mean.

Also, re-arrest rates remain flat for the last several release cohorts. If there were a real change in recidivism, we would expect re-arrest rates to move together with re-conviction rates, or perhaps together with a time lag. Interestingly, the CDCR report noted that the fluctuations in convictions were likely a result of COVID-related court delays that decreased the number of convictions that prosecutors could pursue.¹² This is a plausible explanation as to why the fluctuations in re-convictions do not match similar moves in the rates of re-arrest. Yet, Macomber does not mention this in the press release and contends that decreases in the re-conviction rate are a result of Prop. 57.

Differentiating by Credits Earned

The report includes data regarding the types of credit-bearing opportunities that inmates participated in. About half of the cohort earned some type of "enhanced credit" (e.g., for education, work, or rehabilitative programs). These individuals had a slightly lower recidivism rate, a difference of 1.6% (43.8% vs. 45.4%).¹³

CDCR Secretary Macomber has interpreted this as evidence that the in-prison programs are effective. Unfortunately, though, a high likelihood of selection bias precludes attributing the difference to effectiveness of the programs on the currently available data. In other words, comparing two groups of people who are self-selected into groups (instead of mandated or randomly selected) is like comparing apples and oranges. There are likely several pre-program differences that exist between groups. For example, people who chose to participate were likely better candidates for "going straight" than those who chose not to. These differences will be further explored in a future report. For now, it is sufficient to note that, even if the participants do better, this is not

a valid basis for assuming that the change is attributable to program exposure.

Implementation

Prison programs are said to address inmates' rehabilitative needs, improve their success after release, and reduce recidivism rates. However, even the best programs only help if they are implemented with high fidelity and consistency. Unfortunately, within CDCR, there are myriad concerns regarding the implementation and quality of prison rehabilitation programs.

These concerns are discussed in reports from the California state auditor¹⁴ as well as the California Rehabilitation Oversight Board (C-ROB),¹⁵ both of which noted many inmates being released from prison without having their rehabilitative needs met. According to the C-ROB,¹⁶ 40% of inmates released in 2017-18 had not participated in any rehabilitation program that they had an assessed need for. A similar concern was posed by the state auditor,¹⁷ who found that 62% of inmates released in 2017-18 who were considered "at risk for recidivating" had not had their rehabilitative needs addressed. The report by the state auditor¹⁸ criticized CDCR for not ensuring adequate implementation of programs and for failing to evaluate their effectiveness. The key takeaway from that report was that the financial investment into rehabilitation programs had not demonstrably achieved worthwhile results.

Conclusion

The CDCR's latest recidivism report showed a small reduction in recidivism rates for people released in the year following Prop. 57. CDCR Secretary Jeff Macomber has since used this finding to promote the supposed "benefits" of Prop. 57 on recidivism. Unfortunately, this claim misconstrues the findings of the CDCR report.

The CDCR report is a statistical report, not a research study evaluating Prop. 57. It lacks the elements to make a rigorous assessment of the effectiveness of a policy or program. It is not a research study of the kind which follows a systematic protocol to ensure the validity of the findings.

Taking CDCR Secretary Macomber's claims at face value could lead to ineffective or misguided policies that do not address the complex issues related to recidivism rates. Misguided policies are especially dangerous when the policy relates to the protection of the public from crime. As a previous Secretary of CDCR noted during the federal litigation, California had already moved the best candidates for early release from state prison to county jail in an earlier reform.

Shortening the sentences of the remaining inmates, convicted of more serious and violent crimes, would "pose an undue risk to public safety and [would] not reflect sound correctional practice."¹⁹ In light of the potentially grave consequences to innocent people, a rigorous study demonstrating a reduction in recidivism sufficient to produce a net gain for public safety is needed to justify such policies. None presently exists.



The Criminal Justice Legal Foundation is a nonprofit, public interest law organization promoting the interests of the law-abiding public and victims of crime in the criminal justice system. CJLF believes that an effective system of law enforcement and appropriate punishment of those who have committed serious crimes is essential to a free and orderly society. Such a system is achievable while respecting the constitutional rights of those accused or convicted of crimes. To this end, CJLF engages in advocacy in the courts and conducts research to better inform the public and policy makers. These Research in Brief reports are a part of this effort.

For further information regarding this report, contact Research Associate Elizabeth Berger at 916-446-0345 or elizabeth.berger@cjlif.org.

Endnotes

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3. Recidivism Report, *supra* note 1, at vi.
4. News Release, *supra* note 2.
5. Cal. Const. art. I, § 32.
6. Cal. Code Regs. tit. 15, § 3043.2(b)(2)(B); Cal. Penal Code § 2933.1(a).
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 16. *Id.* at 51-52.
 17. *Definition of Key Terms*, *supra* note 11, at 2.
 18. *Id.*
 19. Declaration of Jeffrey Beard, Ph.D., in Support of Defendants' Response to April 11, 2013 Order Requiring List of Proposed Population Reduction Measures, *Coleman v. Brown*, U.S. Dist. Ct. E.D. Cal. No. 2:90-cv-00520 and *Plata v. Brown*, U.S. Dist. Ct. N.D. Cal. No. C01-1351 (May 2, 2013).