

Admin.

April 13, 2020

## First Supplement to Memorandum 2020-5

**Materials Presented at Meeting on January 24, 2020**

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The Committee on Revision of the Penal Code met in Sacramento on January 24, 2020.

At that meeting, Professor Craig Haney of the University of California Santa Cruz made a presentation entitled *A History to Avoid Repeating: Changing the Narrative in Criminal Justice Reform*. A copy of the slides used by Professor Haney in his presentation are attached to this memorandum.

The sole purpose of this supplement is to place those materials in the Committee's record. **No Committee action is required with regard to this supplement.** This supplement will be posted to the Committee's website and distributed to its electronic mailing list, but will not be part of the materials considered at a future meeting.

Respectfully submitted,

Brian Hebert  
Executive Director

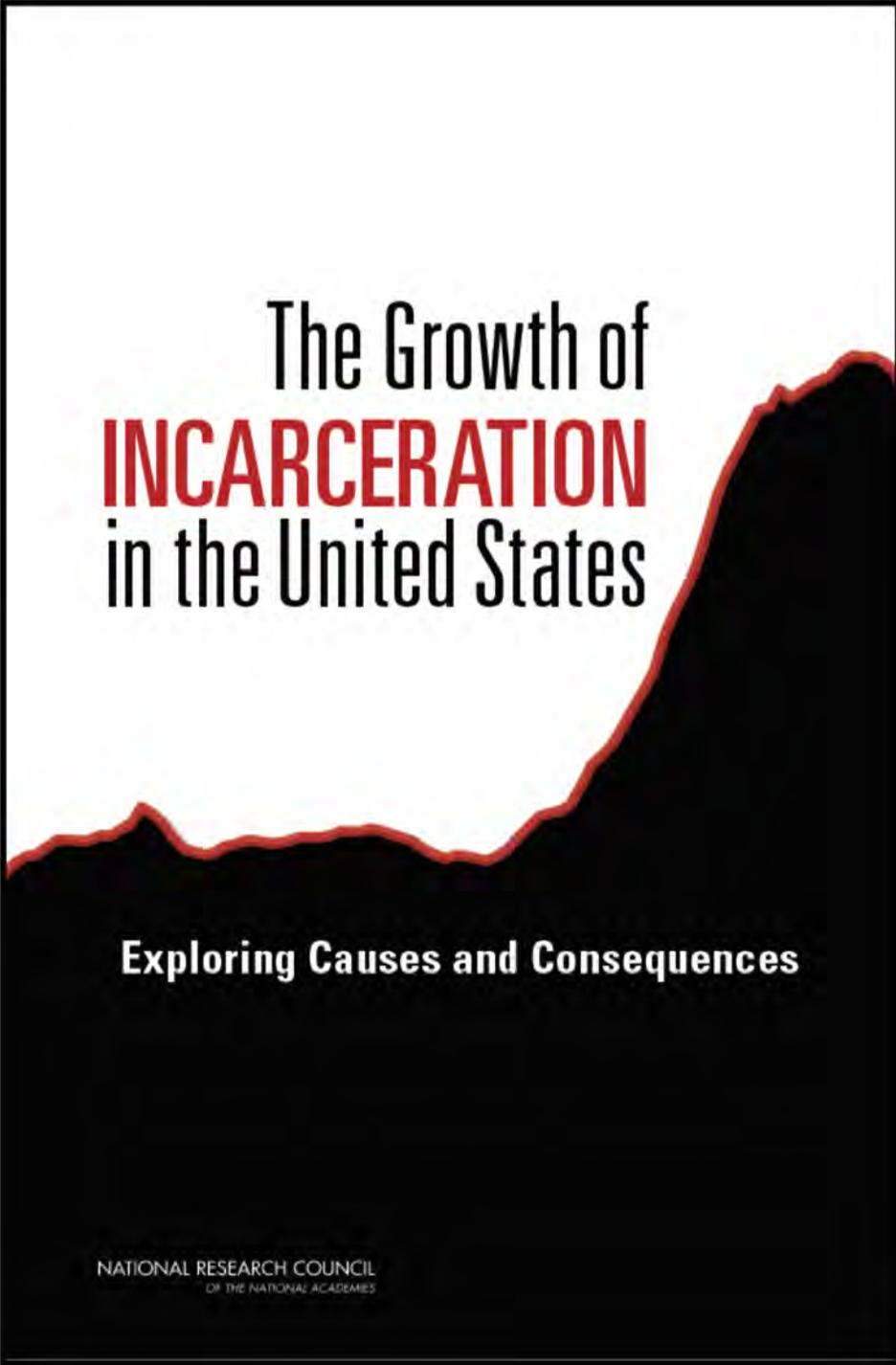


***A History to Avoid Repeating:  
Changing the Narrative in Criminal  
Justice Reform***

**Committee on Reform of the Penal Code**

**Craig Haney  
University of California, Santa Cruz  
psylaw@ucsc.edu**





The Growth of  
**INCARCERATION**  
in the United States

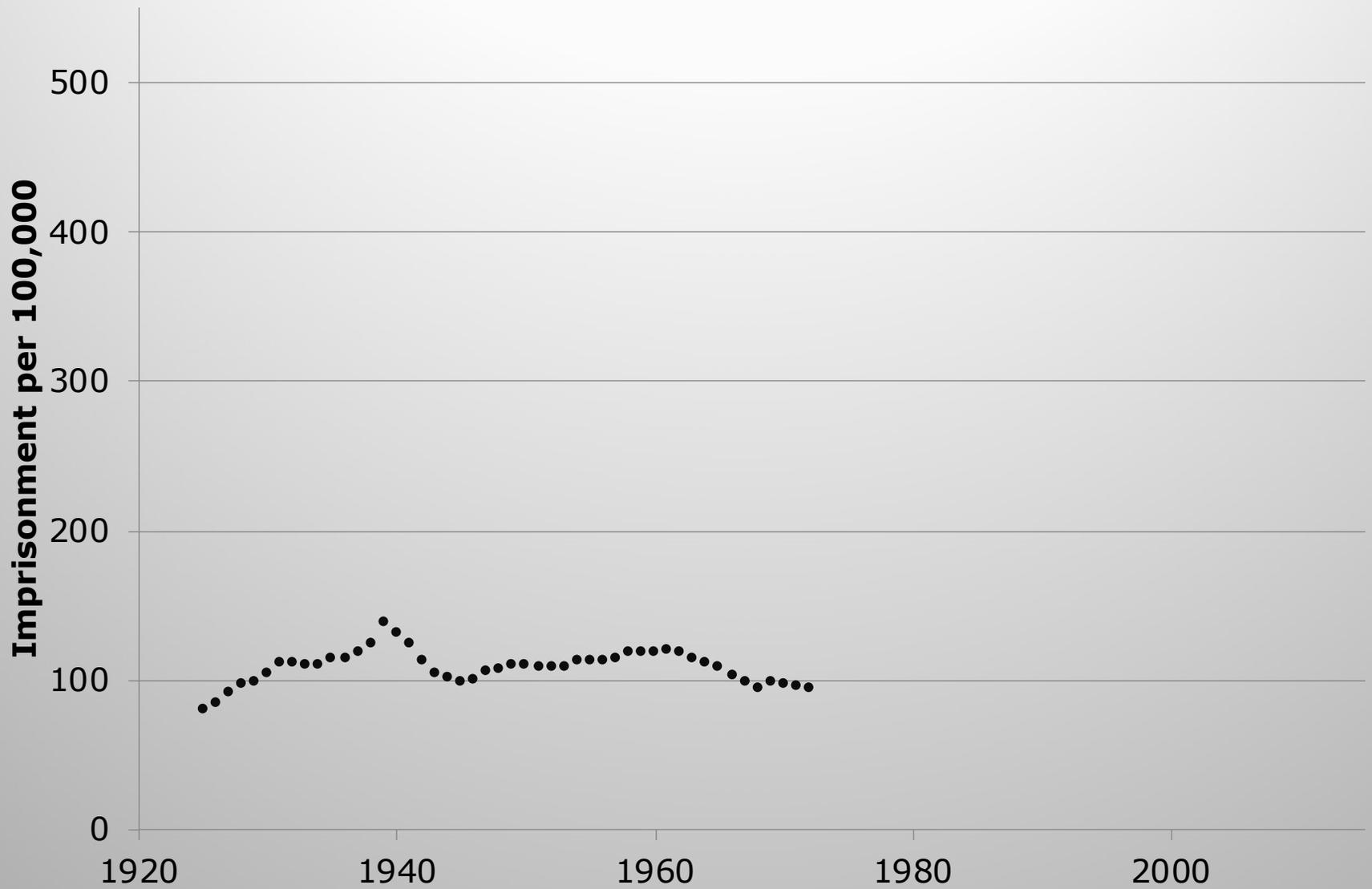
**Exploring Causes and Consequences**

NATIONAL RESEARCH COUNCIL  
OF THE NATIONAL ACADEMIES

*National Academy of  
Sciences Report,  
April, 2014*

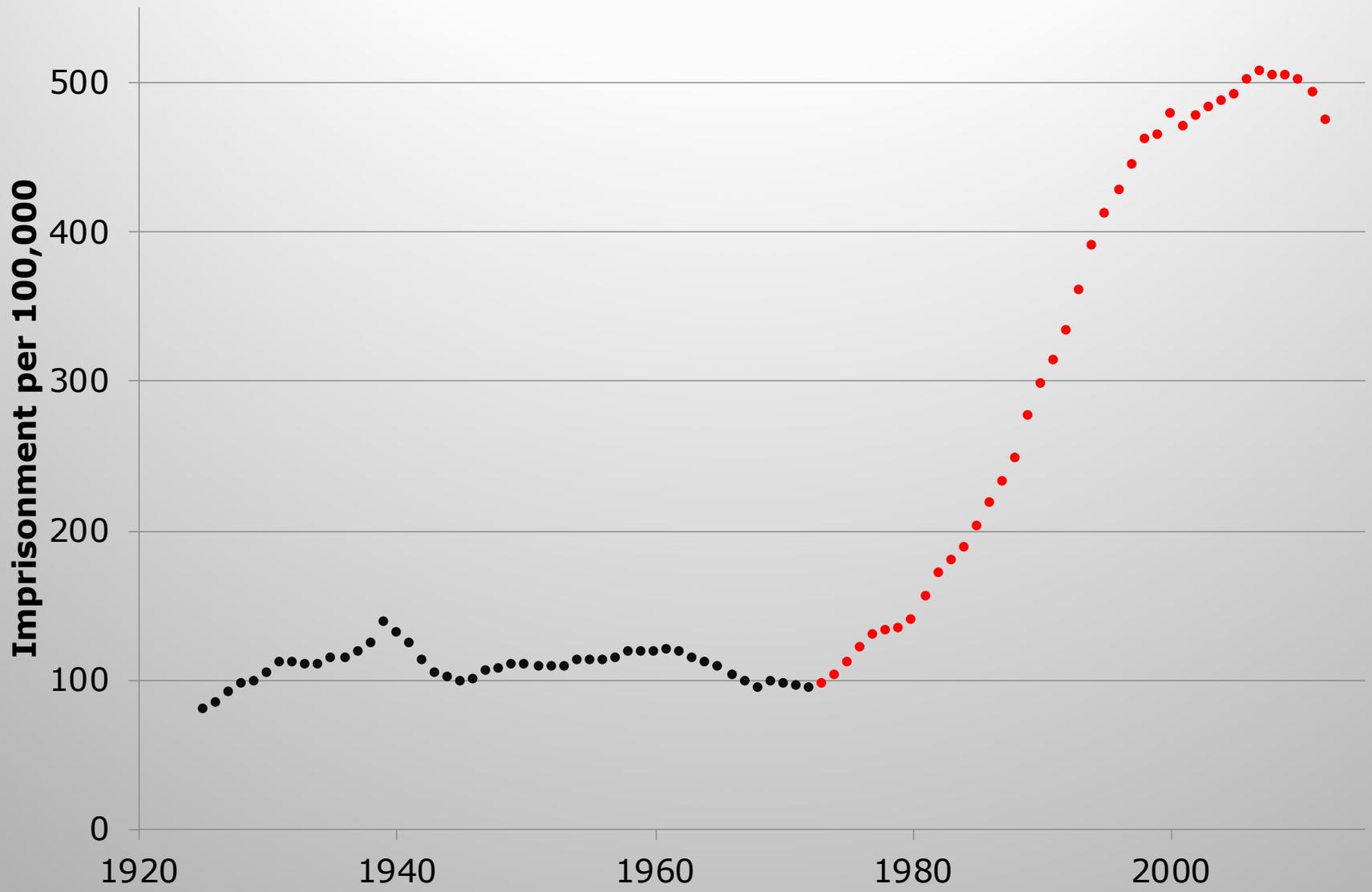
<http://nationalacademies.org/incarceration>

# U.S. Incarceration Rate, 1925-1972



Note: Incarceration rate is state and federal prison population per 100,000

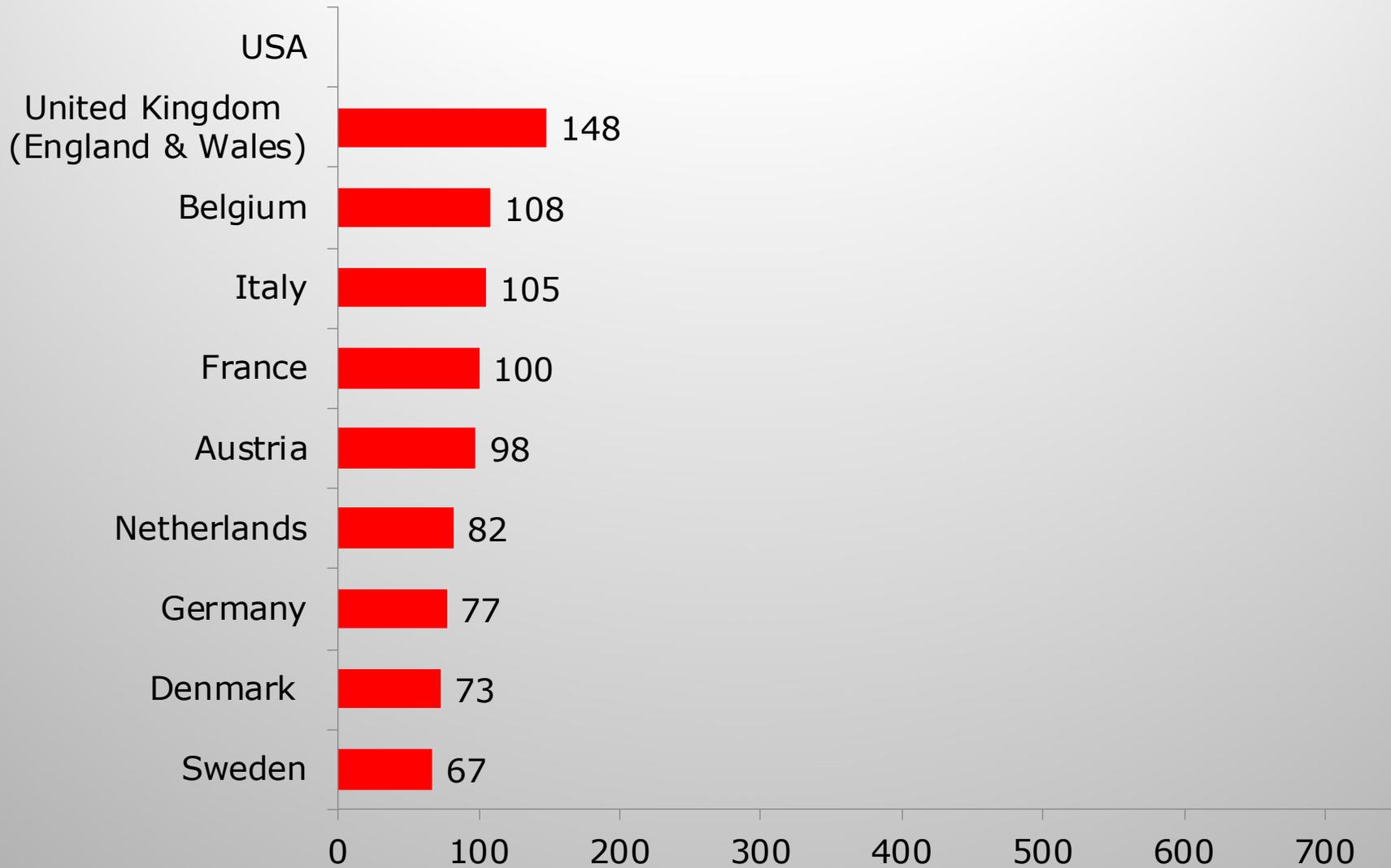
# U.S. Incarceration Rate, 1925-2012



Note: Incarceration rate is state and federal prison population per 100,000

# Incarceration in U.S. and Europe, 2012-2013

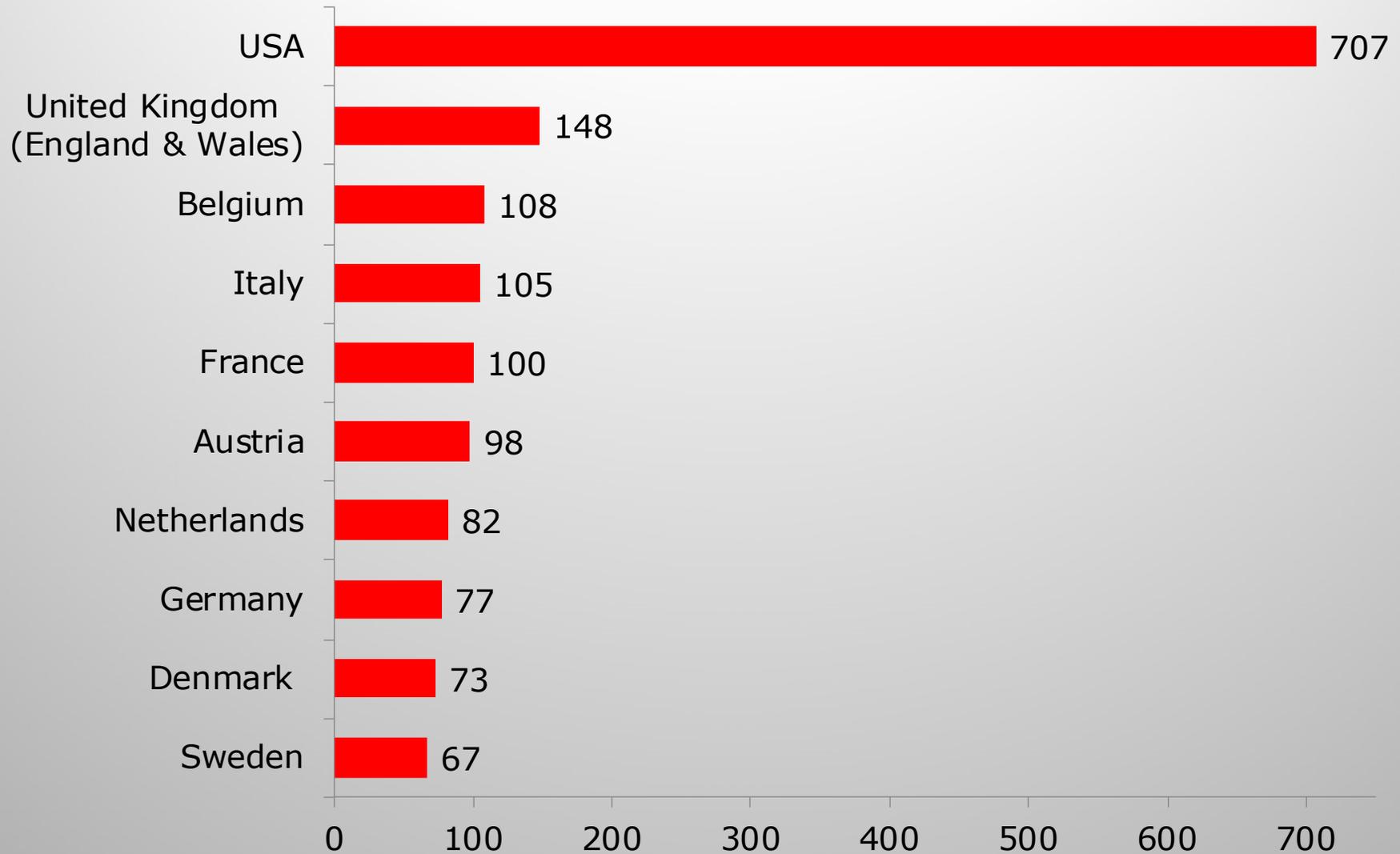
per 100,000 population



\* Prison and Jail

# Incarceration in U.S. and Europe, 2012-2013

per 100,000 population



\* Prison and Jail

We recommend such a systematic review of penal and related policies with the goals of achieving a significant reduction in the number of people in prison in the United States and providing better conditions for those in prison. To promote these goals, jurisdictions would need to review a range of programs, including community-based alternatives to incarceration, probation and parole, prisoner reentry support, and diversion from prosecution, as well as crime prevention initiatives.



LIVING

## PREVIEW OF S.J. WHITNEY SHOW

Art from N.Y. museum/1C



SPORTS

## RICE IS BEST OFFENSIVE PLAYER

Beat out Young for honor/1F

NEWS

## H-P JOINS TALIGENT

Business, 1E

# San Jose Mercury News

SANTA CRUZ/MONTEREY EDITION  
35 CENTS

Serving Northern California Since 1851

THURSDAY  
JANUARY 6, 1994



Associated Press  
Thomas "Tip" O'Neill clung to liberal Democratic ideals.

## Former Speaker O'Neill dead at 81

Political stalwart was seen as ultimate insider

BY MARTIN TOLCHIN  
New York Times

### GOV. WILSON'S STATE OF THE STATE

# Cut taxes, build prisons

## Wilson talks tough: 'Our streets are being stained with the blood of our children'

BY THOMAS FARRAGHER  
AND GARY WEBB  
Mercury News Sacramento Bureau

SACRAMENTO — Gov. Pete Wilson, sounding like the candidate he'll soon be, called Wednesday for an election-year tax cut, a \$2 billion prison-building program and swift, unmerciful justice for violent criminals.

The Republican governor, whose three-year governorship has been hobbled by relentless recession, proposed a \$90 million state income tax cut for those earning up to \$40,000 and a \$50 million business tax break — in



'For middle-class taxpayers . . . give 'em a break.'

spite of a looming state deficit projected at about \$4 billion.

"For middle-class taxpayers, instead of a hike, I say give 'em a break," said Wilson, the author of a \$7 billion tax increase in 1991,

the biggest in California history. According to Wilson's economic advisers, the tax cut Wilson envisions would benefit 4 million taxpayers — which works out to an average of \$22.50 each.

Republicans and Democrats alike were mystified over how Wilson intends to finance a program one lawmaker described as "heavy on tax cuts, heavy on spending."

Sen. Tom Campbell, R-Stanford, said it would be necessary to virtually reinvent state government to pay for it.

See WILSON, Page 15A

## Claims outracing funds for state's crime victims

BY S.L. WYKES  
Mercury News Staff Writer

At a time when concern about crime and criminals has never been higher, victims whose only recourse for help is the state's Victim Restitution Fund are waiting months for payments — and some might not get them at all.

The state Board of Control has approved payments of \$30 million from its restitution fund to 20,000 California victims of crime and their care providers to cover psychotherapy, medical bills, rehabilitation and income loss.

But the money isn't there, nor, without a dramatic

See VICTIMS, Back Page

# San Jose Mercury News

Serving Northern California Since 1851

SUNDAY  
MARCH 6, 1994

FINAL EDITION  
\$1.25

Nowhere have criminal  
justice statistics been  
tossed about more  
recklessly than in the  
debate over the "three  
strikes" initiative and the

mirror-image legislation that Gov. Pete  
Wilson will sign this week.



BY MITCHEL BENSON  
Mercury News Sacramento Bureau

SACRAMENTO — As his audience finished off its Chicken Gallantine and dug into the lemon mousse pastries at a recent luncheon speech, Attorney General Dan Lungren served up his pitch for a crack-down on child molesters.

"When we're talking about repeat offenders, no criminal class has a greater level of recidivism than child molesters," Lungren told the crowd.

It made for a compelling, even frightening, argu-

## 'Lock 'em up' advocates twist statistics

ment about the tendency of child molesters to repeat their crime. But it was a misleading argument, too. The statement simply isn't true.

A research arm of Lungren's own state Justice Department concluded in a July 1988 report that "sex offenders do not differ significantly in terms of overall recidivism from most other types of offenders." (The report did not single out child molesters; they were included in the sex-offender category.) The same conclusion was echoed a year later in a U.S. Justice Department report on prisoner

recidivism in 11 states, including California.

Lungren is one of many politicians who, caught up in the lock-'em-up frenzy of election year politics, is manipulating, misunderstanding, misreading, misrepresenting or simply ignoring the credible body of research and statistics on crime and punishment. It's all being done in the name of tougher laws and safer streets as elected officials scramble to assuage the fears of their constituents.

Nowhere have criminal justice statistics been  
*See CRIME, Back Page*

# Wilson's Throw-Away-the-Key Plan

## As crime summit nears, he proposes locking up rapists, molesters for life

By Greg Lucas  
Chronicle-Sacramento Bureau

Sacramento

The weekend before his "crime summit" in Los Angeles, Governor Wilson unveiled a package of crime bills yesterday that includes a proposal to put all rapists in prison for life.

Wilson would also give life sentences to child molesters who use force and arsonists who cause more than \$5 million in damage or destroy five or more homes.

Critics say the laundry list of crime bills is just a splashy prelude to an event that is little more than a two-day campaign stop in the state's biggest media market.

But some participants in the conference that starts Monday argue that despite the political overtones, the high-profile discussion of crime will be beneficial.

"We wouldn't be having (the summit) if it wasn't an election year," conceded Chief Bill East-

man of the Pleasanton Police Department, a speaker at the conference. "But many of the things that'll be said need to be said. Then we'll see what the public wants to do."

The Republican governor proposed the crime summit in November, imitating the successful strategy of Assembly Speaker Willie Brown, who held a two-day event in Los Angeles early last year that focused on how to improve the state's business climate.

A number of bills came out of Brown's summit, including several that offered tax breaks and incentives to increase job creation.

"It's just a two-day press conference for the governor," said Vincent Schiraldi, director of the Center on Juvenile and Criminal Justice in San Francisco. "The public won't be any safer."

Wilson has divided the program into a number of panels with titles such as Crime's Impact on

Business, Taking Back Our Streets and Enforcement and Punishment.

The speakers and panelists include dozens of politicians and law enforcement officers and several crime victims. Wilson is spending at least \$22,000 in state money to put on the event. Lawmakers who attend will receive a \$100 per diem plus travel expenses.

One panelist is Marc Klark, whose daughter Polly was kidnapped and murdered in October. That high-profile case helped jump-start the campaign to pass the "three-strikes-and-you're-out" ballot initiative that would send someone convicted of a third felony to prison for life.

Chief Eastman doubts that a consensus will be "real clear" by the end of the event. But, he said, later discussions could "lead to a synthesis of the good ideas that came out."

By releasing his legislative

crime package now, Wilson helps set the agenda.

"The governor rolled out his crime package Friday because these are some of the areas he thinks need action," said Kevin Eckery, a spokesman for the governor. "But he's also aware other people have other ideas."

Among Wilson's other heavy-on-punishment, light-on-prevention proposals are:

- Allow 14- and 15-year-olds to be tried as adults for all violent crimes and, if convicted, be sent to prison instead of the California Youth Authority.

- Make robbery or burglary of an inhabited home a violent felony, adding three years to the current sentence.

- Punish felony child abuse that leads to death as first-degree murder.

"Our best line of defense  
WILSON: Page A18 Col. 1

THE STATE  
OF BILL CLINTON

# TIME

## LOCK 'EM UP

### AND THROW AWAY THE KEY

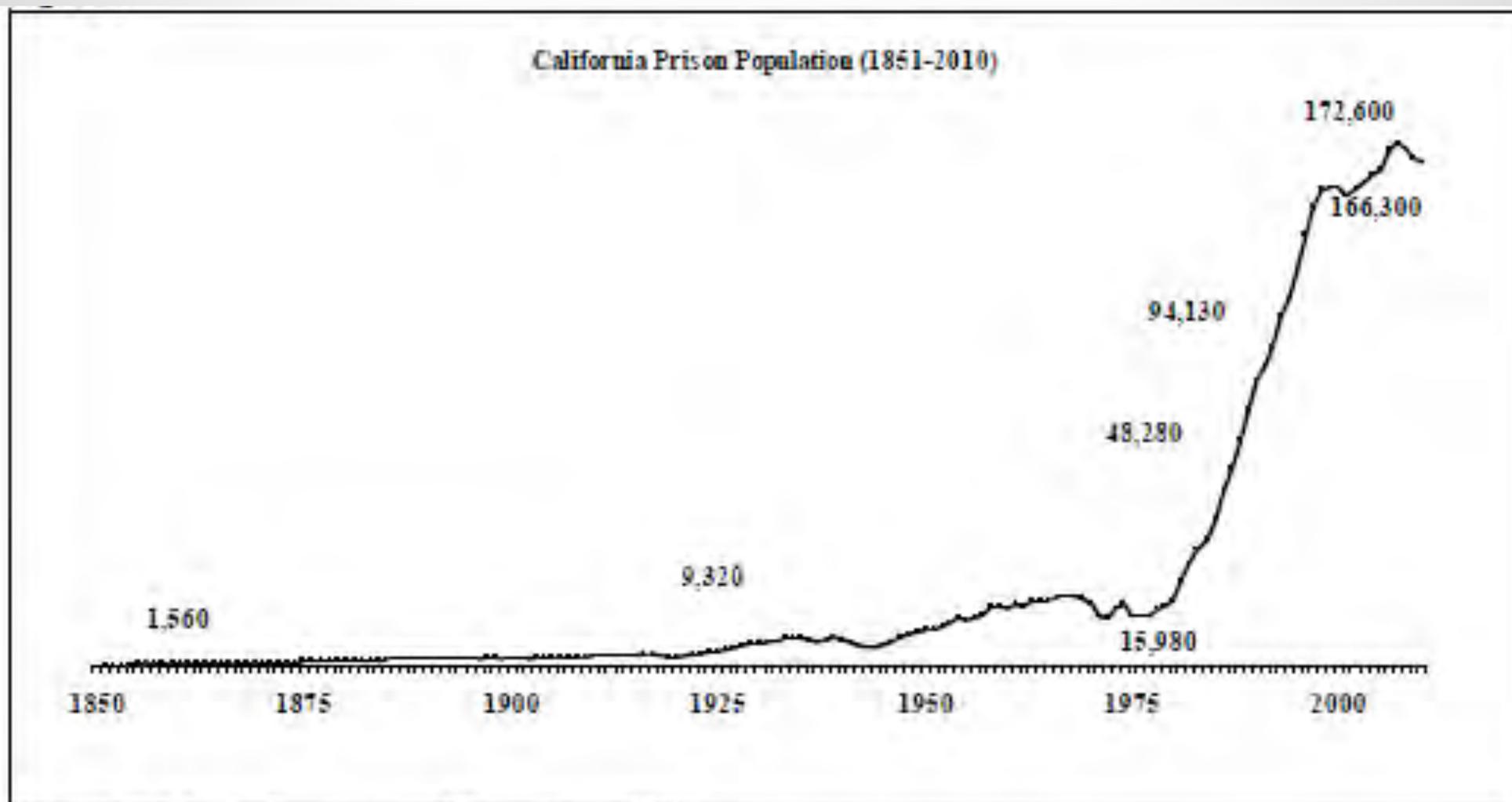
Outrage over crime has America talking tough



88180 JUL\*\*\*\*\*CARR-RT-SORT\*\*CR04  
#95040ELVHS223JPSK3 TS CA104E\*\* MAR94  
JOHN LEVINE 8034  
80888  
323 WASHBURH POC087  
MTR&CRUZ CA 95040-2915

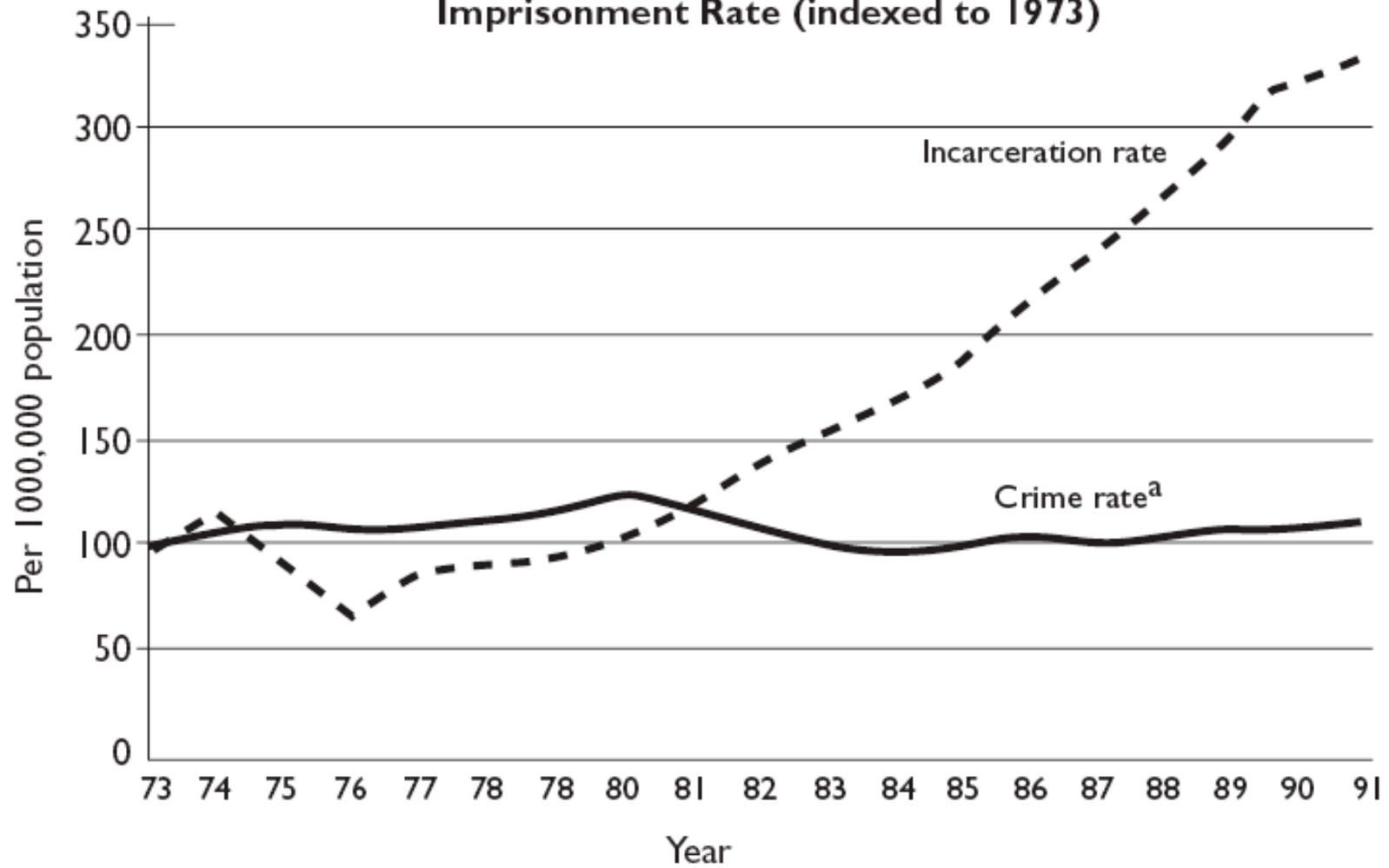
*February 7, 1994*

California Prison Population (1851-2010)



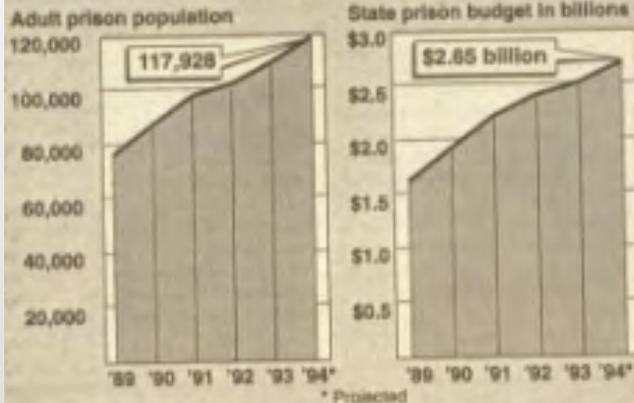
Source: California Department of Corrections (2010)

**Figure 3.4: California's Crime Rate Versus Imprisonment Rate (indexed to 1973)**



Source: Joan Petersilia, *The Prison Journal* (1993)

### California's growing prison system



Sources: Commission on State Finance, California Department of Corrections

CAFL NEUBURGER — MERCURY NEWS

# Construction of prisons is booming

■ Since 1990, 10 new prisons have been opened or started, and in the past decade the inmate population has grown from 40,000 to 120,000.

By DAN BERNSTEIN  
Mercury News Service

SACRAMENTO — Despite the

in 1984-'85.

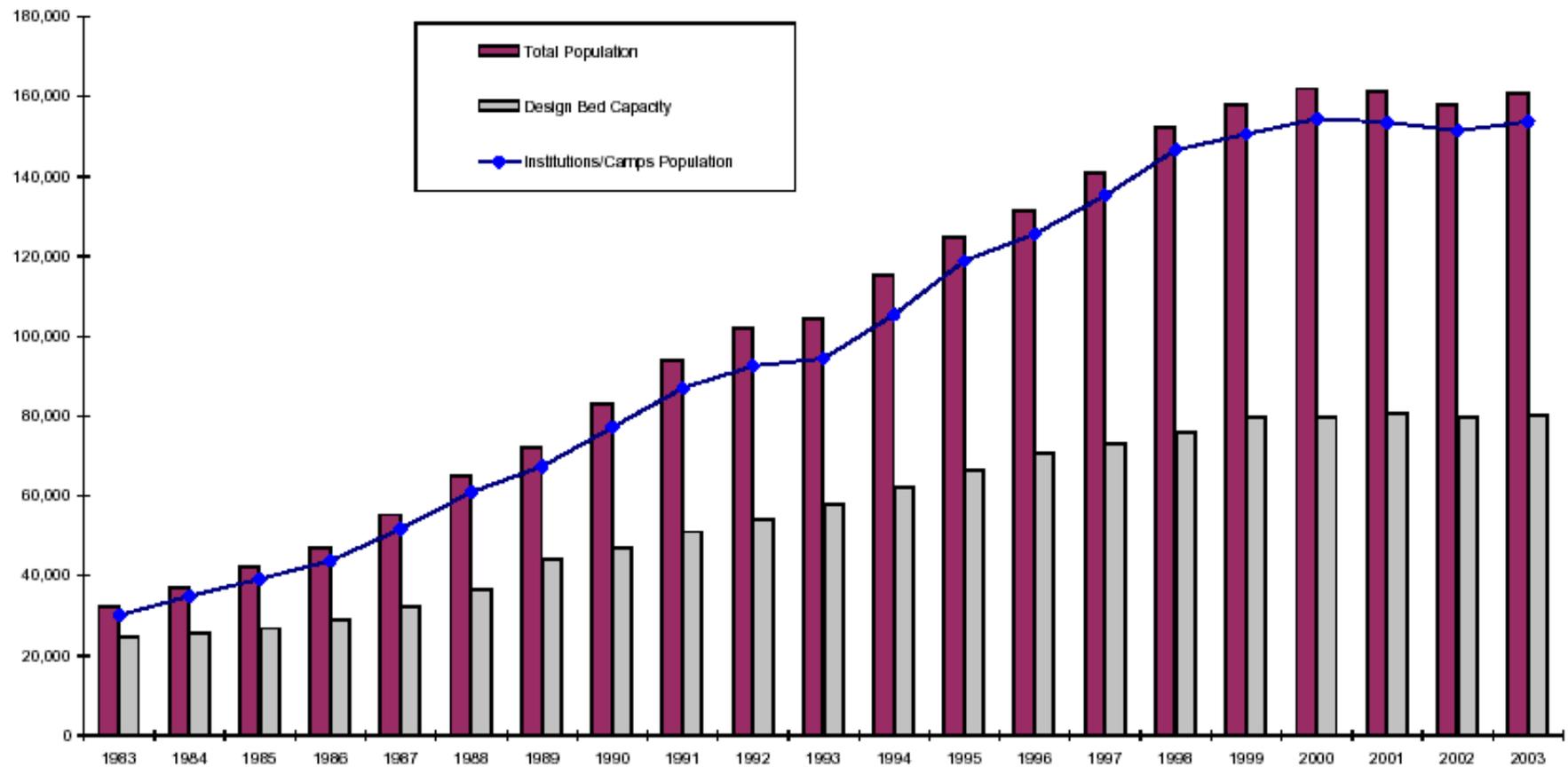
The Republican governor also has proposed issuing \$2 billion in bonds to build six new prisons over the next few years. If those bonds were approved by the Legislature and the voters, the cost to taxpayers for paying off prison bonds would rise from \$520 million per year to \$800 million.

While the state's prison budget has risen dramatically in recent years, the general fund budget for the state's four-year college has dropped 13.5 percent since 1990-'91 — from \$3.79 billion to \$3.28 billion. The cuts have resulted in a sharp increase in student fees along with reduce

*February, 1994*

FIGURE 10

INSTITUTION AND CAMP DESIGN BED CAPACITY AND POPULATION  
JUNE 30, 1983 - JUNE 30, 2003

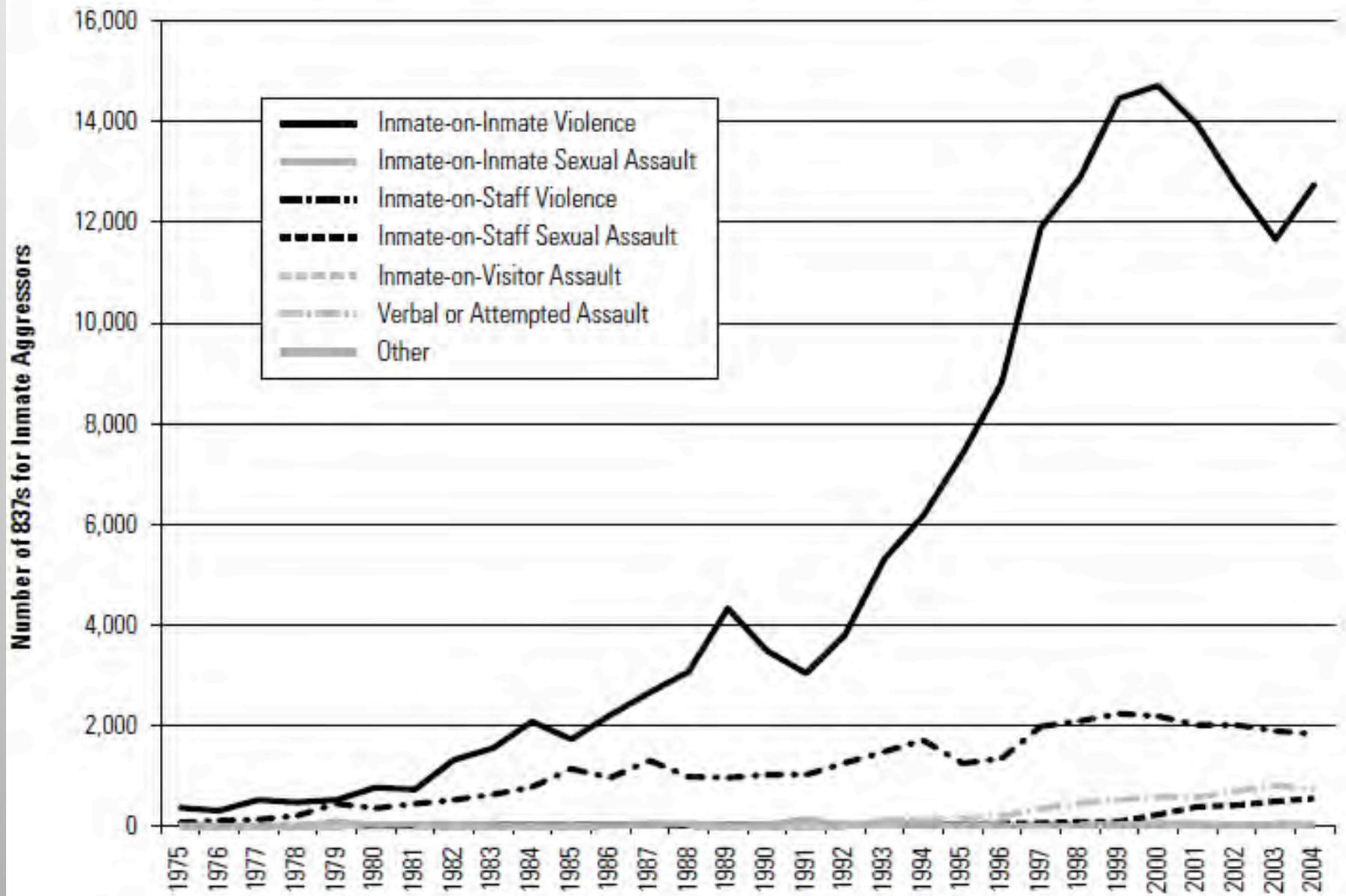




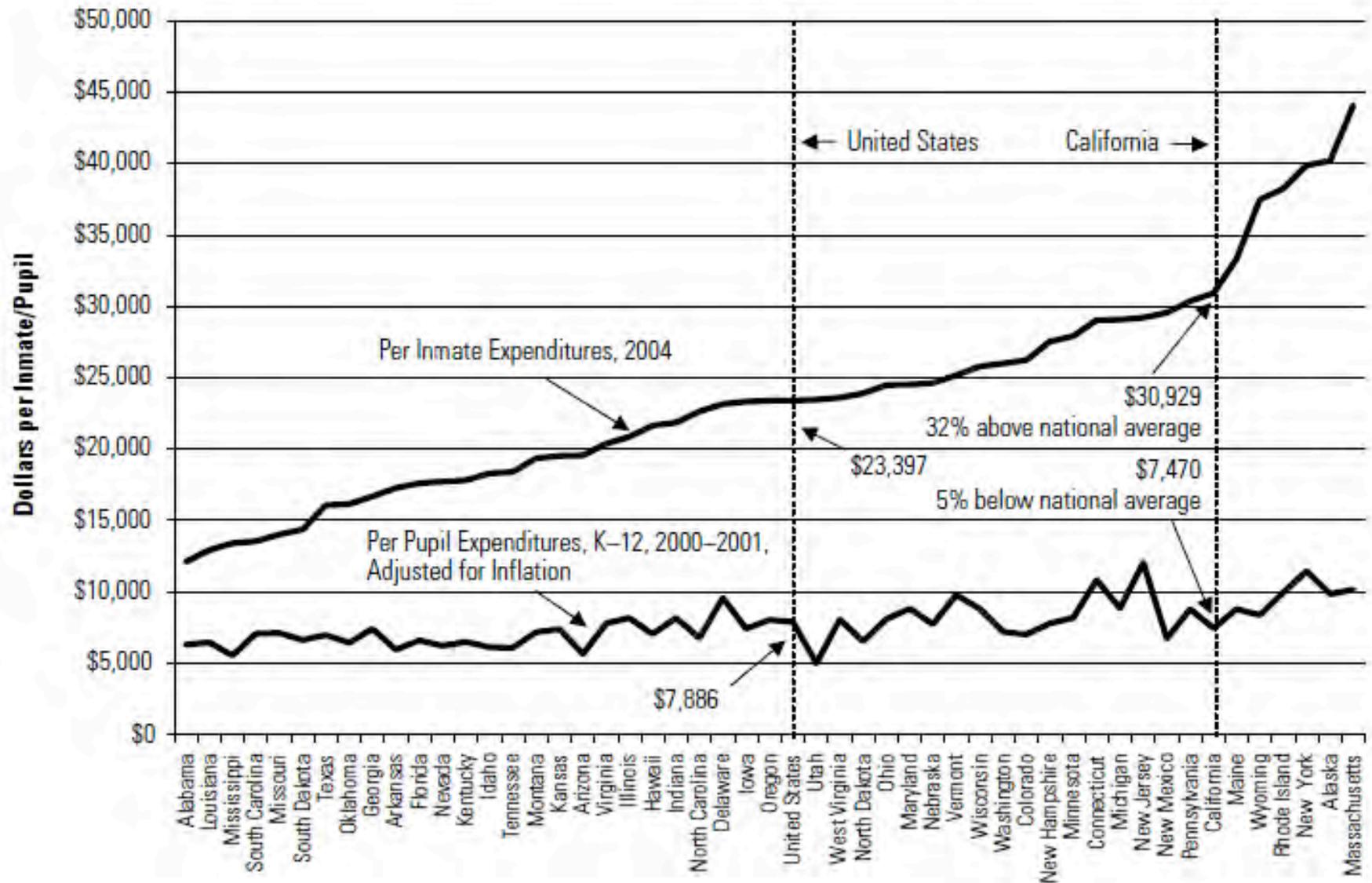




## Crime/Incident Reports (837s) for Inmates in California Adult Prisons, 1975–2004



### Comparison of Expenditures for Prisons vs. Education, K-12, 2004



**State General Funds  
UC/CSU vs. Corrections**

UNIVERSITY of CALIFORNIA



Sources: CPEC Fiscal Profiles, 2008. Displays 1 and 21;  
Department of Finance budget documents.

■ UC/CSU  
■ Corrections

# Prisons' budget to trump colleges'

No other big state spends as much to incarcerate compared with higher education funding

*By James Sterngold*  
CHRONICLE STAFF WRITER

As the costs for fixing the state's troubled corrections system rocket higher, California is headed for a dubious milestone — for the first time the state will spend more on incarcerating inmates than on educating students in its public universities.

Based on current spending trends, California's prison budget will overtake spending on the state's universities in five years. No other big state in the country spends close to as much on its prisons compared with universities.

But California has all but guaranteed that prisons will eat up an increasingly large share of taxpayer money because of chronic failures in a system that the state is now planning to expand.

***S.F. Chronicle,***  
**May 21, 2007**

## State Prison Releases and Recidivism Rates

	Releases 1999–2002	Recidivism	Releases 2004–2007	Recidivism
California	126,456	61.1%	118,189	57.8%

**For 1999-2002, California had the *second worst* recidivism rate in the nation, behind only Utah.**

**For 2004-2007, California had the *second worst* recidivism rate in the nation, behind only Minnesota.**

**From *State of Recidivism: The Revolving Door of America's Prisons*.  
Pew Center on the States (2011).**

*Table 1: Number of Program and-or Job Assignments for 2006 Releases*

<b># of Assignments</b>	<b>% of Offenders</b>
0	49.3
1	21.5
2	16.3
3	8.2
4	3.5
5+	1.1
<i>Source: CDCR</i>	

The resulting prison-building boom, and rapacious bargaining by the prison-guards union, meant that state penitentiaries became the fastest-growing major cost in the state budget. California's 33 prisons and associated camps therefore bear no small responsibility for the state's recurring budget crises, and the resultant crunch on school and university funding.

**The  
Economist**

**May 19, 2012**

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

**SUPREME COURT OF THE UNITED STATES**

Syllabus

**BROWN, GOVERNOR OF CALIFORNIA, ET AL. v.  
PLATA ET AL.**

**APPEAL FROM THE UNITED STATES DISTRICT COURTS FOR  
THE EASTERN AND NORTHERN DISTRICTS OF CALIFORNIA**

No. 09–1233. Argued November 30, 2010—Decided May 23, 2011

***“Perhaps the most radical  
[order] issued by a court in our  
Nation’s history...”***

***—Justice Scalia, Brown v. Plata/Coleman  
(dissenting).***

## Combined State Prison and County Jail Population



Lofstrom & Raphael (2016)

# Prison

California's Total Prison Population, January 2010–August 2015



Notes. California Department of Corrections and Rehabilitation, Monthly Population Report, January 2010–August 2015. Total prison population as of the last day of the month.

# Jail

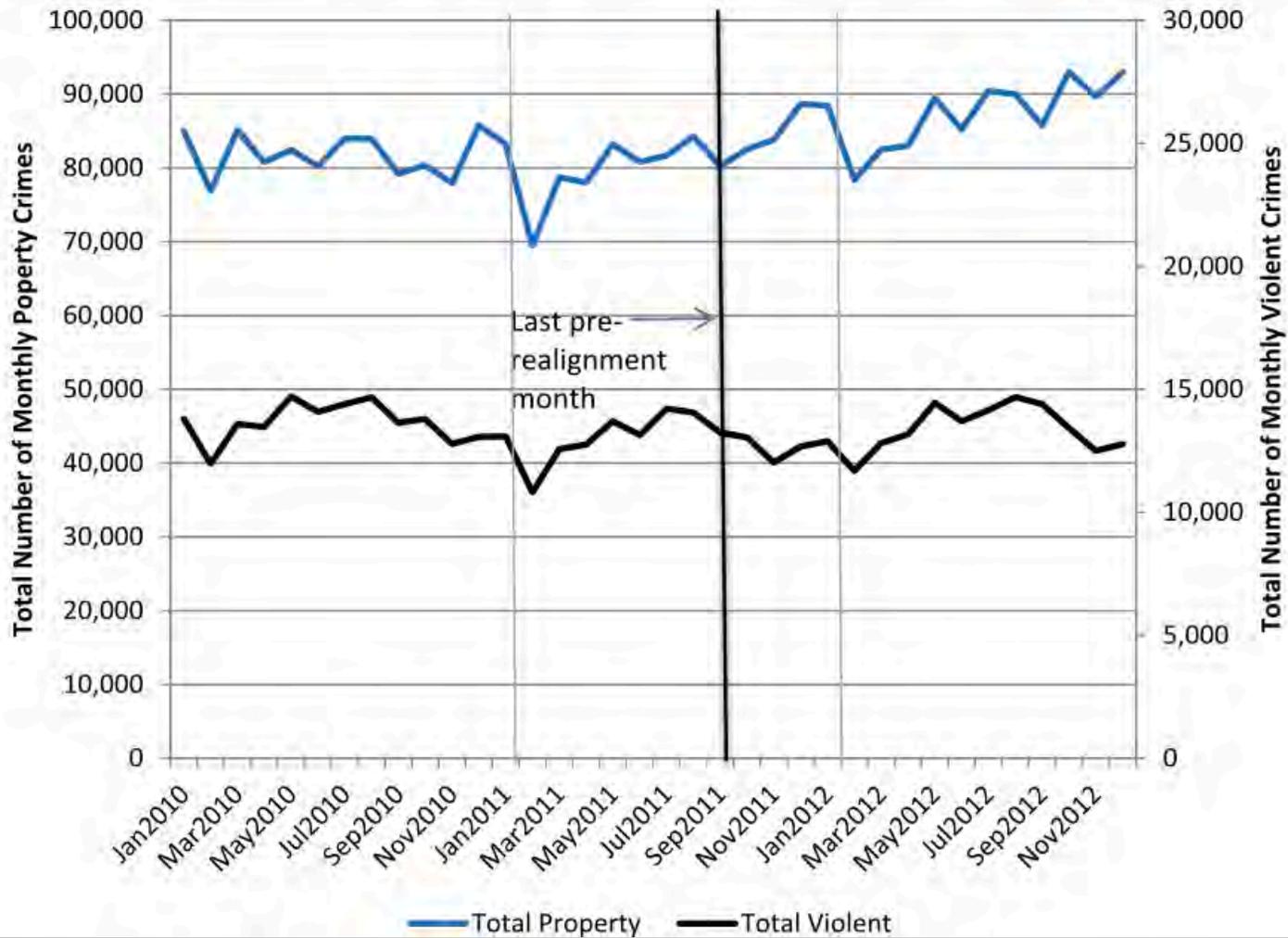
California's Average Daily Jail Population, January 2010–December 2014



Note. Board of State and Community Corrections, Monthly Jail Profile Survey January 2010–December 2014.

Lofstrom & Raphael (2016)

**Total Monthly Violent and Property Crimes in California, January 2010 through December 2012**



***The “most radical” order (Plata)  
and two grand experiments  
(Realignment & Prop 47) are  
working...***

***And, yet, very serious problems  
remain...***

***A prison system operating at  
137.5% of capacity***

***over a long period of time***

***is still a very dangerous,  
degrading, damaging system...***

## Many prisoners still live in overcrowded prisons

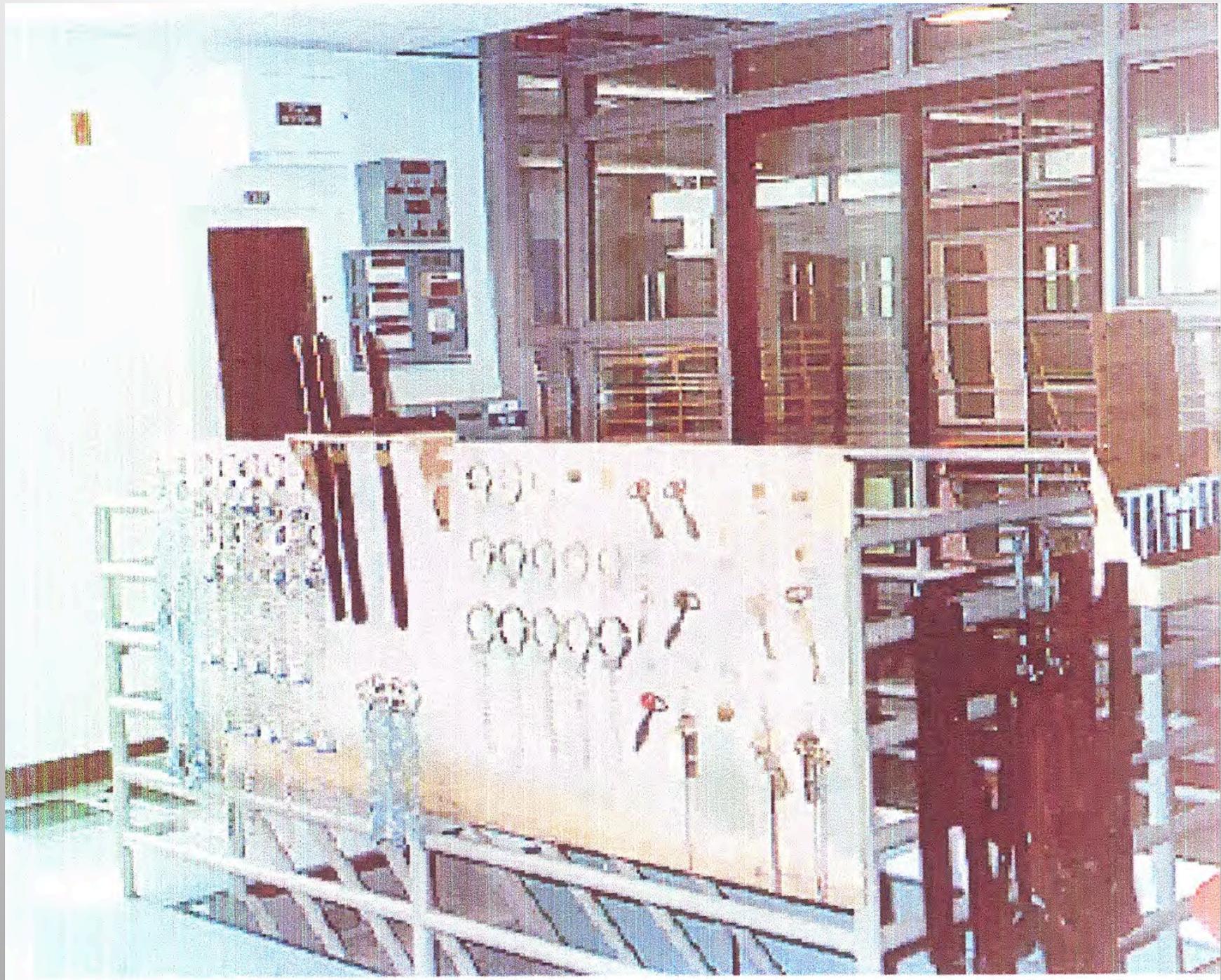


SOURCE: California Department of Corrections Monthly Population Reports.

NOTES: Inmates housed at the California Health Care Facility and women housed at Folsom State Prison are represented in 2018, but not in 2011 because neither facility was operational then. The Supreme Court mandated target applies systemwide, not to individual prisons.

**Public Policy Institute of California, July 2019**



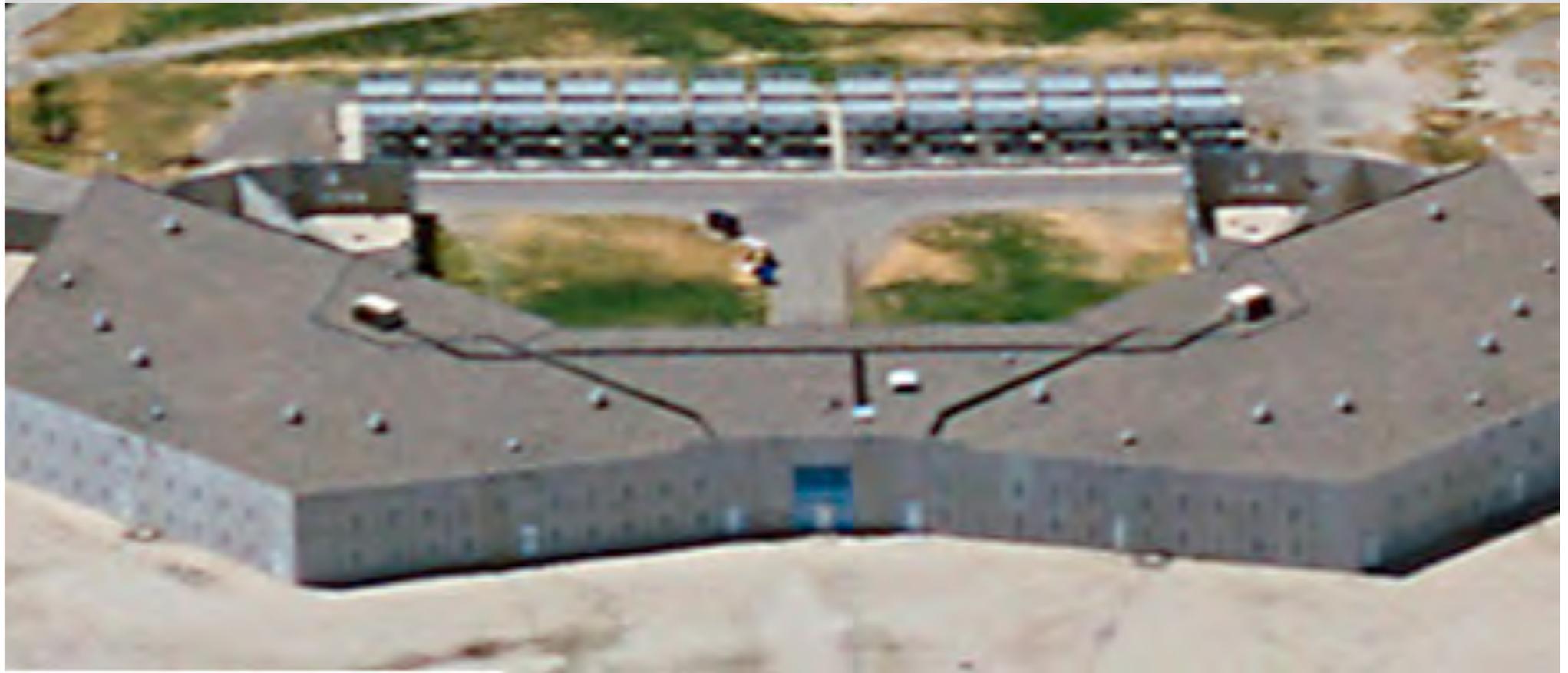


















***The CDCR has become the  
default placement for the state's  
mentally ill residents...***

# Prisons Replace Hospitals for the Nation's Mentally Ill

By FOX BUTTERFIELD

LOS ANGELES — Michael H. had not had a shave or haircut in months when he was found one recent morning sleeping on the floor of St. Paul's Episcopal Church in suburban Lancaster, next to empty cans of tuna and soup from the church pantry.

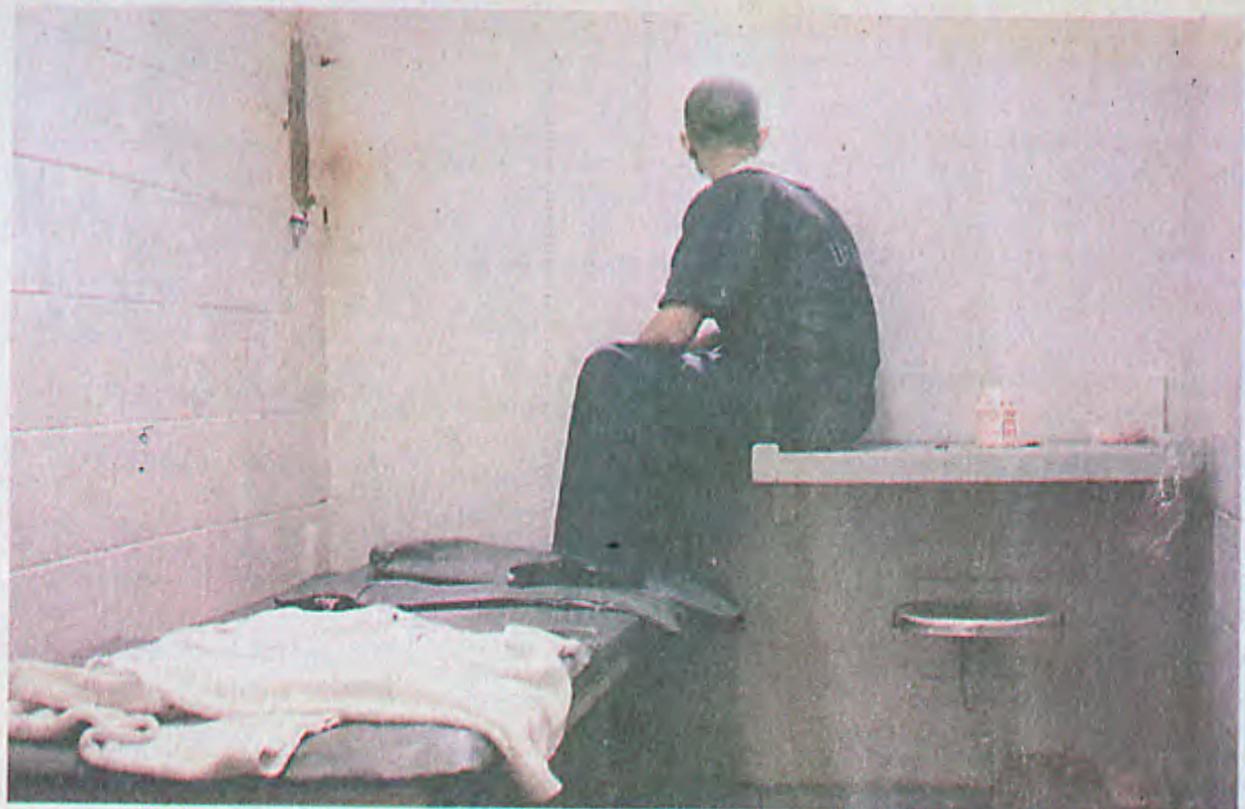
There was little to suggest that he had once been a prosperous college graduate with a wife and two children — until he developed schizophrenia, lost his job and, without insurance, could no longer afford the drugs needed to control his mental illness.

Charged with illegal entry and burglary, Michael H. was taken to the Los Angeles County Jail. The jail, by default, is the nation's largest mental institution. On an average day, it holds 1,500 to 1,700 inmates who are severely mentally ill, most of them detained on minor charges, essentially for being public nuisances.

The situation in the jail, scathingly criticized as unconstitutional by the United States Justice Department last fall, is the most visible evidence that jails and prisons have become the nation's new mental hospitals.

On any day, almost 200,000 people behind bars — more than 1 in 10 of the total — are known to suffer from schizophrenia, manic depression or major depression, the three most severe mental illnesses. The rate is four times that in the general population. And there is evidence, particularly with juveniles, that the numbers in jail are growing.

Some of these people have committed serious, violent crimes. But



Monica Almeida/The New York Times

The new Twin Towers jail in Los Angeles has an area for mentally ill inmates, but offers little treatment.

## ASYLUMS BEHIND BARS

A special report.

case on the condition that he not be identified: homeless people charged with minor crimes that are byproducts of their illnesses. Others are picked up with no charges at all, in what the police call mercy arrests, simply for acting strange.

The mentally ill at risk of being jailed include adults like Helen

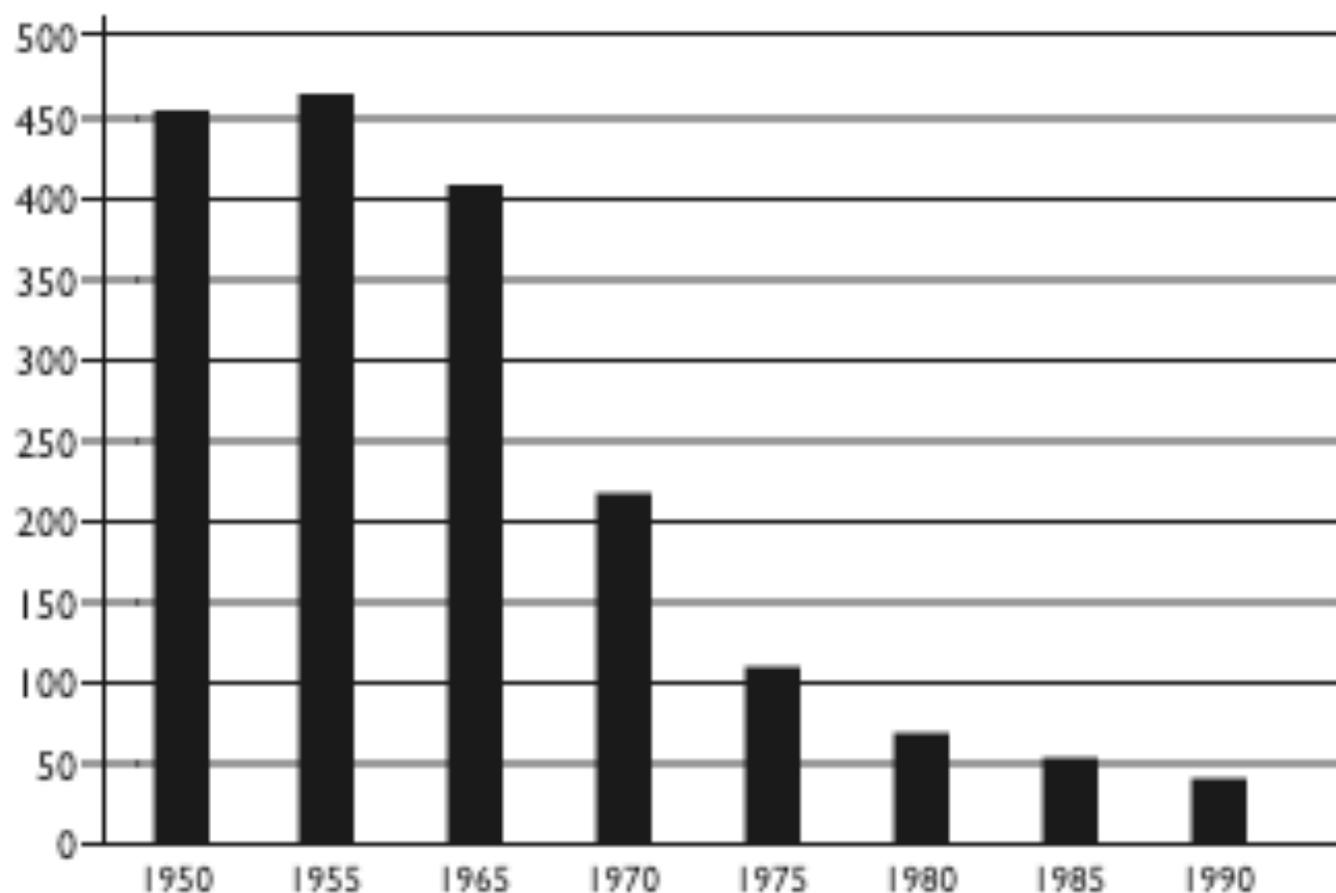
takenly charged with drunken driving and held for a week before a psychiatrist saw her. They include teen-agers like Jason E., a manic-depressive whose violence gives his father the choice of having him jailed or endangering his family.

"Part of mental illness in America now is that you are going to get arrested," said Laurie M. Flynn, executive director of the National Alliance for the Mentally Ill, an advocacy group of relatives and friends of people with mental disorders.

zation of the mentally ill has grown as an issue as the nation's inmate population has exploded and as corrections officials and families of the emotionally disturbed have become alarmed by the problems posed by having the mentally ill behind bars.

The trend began in the 1960's, with the mass closings of public mental hospitals. At the time, new antipsychotic drugs made medicating patients in the community seem a humane alternative to long-term

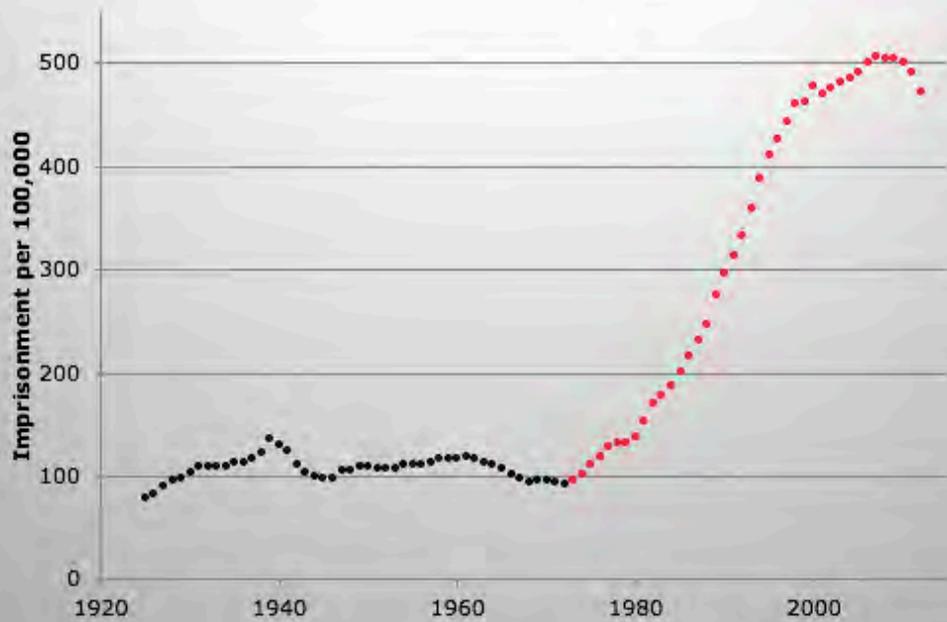
**Figure 8.1: Decline in Hospitalized Mental Patients**



Hospitalized mental patients per 100,000 U.S. residents age fifteen and over.

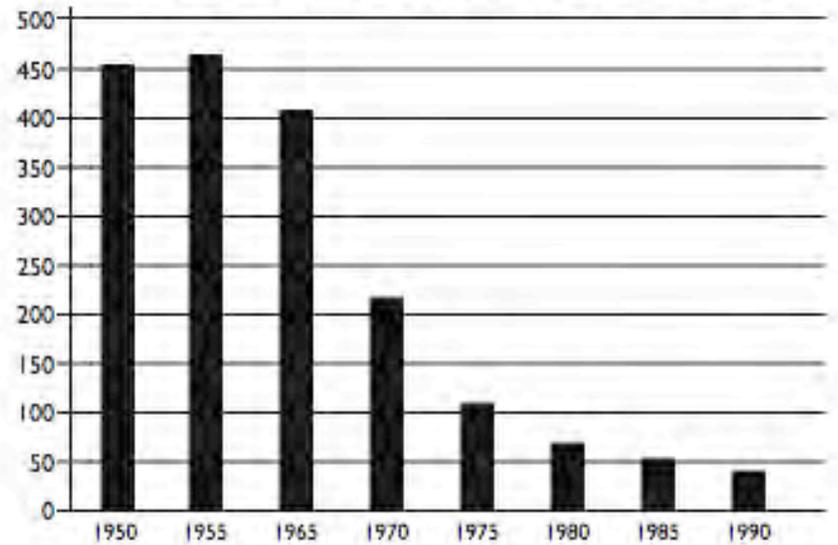
Source: D. Mechanic & D. Rochefort, *Deinstitutionalization: An Appraisal of Reform*.  
*Annual Review of Sociology*, 16, 301-327 (1990)

### U.S. Incarceration Rate, 1925-2012



Note: Incarceration rate is state and federal prison population per 100,000.

### Figure 8.1: Decline in Hospitalized Mental Patients



Hospitalized mental patients per 100,000 U.S. residents age fifteen and over.

Source: D. Mechanic & D. Rochefort, *Deinstitutionalization: An Appraisal of Reform*. *Annual Review of Sociology*, 16, 301-327 (1990)

In 2012, there were **10 times** as many mentally ill persons in prisons and jails than in state hospitals.



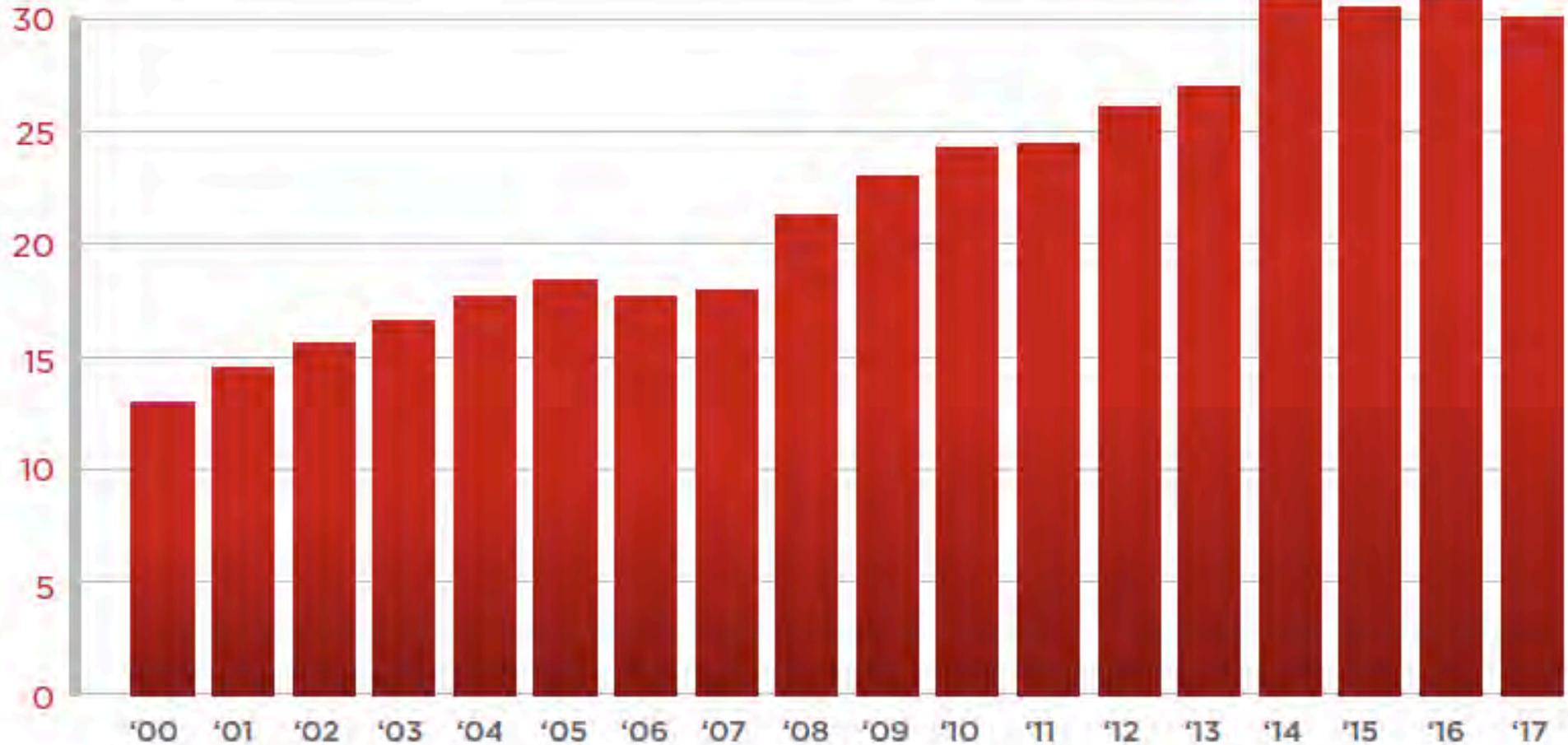
Hospitals:  
**35,000**  
mentally ill patients

Prisons and jails:  
**356,000**  
mentally ill inmates



# *California's Increasingly Mentally Ill Prison Population*

Percent of State Prison Population Receiving Mental Health Treatment, 2000-2016<sup>1</sup>



*Stanford Justice Advocacy Project*

# *Especially at higher levels of acuity*

**Increase of Prisoners in Enhanced Outpatient (EOP) Care, 2012-2016<sup>16</sup>**



***Mental health care is not only  
difficult to deliver in prison***

***But far more expensive than in the  
community***

CDCR Mental Health  
Crisis Bed

\$345K

**CDCR Crisis Bed**

***Relative Costs of  
Providing Mental  
Health Care***

*Relative Costs of  
Providing Mental  
Health Care*



**CDCR Crisis Bed**

**State Hospital**

*Relative Costs of  
Providing Mental  
Health Care*

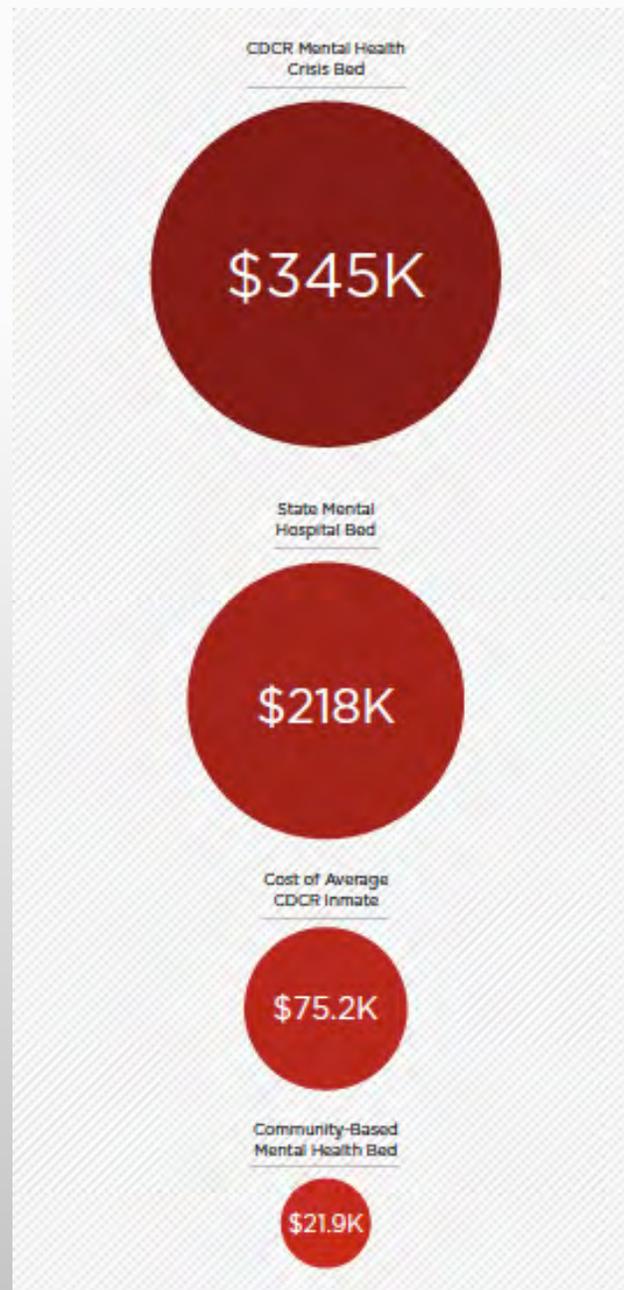


**CDCR Crisis Bed**

**State Hospital**

**Average CDCR  
Inmate**

*Relative Costs of  
Providing Mental  
Health Care*



**CDCR Crisis Bed**

**State Hospital**

**Average CDCR  
Inmate**

**Community-Based  
Mental Health Bed**

# Relative Costs of Providing Mental Health Care

CDCR Mental Health Crisis Bed

\$345K

State Mental Hospital Bed

\$218K

Cost of Average CDCR Inmate

\$75.2K

Community-Based Mental Health Bed

\$21.9K

Marginal Cost of Parolee Supervision w/Mental Health Treatment

\$7.9K

**CDCR Crisis Bed**

**State Hospital**

**Average CDCR Inmate**

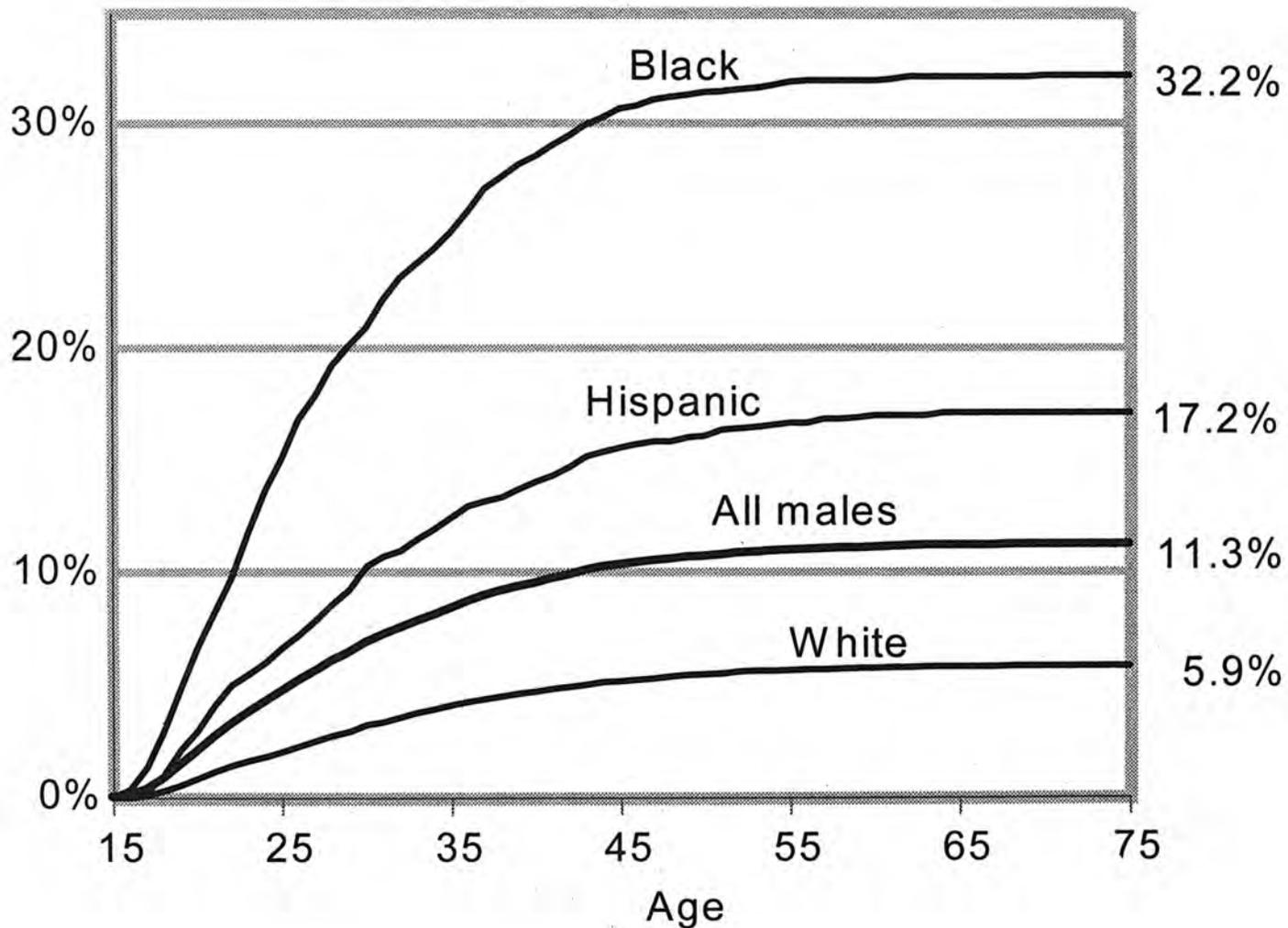
**Community-Based Mental Health Bed**

**Parole+MH Tx =  
\$7,9000**

***The California criminal justice system continues to be plagued by extreme racial disparities***

## Nearly 1 in 3 black males likely to go to prison based on constant 2001 incarceration rates

Cumulative percent of males going to prison



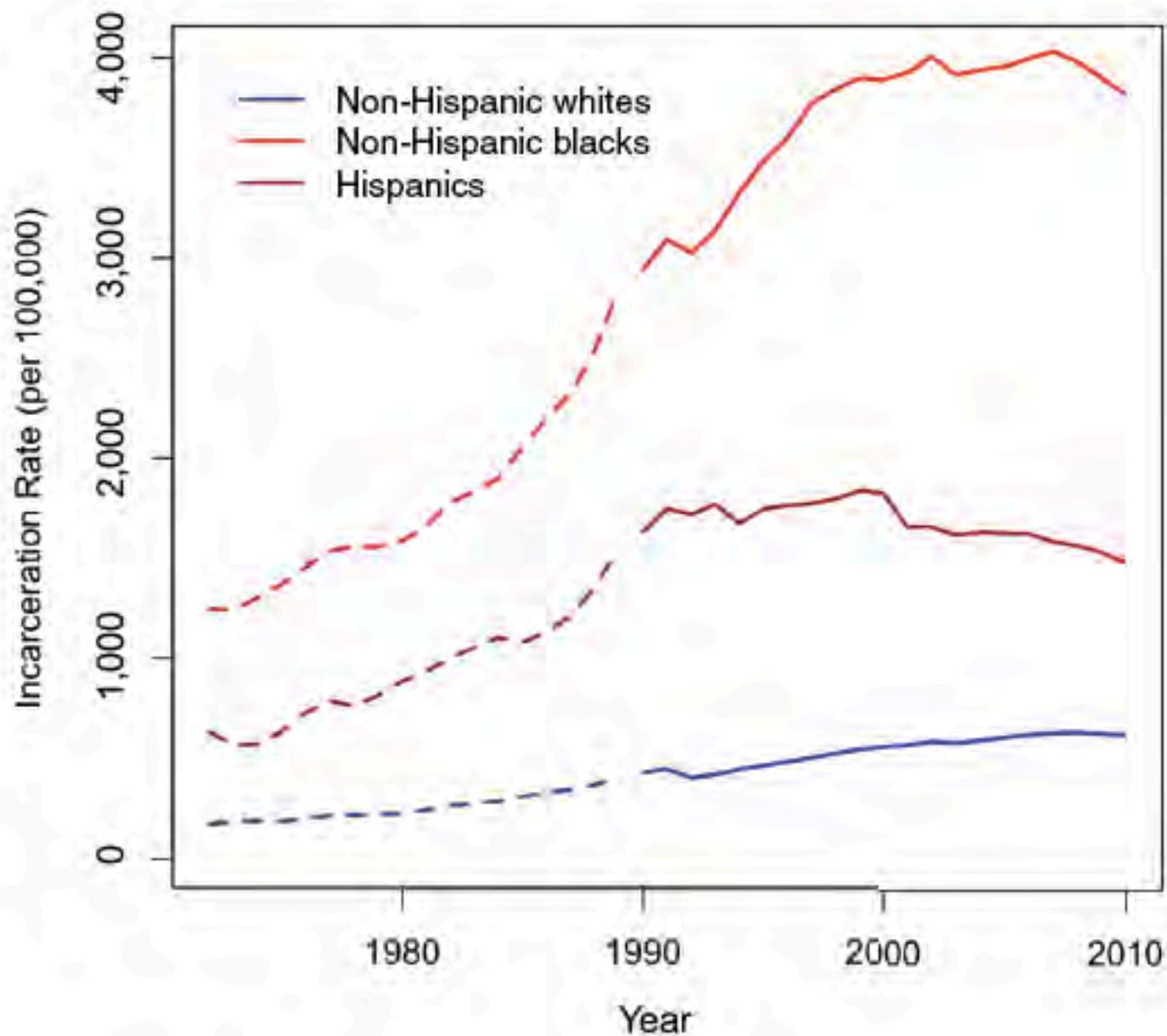


FIGURE 2-14 Prison and jail incarceration rates per 100,000 population for non-Hispanic whites, non-Hispanic blacks, and Hispanics, aged 18 to 64, 1972 to 2010.

▶ **African Americans remain overrepresented in California's prison population.**

In 2017, the year of most recent data, 28.5% of the state's male prisoners were African American—compared to just 5.6% of the state's adult male residents. The imprisonment rate for African American men is 4,236 per 100,000 people—ten times the imprisonment rate for white men, which is 422 per 100,000. For Latino men, the imprisonment rate is 1,016 per 100,000; for men of other races it is 314. 

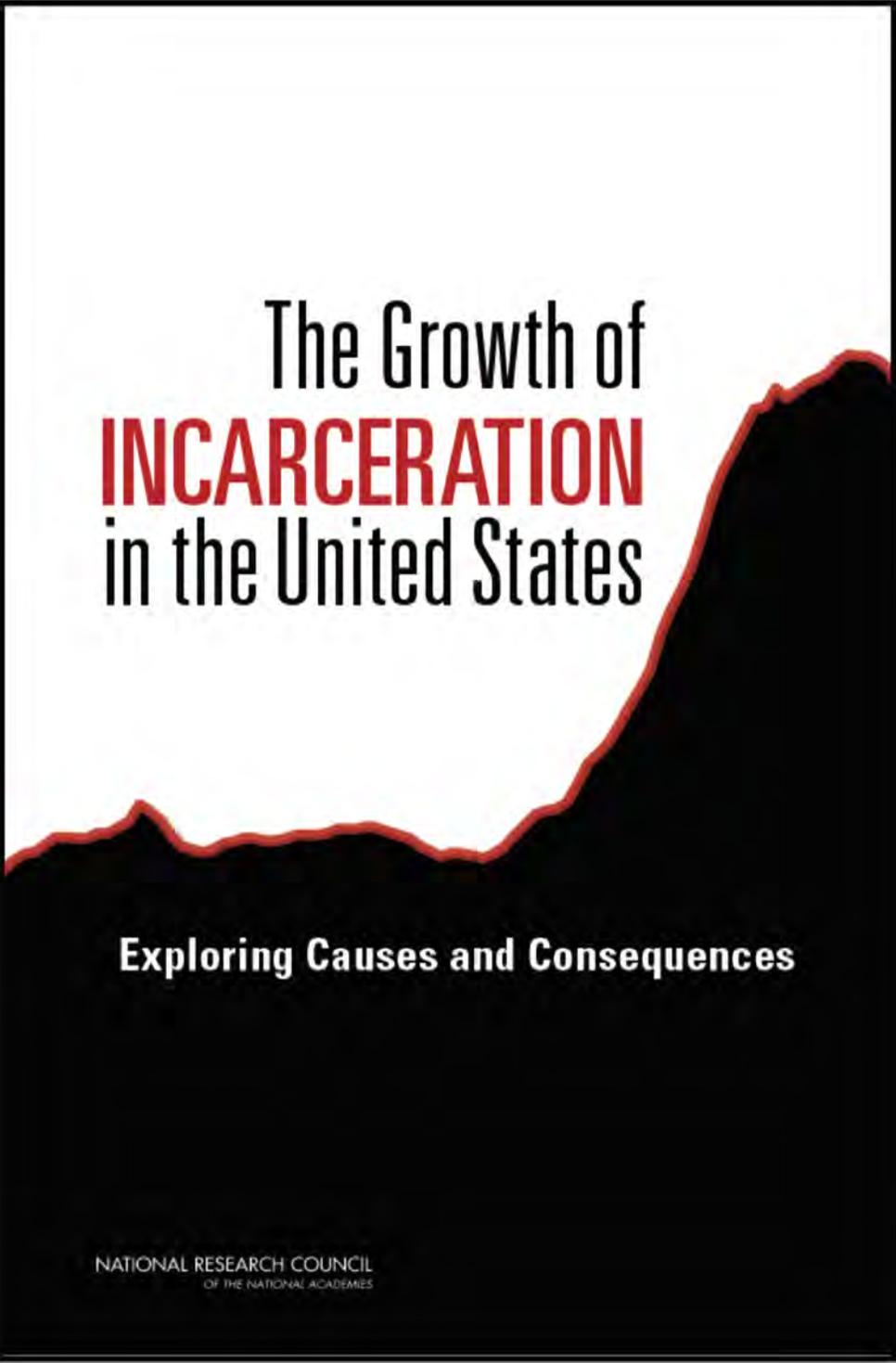
***California's legacy of  
overincarceration has ensured that***

***re-entry and community corrections  
remain works in progress.***

***Yet prison systems cannot be  
improved independent of the society  
around them...***

***“It is one thing to urge prison downsizing, but such pronouncements will be hugely counterproductive if policymakers act without giving serious thought to how communities deal with all the offenders how are released...”***

***—Joan Petersilia, “California Prison Downsizing”  
(2014).***



The Growth of  
**INCARCERATION**  
in the United States

**Exploring Causes and Consequences**

NATIONAL RESEARCH COUNCIL  
OF THE NATIONAL ACADEMIES

## The Prison in Society: Values and Principles

**CONCLUSION:** In the domain of justice, empirical evidence by itself cannot point the way to policy, yet an explicit and transparent expression of normative principles has been notably missing as U.S. incarceration rates dramatically rose over the last four decades. Normative principles have deep roots in jurisprudence and theories of governance and are needed to supplement empirical evidence to guide future policy and research.

# **NAS Report Went From Evidence to Policy: Guiding Principles**

**To draw implications from the empirical research we elaborated four principles of jurisprudence and good governance:**

- **Parsimony: Punishment should not exceed the minimum needed to achieve its legitimate purpose**

• **Proportionality: Sentences should be proportionate to the seriousness of the crime**

- **Citizenship: The conditions and consequences of imprisonment should not be so severe or lasting as to violate one's fundamental status as a member of society**

• **Social Justice**: As public institutions in a democracy, prisons should promote, not undermine, the general well-being of all members of society