



# ENDING THE ERA OF **MASS** **INCARCERATION**

How the Power of 501(c)(4) Spending  
Propelled California's Proposition 47

By Shelley Whelpton and Loren McArthur

## What Proposition 47 Does

Many people who commit petty crimes are driven to do so by addiction, mental illness, or poverty, and their incarceration typically lessens rather than improves public safety. As such, Proposition 47 reduces incarceration for such crimes and redirects the resources saved into prevention and rehabilitation programs. The measure reclassifies six categories of nonviolent drug and property crimes from felonies to misdemeanors, and directs the savings, estimated at \$500 million to \$750 million over the next five years, to schools, victim services, and mental health and drug treatment. Importantly, Proposition 47 also allows as many as one million Californians previously convicted of these non-serious offenses to remove felonies from their old criminal records, thereby eliminating significant barriers to employment and economic security, especially in low-income communities of color where rates of incarceration and felony convictions are disproportionately high.

**California's passage of Proposition 47**, the Safe Neighborhoods and Schools Act, brought sweeping sentencing reforms for people convicted of nonviolent offenses and stands as a groundbreaking victory in the movement to end mass incarceration. Financed primarily through funding for 501(c)(4) organizations, the campaign for Proposition 47 demonstrates the power of 501(c)(4) efforts to drive transformative policy change. Proposition 47 achieved what years of advocacy by 501(c)(3) organizations alone could not: an end to felony sentences for people convicted of low-level offenses in California and a resounding rejection of the tough-on-crime approach to public safety marked by excessive prison spending and over-incarceration.

This case study tells the story of Proposition 47's passage in 2014, and highlights these important lessons for funders:

- **Funding for 501(c)(4) activities can be a crucial driver and accelerator of policy change, especially when political interests opposed to reforms have significant influence in the legislative process.** As the case study will show, in California, 501(c)(3) resources alone were inadequate for achieving bold sentencing reforms, while 501(c)(4) investments enabled advocates to neutralize opponents' influence with lawmakers by bringing reforms directly to the public.
- **501(c)(4) initiatives need not be partisan.** 501(c)(4) initiatives are often associated with partisan political activity, such as endorsing candidates for office. However, funders that eschew partisan activities should consider the potential impact of and crucial need for 501(c)(4) investments in nonpartisan activities such as lobbying and ballot initiatives. Proposition 47, which received support from across the political spectrum, shows that 501(c)(4) campaigns can have a huge impact while attracting bipartisan support and resources.
- **501(c)(4) funding, if deployed thoughtfully and strategically, can engage underrepresented communities in the political process and alter the dynamics of power.** During the campaign for Proposition 47, funders invested significant

resources in direct voter contact, mobilizing Californians who are more likely than others to be impacted by over-incarceration and crime but less likely to have a voice in public policy, including infrequent voters in low-income communities of color and formerly incarcerated people.

- **501(c)(3) activities can complement 501(c)(4) initiatives.** While funding for 501(c)(4) organizations was essential to passing Proposition 47, many 501(c)(3) organizations helped pave the way for sentencing reform through years of work to educate the public about the high costs of incarceration and alternative approaches to public safety. Funders that are constrained in their ability to support 501(c)(4) organizations, such as private foundations, have a range of options for supporting 501(c)(3) organizations engaged in complementary work that is purely charitable.
- **Big, well-placed bets on advocacy campaigns can pay huge dividends.** In the case of Proposition 47, funders and major donors made \$10 million in 501(c)(4) investments that could yield hundreds of millions of dollars or more annually in new resources for mental health, education, and prevention programs. Beyond these financial benefits, the measure will have a tremendous impact on communities of color that have been disproportionately impacted by the policies of mass incarceration and their collateral consequences.

## The Costs of Incarceration

22

NUMBER OF NEW PRISONS CALIFORNIA HAS CONSTRUCTED IN THE LAST 30 YEARS, COMPARED TO ONLY ONE PUBLIC UNIVERSITY

1500%

AMOUNT BY WHICH PRISON SPENDING HAS INCREASED SINCE 1981

\$62,396

AMOUNT THE STATE SPENDS PER PRISONER EACH YEAR, COMPARED TO JUST OVER \$9,000 PER K-12 STUDENT

15

NUMBER OF KIDS WHO COULD ATTEND PRESCHOOL FOR THE PRICE OF INCARCERATING ONE OFFENDER IN CALIFORNIA

SOURCE: Californians for Safety and Justice

## THE TOUGH-ON-CRIME MOVEMENT AND THE CONSEQUENCES OF MASS INCARCERATION IN CALIFORNIA

Not so long ago, California led the nation in getting tough on crime. Starting in the 1980s, the state's legislature passed hundreds of mandatory-sentencing laws for felonies, and voters enacted the strictest "three strikes and you're out" measure in the country. The number of people in prison skyrocketed, but not because of any uptick in crime rates. In fact, crime rates have dropped precipitously over the last 35 years—a trend many experts attribute to the aging of the population rather than to tough-on-crime policies.<sup>i</sup> At the same time, the prison population has quintupled.

Today, California's three-year recidivism rate is 61 percent, a strong indication that incarceration fails to effectively stop the cycle of crime.

As noted by former Speaker of the House Newt Gingrich and conservative California businessman B. Wayne Hughes, Jr., a major donor to the ballot campaign, "it makes no sense to send non-serious, nonviolent offenders to a place filled with hardened criminals and a poor record of rehabilitation—and still expect them to come out better than they went in."<sup>ii</sup>

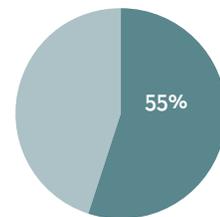
Simply put: California's tough-on-crime policies have led to over-incarceration, which has necessitated massive increases in spending on prisons, exacerbated the state's fiscal challenges, and crowded out investments in schools and other important social programs. To make matters worse, over-incarceration disproportionately impacts communities of color and is a significant driver of racial inequality. Those convicted of felony offenses—primarily African Americans and Latinos—suffer profound, long-term collateral consequences, including lost rights and legalized discrimination in employment, housing, and access to public benefits.

In 2011, prison overcrowding in California had become so severe that the US Supreme Court ruled that inmates' health and safety had been compromised and ordered the state to reduce its prison population. In response to the ruling, the

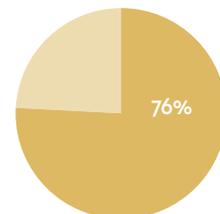
governor and legislature enacted Public Safety Realignment, a policy to shift incarceration from state prisons to county jails for numerous offenses. However, the state's prison population did not drop enough to meet federal court requirements. The need for further sentencing reform remained.

## Racial Disparities

55% African-American and Latino share of California's overall population



76% African-American and Latino share of the state's prison population



Rates of incarceration per 100,000 people:



SOURCE: Californians for Safety and Justice

## Proposition 47 Opponents Have History of Political Spending

For example, Peace Officers Research Association of California (PORAC) lobbies on behalf of local, state, and federal law enforcement agencies for “tough-on-crime” policies. It alone:

- Has 65,000 members statewide
- Spent \$1.36 million on ballot campaigns from 2003 to 2010
- Made \$1.36 million in political contributions to candidates during the same period
- Spent \$286,000 in opposition to Proposition 47 in 2014

SOURCES: PORAC, Center on Juvenile and Criminal Justice, Ballotpedia



Proposition 47 supporters made direct contact with more than 300,000 voters.

## BUILDING AN INFRASTRUCTURE FOR CRIMINAL JUSTICE REFORM: CALIFORNIANS FOR SAFETY AND JUSTICE

Recognizing the need to advance criminal justice reform in California, funders and advocates formed Californians for Safety and Justice (CSJ) in 2012. CSJ is a 501(c)(3) organization supported with grant funding from the Ford Foundation, Fund for Nonviolence, Open Society Foundations (OSF), Public Welfare Foundation, Rosenberg Foundation, The California Endowment, California Wellness Foundation, and James Irvine Foundation. CSJ’s public education and advocacy efforts—and its work to forge alliances among crime victims, forward-thinking law enforcement leaders, and business, labor, faith, and community leaders—have helped to change the conversation on public safety in California and to build support for new safety priorities focused on prevention and rehabilitation as an alternative to over-incarceration and excessive prison spending. However, like other 501(c)(3) advocacy initiatives in California, efforts to enact bold sentencing reform via the legislature met with limited success.

In 2012, advocates introduced a bill to reduce simple drug possession from a felony to a misdemeanor, a modest sentencing reform that would have alleviated prison crowding, but the bill faced opposition and never made it out of committee. The following year, an even more modest bill to change drug possession from a felony to a wobbler—an offense that prosecutors have discretion to charge as either a felony or a misdemeanor—also failed.

Lack of political support for sentencing reform—a circumstance not unique to California—is partly linked to the substantial political influence wielded by opponents of justice reform. Groups such as the Peace Officers Research Association of California and the Los Angeles Police Protective League have spent millions on campaign contributions and independent expenditures to support scores of elected officials, including many prominent Democrats. Until recently, their influence helped stymie legislative reform efforts.

“When even modest sentencing reductions failed to make it into law, we knew the legislature was out of step with the public,” says Lenore Anderson, executive director of CSJ. “For years

▶ Dozens of celebrities and artists endorsed Proposition 47.



Californians have signaled a desire to reduce prison spending and incarceration, but the tired tough-on-crime rhetoric of the past was alive and well in the state capital.”

#### LAUNCHING A 501(C)(4) STRATEGY FOR REFORM: VOTE SAFE

Advocates decided their best chance was to take sentencing reforms directly to the public. Opinion research had repeatedly indicated that the public would support bolder sentencing reforms than had elected politicians. And while opponents of reform have had enormous influence in the

legislature, advocates believed they could win a ballot campaign by raising enough funds to get their message out.

Advocates and funders founded a new 501(c)(4) organization, Vote Safe; crafted Proposition 47; and established a ballot committee, Californians for Safe Neighborhoods and Schools, to pass the initiative. Influential funders for the ballot campaign included 501(c)(4) funders such as the Atlantic Advocacy Fund and the Open Society Policy Center, as well as B. Wayne Hughes, Jr.

With strong anchor funding from these donors, the Proposition 47 initiative was able to raise



When a mom or dad or kid goes to prison, a grenade goes off and the shrapnel hits everybody, and when enough homes experience this, we lose whole communities, and that's what we have here...This is a situation where the walls of partisanship ought to come down immediately."

—B. WAYNE HUGHES, JR.  
California businessman  
and founder and  
chairman of the board of  
Serving California

\$10 million to carry out a successful campaign that brought unprecedented attention to the need for sentencing reform and inspired justice reformers across the country. Proposition 47 received more social media attention than all other California ballot initiatives combined in the 2014 election, was endorsed by nearly every major newspaper in the state, and received high-profile endorsements from dozens of celebrities and artists, including Jay Z, John Legend, Demi Moore, and Brad Pitt. Notably, Proposition 47 attracted support from across the political spectrum, with supporters ranging from prominent Republicans such as Gingrich and Senator Rand Paul to organized labor, the Los Angeles Chamber of Commerce, and civil rights organizations such as the ACLU. On November 4, 2014, California voters passed Proposition 47 by a 60 to 40 margin.

### THREE SUCCESSFUL STRATEGIES:

Leaders of the campaign cite three strategies as pivotal to the success of Proposition 47:

**1** The campaign appealed to the public's concerns about wasteful spending and offered voters a clear choice: continue to pump hundreds of millions of dollars into prisons to incarcerate people for petty offenses, or redirect resources into schools, prevention, and treatment.

**2** The campaign highlighted the support of law enforcement officials and crime victims to demonstrate the measure's positive impacts on public safety. Campaign leaders included San Francisco District Attorney George Gascón, former San Diego Police Chief Bill Landsdowne, Santa Clara District Attorney Jeff Rosen, and Dionne Wilson, the widow of a police officer killed in the line of duty.

**3** The campaign invested heavily in mobilizing new and infrequent voters in a low-turnout midterm election. It made direct contact with tens of thousands of Latino, African-American, and low-income voters across the state, urging them to support the ballot initiative. Campaign leaders and volunteers organized more than 200 voter-mobilization events and contacted more than 300,000 voters statewide.

### THE CRUCIAL ROLE OF 501(C)(4) FUNDING

501(c)(4) funding was essential to advancing meaningful sentencing reform in California. With few options for advancing such reforms in the legislature, and with a public eager to reduce waste in the justice system, advocates saw the potential to succeed through a ballot initiative. Under federal tax law, work on ballot initiatives is considered lobbying. And the IRS restricts the amount of money 501(c)(3) organizations can spend on lobbying. In contrast, 501(c)(4) organizations can spend unlimited portions of their budgets on lobbying. Because ballot campaigns in California are extremely expensive, the cost of running a successful one dwarfs the limited lobbying budgets of most 501(c)(3) organizations, making the participation of 501(c)(4) organizations critical.

"We raised and spent \$10 million in one year," notes Anderson, who in addition to serving as executive director of CSJ was the architect of the ballot campaign in her role as executive director of Vote Safe. "A ballot campaign requires tremendous resources."

According to Karren Lane of the Community Coalition, which mobilized low-income voters in

## Can private foundations support ballot campaigns?

Under federal tax law, private foundations may not directly support 501(c)(4) organizations' work on ballot campaigns. However, private foundations can support 501(c)(3) organizations, even those engaged in ballot work, either by providing them with general support grants or, under certain circumstances,

earmarking grants for specific projects that include ballot work. Information on the rules governing private foundation support for ballot campaigns is available through the Alliance for Justice at <http://bolderadvocacy.org/tools-for-effective-advocacy/toolkits/ballot-measures/foundations-and-ballot-measures>.



If there were more 501(c)(4) resources to organize a voting base in poor communities and communities of color, the legislature and political system in California would look very different.”

—KARREN LANE,  
Community Coalition



support of Proposition 47, 501(c)(4) investments have an additional benefit. “501(c)(4) funding is a vehicle for ensuring the voices of people in these communities are heard in policy and governance. If there were more 501(c)(4) resources to organize a voting base in poor communities and communities of color, the legislature and political system in California would look very different.”

While the scale of lobbying resources needed to run a successful ballot campaign made the participation of 501(c)(4) organizations essential to winning Proposition 47, the efforts of many 501(c)(3) organizations and their funders to raise awareness about criminal justice issues in California were also pivotal. In California, private foundations support numerous 501(c)(3) organizations that have educated the public about the problems of over-incarceration and alternatives that improve safety and reduce costs. These efforts helped ripen the issue and created a more conducive environment for voter action to change public policy. For example, The California Endowment (TCE) has financed and led a 501(c)(3) communications campaign, Do the Math, which educates the public about the high costs of prisons and alternatives to incarceration. 501(c)(3) organizations are also playing a crucial role in the implementation of Proposition 47, informing

formerly incarcerated individuals about the opportunity to remove past felony offenses.

“Those who work in the 501(c)(3) space can create a conducive environment through public education, research and analysis, and community engagement,” says Charles Fields, regional program manager at TCE. “Donors are positioned differently to make investments, but however you are positioned, there is something you can do.”

While 501(c)(3) funding has an important role in reform efforts, there is a critical need for funders to increase 501(c)(4) investments that can accelerate transformative policy change. In particular, there is a dearth of 501(c)(4) institutional donors—a gap that philanthropists who support private foundations can rectify by setting up new 501(c)(4) funding vehicles. Two funders who have done so are George Soros, who established the Open Society Policy Center as a 501(c)(4) counterpart to OSF, and Chuck Feeney, who created the 501(c)(4) Atlantic Advocacy Fund to complement Atlantic Philanthropies’ 501(c)(3) grant making. Individual and family donors, who have greater flexibility in their choice of funding vehicles, should also consider the potential impact they can achieve through 501(c)(4) investments.

## Alliance for Safety and Justice

With anchor funding from the Public Welfare Foundation and the Ford Foundation, advocates and donor partners are developing a new national initiative to significantly reduce state incarceration rates and create a tipping point across the country. For (c)(3) and (c)(4) donors looking to make an impact on the issue of over-incarceration and excessive prison spending, the Alliance for Safety and Justice aims to provide direct support to state-based campaigns and bolster the power of state-based sentencing reform advocacy through alliance-building, communications, and growing broad-based public support for reform.

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### THE SIGNIFICANCE OF PROPOSITION 47 AND THE FUTURE OF REFORM - ALLIANCE FOR SAFETY AND JUSTICE

The passage of Proposition 47 holds tremendous significance. As of July 2015, eight months after passage of the ballot measure, California had released 4,000 inmates, and the state projects \$100 million to \$200 million in savings in the 2016–2017 fiscal year.<sup>iii</sup> The measure also removes the yoke of felony convictions from hundreds of thousands of Californians convicted of nonviolent offenses. As Rosenberg Foundation President Tim Silard puts it, “we are no longer pinning the scarlet letter on them as a lifetime burden.”

Equally important, the campaign politicized and activated thousands of people in low-income communities, elevating their voices in the public debate on California’s criminal justice system. Formerly incarcerated people, crime victims, and the families of both organized house meetings, went door to door, and ran phone banks to educate and mobilize voters in support of Proposition 47. These leaders and activists are now invested in ensuring the effective implementation of Proposition 47 and committed to remaining politically engaged to advance the next set of needed reforms.

Passage of Proposition 47 also has great potential political importance. According to OSF’s Lenny Noisette, “the fact that voters supported the measure at such a substantial margin shows that the general public is supportive of bold changes in the criminal justice system, and will make policymakers more ambitious in supporting future legislative reforms.”

Anderson believes that the Proposition 47 victory “put the nail in the coffin of the tough-on-crime rhetoric that has dominated California politics for decades.” What’s more, the victory has potential to spur change in other states. Anderson is planning a new national effort to support state-based sentencing reform campaigns—the Alliance for Safety and Justice—and the ACLU is seeking to advance ballot initiative campaigns for justice reform in several states in 2016.<sup>iv</sup>

“Proposition 47 is groundbreaking,” notes Mary McClymont, president of the Public Welfare Foundation. “It is urgent that we capitalize on the political momentum its passage has created by advancing ambitious justice reforms in other states to significantly reduce incarceration. For this reason, the Public Welfare Foundation has joined with the Ford Foundation to help launch the Alliance for Safety and Justice and bolster state-based advocacy campaigns across the country. We look forward to funder partnerships in this critically needed campaign.”

Substantial 501(c)(4) investments will be pivotal to future sentencing reform efforts in California and across the country. Ballot initiatives will continue to be an essential tool—both for bypassing state legislatures too fearful of being seen as weak on crime, as well as for dismantling tough-on-crime policies that can only be revised through the ballot initiative process, such as voter-enacted constitutional amendments.

As Silard notes, “many of the states with very high incarceration rates have a ballot process, and it will require substantial 501(c)(4) funding to move reforms in those states.”

“With crime rates and fear of crime at an all-time low, there is a window of opportunity,” adds Silard, “but if we don’t advance these reforms over the next few years, we may miss that window.”

Funders and advocates alike should plan accordingly.

#### REFERENCES

<sup>i</sup> <https://www.brennancenter.org/publication/what-caused-crime-decline>

<sup>ii</sup> <http://www.latimes.com/opinion/op-ed/la-oe-0917-gingrich-prop--47-criminal-justice-20140917-story.html>

<sup>iii</sup> <http://www.lao.ca.gov/reports/2015/budget/prop47/implementation-prop47-021715.pdf>

<sup>iv</sup> <http://www.washingtonpost.com/news/powerpost/wp/2015/06/19/aclu-growing-political-program-plans-ballot-initiatives/>