

Committee on Revision of the Penal Code Death Penalty Report & Recommendations



History and Purpose of the Committee

The Committee was formed to study the CA Penal Code and to recommend statutory reforms to:

1. Simplify and rationalize the substance of criminal law.
2. Simplify and rationalize criminal procedures.
3. Establish alternatives to incarceration that will aid in the rehabilitation of offenders.
4. Improve the system of parole and probation.



Committee Members

- Gubernatorial appointees:
 - **Chair Michael Romano**, Stanford Law School
 - **Hon. Thelton Henderson**, retired federal district court judge
 - **Hon. Peter Espinoza**, LA Office of Diversion and Reentry
 - **Hon. Carlos Moreno**, retired California Supreme Court justice
 - **Professor Priscilla Ocen**, Loyola Law School
- Legislative members:
 - **Alex Lee**, Assemblymember
 - **Nancy Skinner**, Senator



2020 Annual Report and Recommendations

- Results of 2020 recommendations:
 - Passed into law
 - ☞ End mandatory sentences for drug offenses (SB 73)
 - ☞ Guidance for dismissing sentencing enhancements (SB 81)
 - ☞ Good conduct credits for people in state hospital (SB 317)
 - ☞ Retroactivity for repealed sentencing enhancements (SB 483)
 - ☞ Limit gang enhancements to most dangerous conduct (AB 333)
 - ☞ Strengthen process for “second look” resentencings (AB 1540)



Committee Panelists on Death Penalty

- **Sean Kennedy**, Executive Director, Center for Juvenile Law and Policy, Loyola Law School
- **Elisabeth Semel**, Director, UC Berkeley Death Penalty Clinic
- **Steve Shatz**, Professor Emeritus, University of San Francisco
- **Carol Steiker**, Co-Director, Criminal Justice Policy Program at Harvard Law School
- **Jordan Steiker**, Director, Univ. of Texas at Austin School of Law Capital Punishment Center
- **Dr. Sherod Thaxton**, Professor of Law, UCLA School of Law
- **Dr. George Woods**, President, International Academy of Law and Mental Health

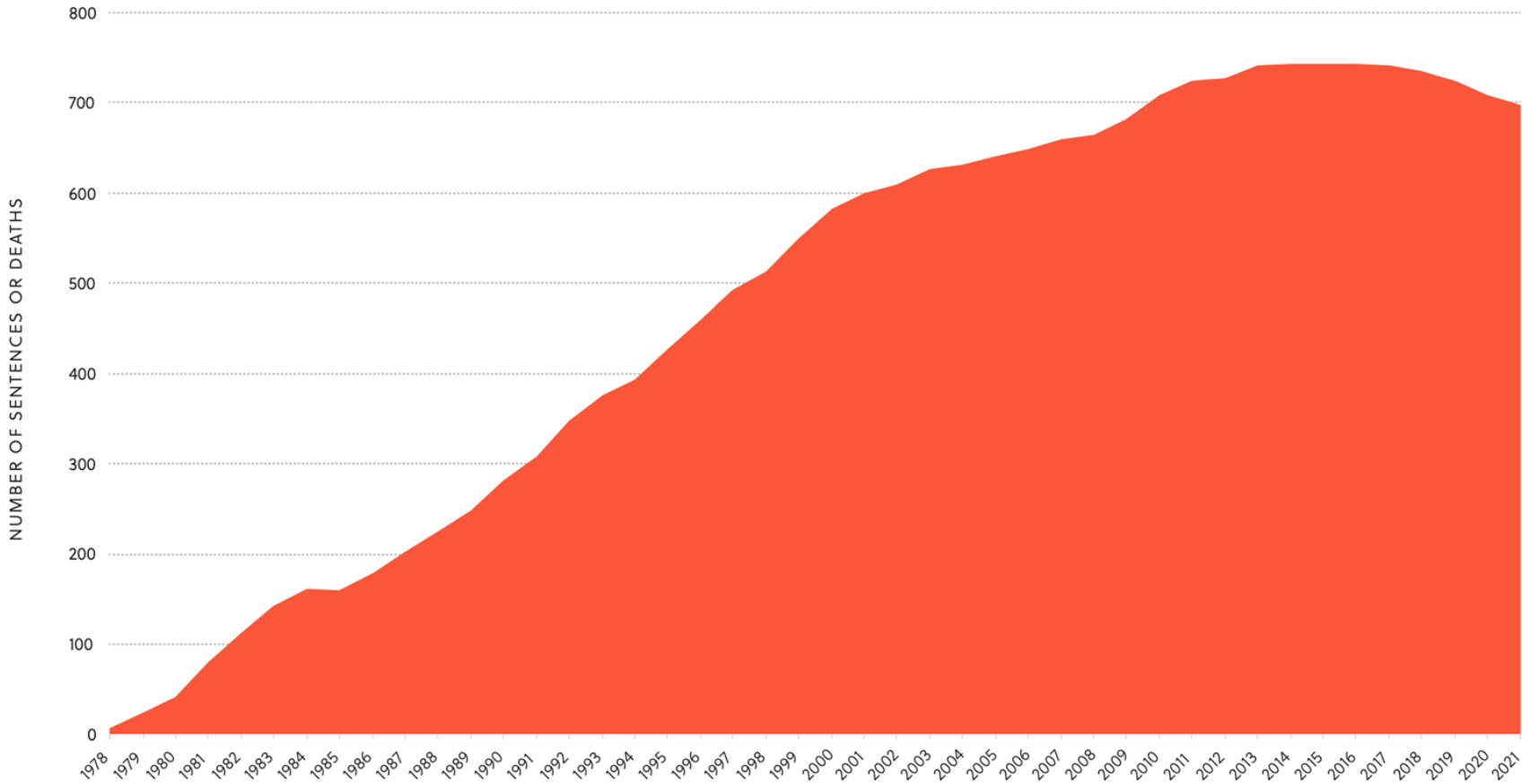


Introduction and Background to CA Death Penalty

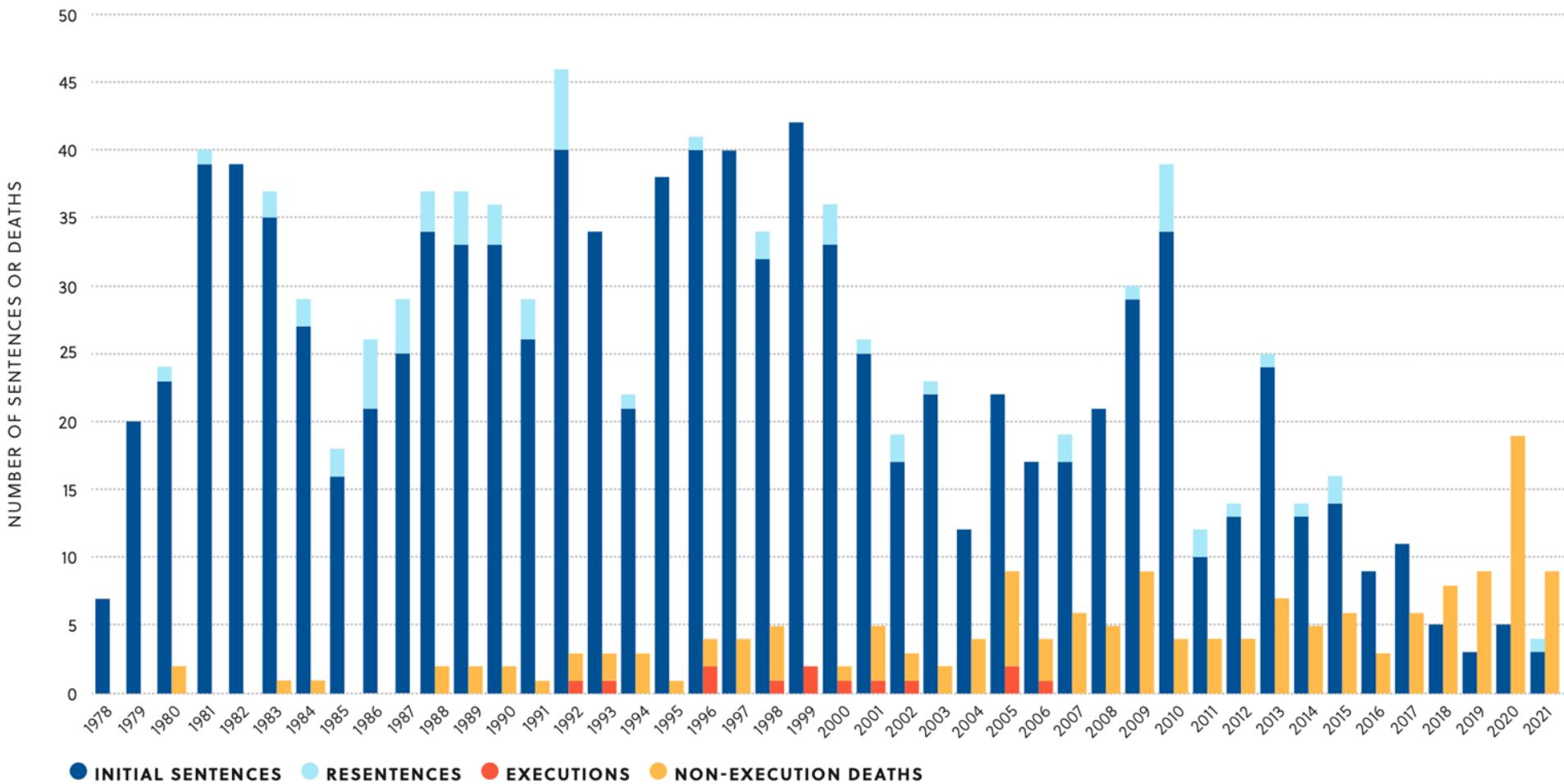
- California has the largest death row in the country.
- Currently, 697 people on death row.
- Zero executions in last 15 years. (13 since 1977.)
- 233 people have had sentences overturned.
- \$4 billion spent since 1977.
- Most death sentences overturned by courts.



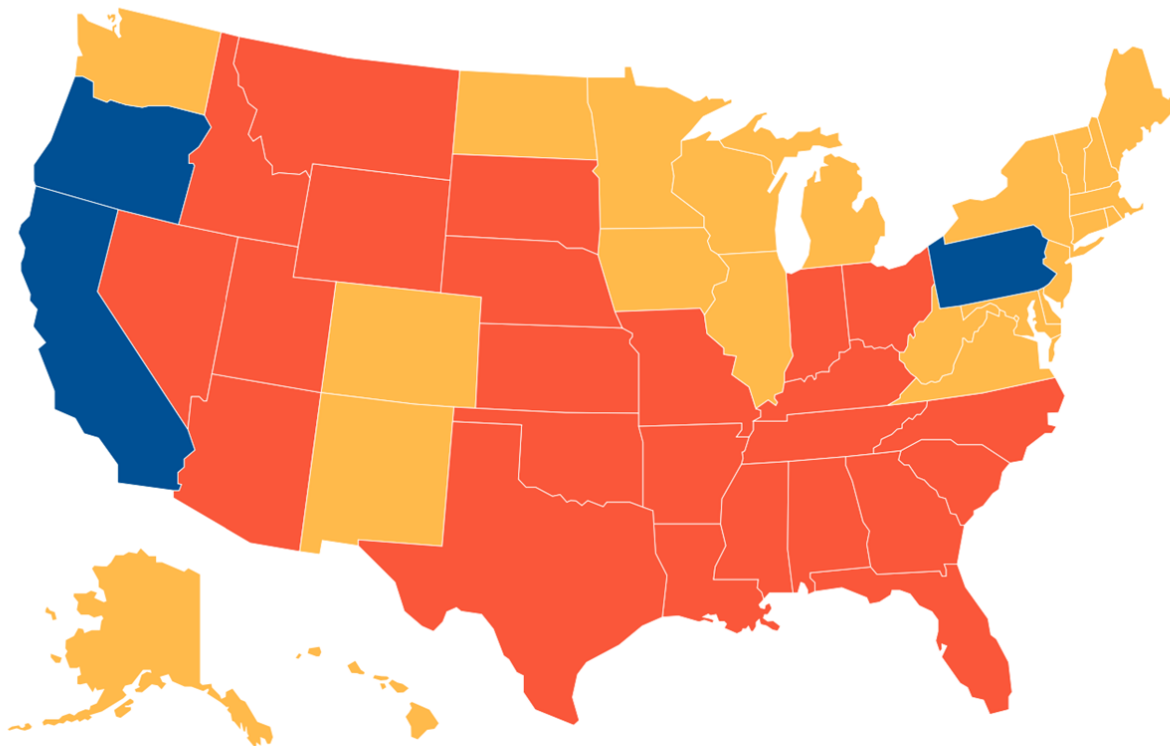
TOTAL NUMBER OF CONDEMNED PEOPLE AT END OF YEAR



DEATH SENTENCES AND EXECUTIONS BY YEAR IN CALIFORNIA (1978-2021)



DEATH PENALTY STATUS BY STATE



● DEATH PENALTY ● NO DEATH PENALTY ● GOVERNOR-IMPOSED MORATORIUM

Source: Death Penalty Information Center.

Legal and Historical Background

- History of California's modern death penalty:
 - 1972: CA Supreme Court ruling in *Anderson*
 - 1972: Prop. 17
 - 1972: U.S. Supreme Court ruling in *Furman*
 - 1977: CA replaces mandatory death penalty with ALI model
 - 1978: Briggs initiative (Prop. 7)
- California's death penalty process:
 - Special circumstances
 - 2 phases of trial
 - Post-conviction process
- No functional method of execution



Legal Problems with California's Death Penalty

- CA's death penalty applies to almost any murder
 - 95% of all 1st-degree murder convictions death eligible
- Juror issues
 - Do not need to agree on why someone should be sentenced to death
 - No proof beyond a reasonable doubt that death is appropriate
- Delays
 - Death sentence has transformed into “life in prison with the remote possibility of death”
- Disproportionate sentences
 - No proportionality review required



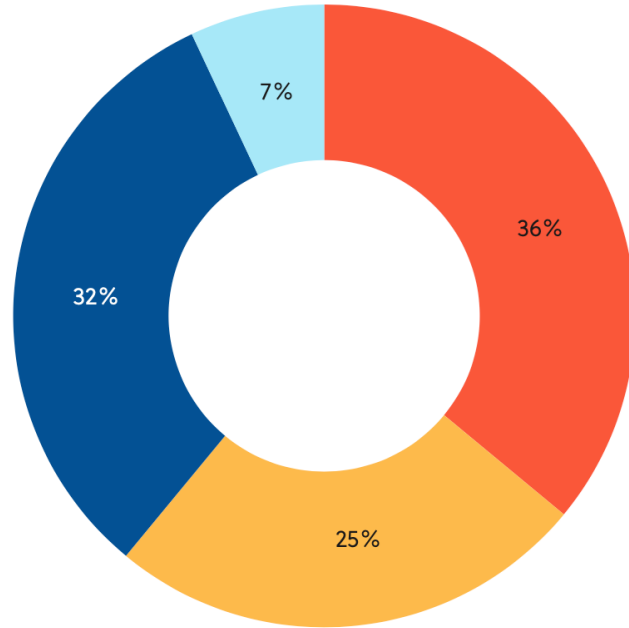
Racial Bias

- People accused of killing white victims are:
 - More likely to be charged with special circumstances
 - More likely to be sentenced to death



Racial Bias

RACIAL DEMOGRAPHICS OF CALIFORNIA'S DEATH ROW



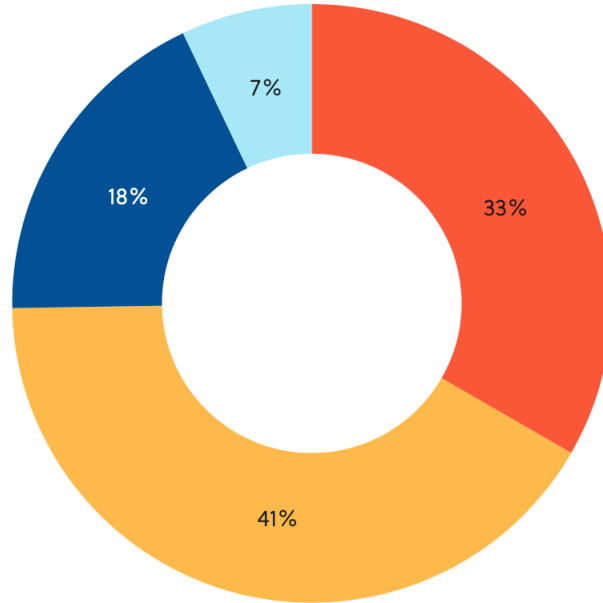
● BLACK ● LATINX ● WHITE ● OTHER

Source: Analysis of data provided by CDCR Office of Research.



Racial Bias

NEW DEATH SENTENCES IMPOSED IN CALIFORNIA BY RACE OF DEFENDANT (2010–2020)

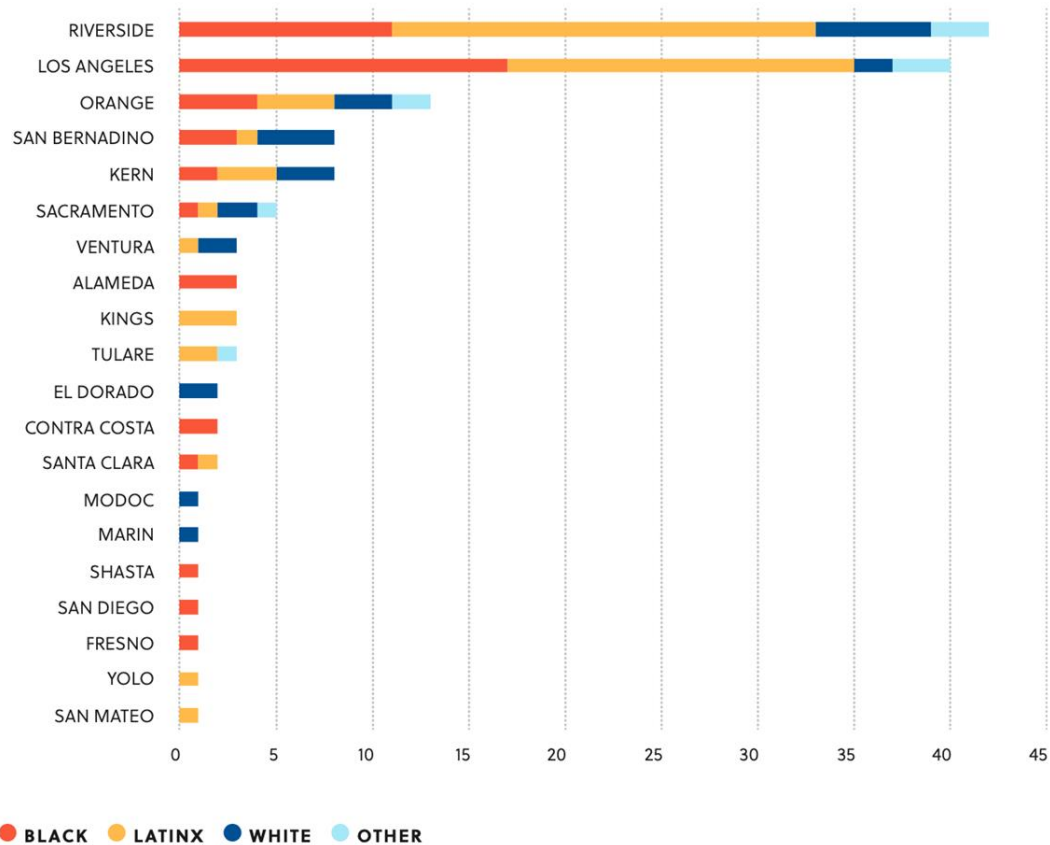


● BLACK ● LATINX ● WHITE ● OTHER

Source: California Department of Justice, *Homicide in California* reports from 2010–2020, Table 36.



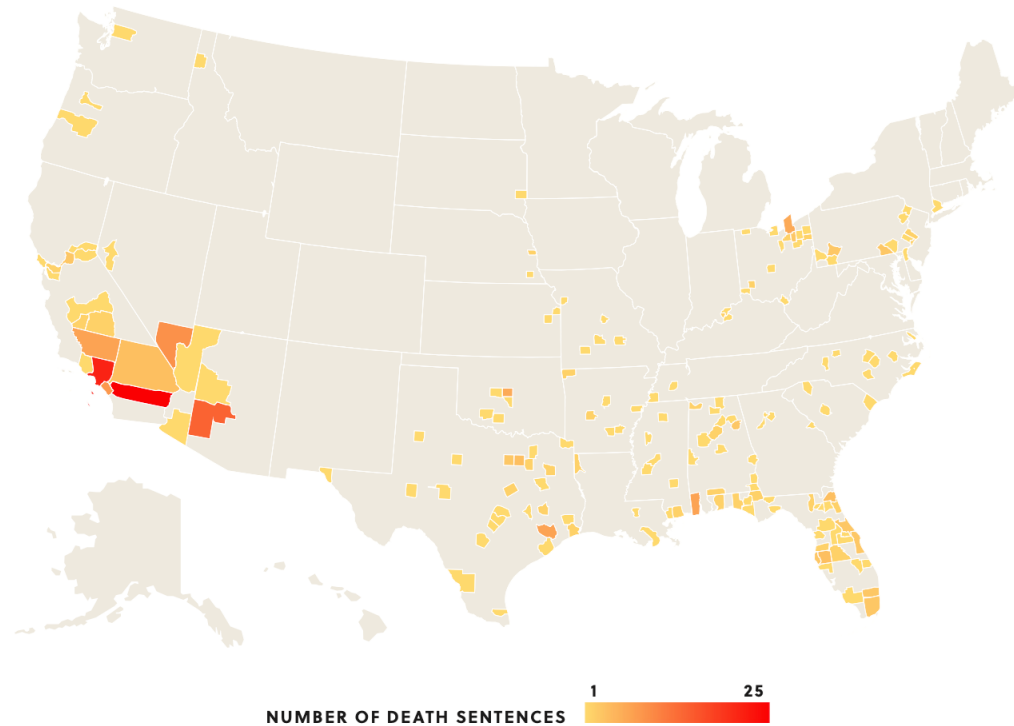
DEMOGRAPHICS OF NEW DEATH SENTENCES IMPOSED IN CALIFORNIA BY COUNTY (2010-2020)



Source: California Department of Justice, Homicide in California reports from 2010-2020, Table 36.

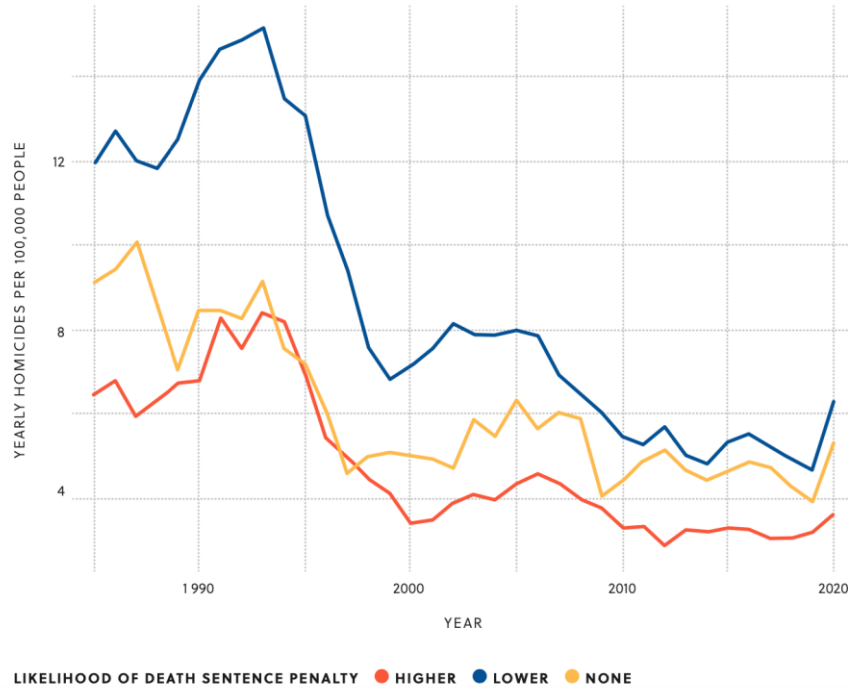
Geographic Bias

DEATH SENTENCES IMPOSED IN THE UNITED STATES (2013–2019)



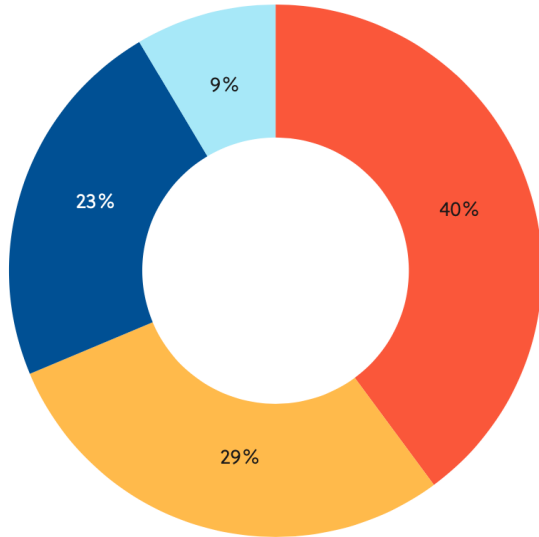
Geographic Bias

CHANGES IN HOMICIDE RATE OVER TIME: DIVIDED BETWEEN COUNTIES IN CA WITH NO, LOW, AND HIGH PROPENSITY TO SENTENCE PEOPLE TO DEATH PENALTY



Young and Mentally Ill People

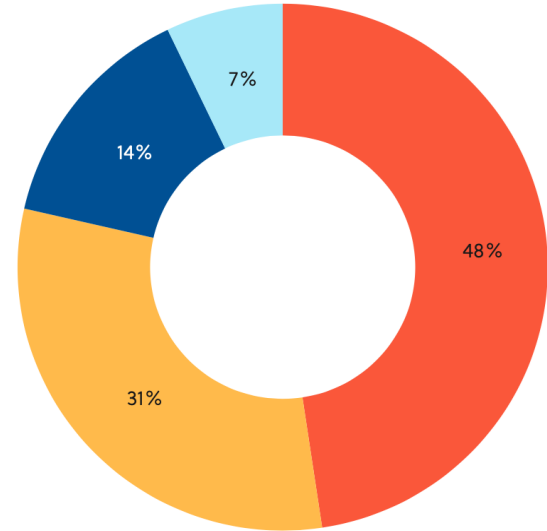
RACIAL DEMOGRAPHICS OF PEOPLE ON DEATH ROW WHO WERE 25 OR YOUNGER AT THE TIME OF THEIR OFFENSE



● BLACK ● LATINX ● WHITE ● OTHER

Source: Analysis of data provided by CDCR Office of Research.

RACIAL DEMOGRAPHICS OF PEOPLE ON DEATH ROW WHO WERE 18 AT THE TIME OF THEIR OFFENSE



● BLACK ● LATINX ● WHITE ● OTHER

Source: Analysis of data provided by CDCR Office of Research.

Costs and Dysfunction

- \$150 million per year
- \$4 billion since 1978
- Death penalty trial adds between \$500,000 to \$1.2 million to cost of a murder trial
- Post-conviction review takes 30+ years
- Poor quality defense at trial leads to death sentences



Committee Recommendations

- **Repeal the death penalty**
- Reduce the size of death row:
 - Award clemency to commute death sentences.
 - Settle pending legal challenges to death sentences.
 - Recall death sentences under Penal Code § 1170(d)(1).
 - Limit the felony-murder special circumstance.
 - Restore judicial discretion to dismiss special circumstances.
 - Amend the Racial Justice Act of 2020 to give it retroactive application.
 - Remove from death row people who are permanently mentally incompetent

