

CITY AND COUNTY OF SAN FRANCISCO  
OFFICE OF THE DISTRICT ATTORNEY



*Chesa Boudin*  
*District Attorney*

SAN FRANCISCO PUBLIC DEFENDER

MANOHAR RAJU – PUBLIC DEFENDER  
MATT GONZALEZ – CHIEF ATTORNEY



March 27, 2020

Governor Gavin Newsom  
1303 10th Street Suite 1173  
Sacramento, CA 95814

Dear Governor Newsom,

As we work collectively to protect all Californians in the midst of the COVID-19 pandemic, we appreciate the strong leadership you have shown during this crisis. Though we have made great strides in our efforts to flatten the curve, in order to be truly successful we must do more to reduce the number of people in jails, detention centers, and prisons across the state. COVID-19 poses a heightened risk to people incarcerated in overcrowded facilities, who cannot exercise proper social distancing, and are instead forced to remain in close quarters without easy access to proper hygiene or medical care. This greatly increases the risk of rapidly spreading the infection amongst incarcerated people and correctional staff.

In the midst of these rapidly developing circumstances, and in response to urgent pleas from public health officials, our offices have collaboratively developed processes to reduce our incarcerated population locally. We have done so making sure that people are released with reentry plans so they do not cycle back into the jail. We write to you to provide our insight at this crucial time, to present some pathways that may assist in the statewide reduction effort, and to urge you to take all available steps to swiftly and safely bring as many people home as possible.

We are deeply aware that the work to reduce incarcerated populations does not happen in a vacuum, and that in order to be successful we must be sensitive to a myriad of overlapping issues -- including housing, healthcare, employment, the concerns of survivors of all kinds, and especially those who have suffered family violence. We also know it is imperative we collaborate across a broad section of stakeholders, to ensure our efforts are successful and sustainable. Though the work is complex and challenging, we believe there are real and attainable solutions--some of which we outline below--and that reducing the incarcerated population is a key component in the effort to keep us all safe and bring an end to the pandemic.

We are aware the California Department of Corrections and Rehabilitation has been taking precautions to prevent the virus from making its way into the prisons, but with the news last weekend that an incarcerated person tested positive at CSP Los Angeles, it is inevitable that we will see more. Former CDCR Secretary Scott Kernan has described the situation in the prisons as a “tinderbox of potential infection,” and has urged state leaders to look at *all options* to reduce the prison population to mitigate the worst impacts of an outbreak. With 120,000 people incarcerated in California’s prisons, over 60,000 correctional officers and thousands of other

CDCR employees, thousands of people cycle in and out of correctional facilities across the state on a daily basis. When you combine these numbers with the family members of CDCR staff, a staggering number of Californians are affected.

Therefore, we propose the following steps be considered as important components in the effort to reduce the incarcerated population:

**1) Expand and expedite the 1170(d)(1) resentencing process:**

The Penal Code section 1170(d)(1) “Recall of Sentence and Resentencing” process is meant to be a safety valve to release people incarcerated in California, especially those who have fallen through the cracks of other reforms. This process works well because decisions are made at the local level about who can be safely released into the community. We propose three ways this process should be expanded: 1) encourage CDCR to expand its current guidelines to allow for more referrals, 2) encourage local jurisdictions to expeditiously process CDCR referrals, and 3) encourage District Attorneys to use their authority to refer people for resentencing.

First, CDCR Secretary Diaz has nearly unlimited power to recommend courts across the state recall sentences and replace them with shorter, time-served sentences. However, the current guidelines for identifying and referring individuals through this process should be expanded. Specifically, the “Exceptional Conduct” category should better reflect the reality of prison life when assessing disciplinary records (more detail on this below).

Second, local jurisdictions should be encouraged to act on outstanding recommendations for resentencing immediately. While we have been advised that Secretary Diaz has sent over 900 such recommendations, we do not know how many of Secretary Diaz’s recommendations for resentencing have been resolved. Though we have only received a few such recommendations in San Francisco, we have acted on them expeditiously, and have connected each person to housing, employment opportunities, and healthcare upon release. Helping people into this reentry space is critical and extremely rewarding.

Third, since last year, local prosecutors are also empowered to independently recommend people for resentencing. We have begun to use that power in San Francisco, particularly for sentences that have been increased due to sentence enhancements for prior convictions. We want those in prison to know that if they take part in self-help programs, and determine to make new and different choices, it will matter in big ways. We want families and communities to notify us when they have seen a change in their loved one. We would like to see prosecutor offices statewide scouring their files to make 1170(d)(1) recommendations in every appropriate case.

**2) Encourage prison officials and staff to identify people under their ward who can be safely released:**

Prison administrations at institutions across the state should be encouraged to make determinations about people in their institutions who can most safely be released without further strain on social safety nets. Wardens, and their staff, are well equipped to make these determinations and are important partners in the effort to ensure we are balancing release decisions with public safety interests. This should include a process whereby individual correctional officers can make recommendations (confidentially if necessary) regarding people

they believe to be safe and ready for release. We have seen incredible letters of support and chronos from correctional staff for the incarcerated people they work with every single day, underlining this as an important and necessary component of this effort.

**3) Encourage release decisions to be made based on current and substantiated public safety risk:**

While many calls for release have rightfully focused on the elderly and immunocompromised, a far broader swath of the population can be considered. In particular, people who are not a public safety risk and have re-entry plans in place should be released in a feasible, responsible, and safe manner. We must not over-emphasize commitment offenses, or prison disciplinary record, in making these decisions.

Rather than determining public safety risk based upon being convicted of a “violent” or “non-violent” offense many years ago, a true assessment must be based on someone’s risk of committing violence today. Notably, 2018 statistics show almost 50% of all people currently in California prisons have the lowest risk score by CDCR's evidence-based risk assessment for recidivism.<sup>1</sup> Additionally, all convictions must be examined with the understanding that 97% of criminal cases are resolved through plea deals rather than full evidentiary hearings in jury trials where factfinders carefully examine actual conduct. Finally, many people in prison have already served decades of time, engaged in many self-help programs, and built lives outside the prison walls that will allow for them to be safely released.

Though someone’s disciplinary history while in prison may help in determining current risk, it is frequently given outsized emphasis in making these assessments. Often, individuals are denied parole, or other forms of relief, for having incurred write-ups for conduct that is neither serious nor violent. This is always myopic, and even more so in the current climate. While a rules violations report may make it appear that a person has engaged in misconduct, the reality is that people in prison live under draconian circumstances, and are subject to ever-changing rules with constantly morphing application. We must also be sensitive to the fact that people in prison are trying to survive in dangerous conditions and that the process for write ups lacks due process and procedural protections. Looking at someone’s disciplinary history without a clear understanding of the context leads to injudicious results.

We propose the following criteria be considered when determining when someone can safely be released (many of which can easily be assessed through already compiled commutation packets, parole plans, and an individual’s central file): 1) Does the individual have a verifiable reentry plan? 2) Have they made substantial efforts in prison consistent with their known access and abilities? 3) Does the individual have a disciplinary record that suggests they are a current public safety threat, like recent violence?

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<sup>1</sup> Offender Data Points: Offender Demographics for the 24-Month Period Ending December 2018, California Department of Corrections and Rehabilitation’s Office of Research (January 2020), pg. 16, available at: [https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2020/01/201812\\_DataPoints.pdf](https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2020/01/201812_DataPoints.pdf). According to CDCR, “The California Static Risk Assessment utilizes an offender’s demographic and criminal history data to predict a low, moderate, or high risk to reoffend. The California Static Risk Assessment scores range from one (1) at the lowest to five (5) at the highest.” *See attachment A.*

In conclusion, we recommend you take the following steps to quickly and safely reduce the prison population in light of the current crisis:

1. Expand and expedite the 1170(d)(1) resentencing process.
2. Encourage prison officials and staff to identify people under their ward who can be safely released.
3. Encourage release decisions to be made based on current and substantiated public safety risk.

Our offices stand ready to assist you in taking steps to proactively protect not only the physical health and safety of some of the most vulnerable Californians and the staff tasked with protecting them, but also their mental and emotional wellbeing, and that of their families. We would be happy to meet with your staff to assist in taking the steps outlined above.

Thank you for your consideration of these urgent requests.

Sincerely,

A handwritten signature in black ink that reads "Manohar Raju". The signature is fluid and cursive, with the first name being more prominent.

Manohar Raju  
San Francisco Public Defender

A handwritten signature in blue ink that reads "Chesa Boudin". The signature is cursive and somewhat stylized.

Chesa Boudin  
San Francisco District Attorney

CC: The Honorable Xavier Becerra, California Attorney General  
Ann O'Leary, Chief of Staff, Office of the Governor  
Daniel Seeman, Deputy Cabinet Secretary, Office of the Governor  
Kelli Evans, Chief Deputy Legal Affairs Secretary, Office of the Governor  
Eliza Hersh, Deputy Legal Affairs Secretary, Office of the Governor  
Ralph Diaz, Secretary, California Department of Corrections and Rehabilitation

## Attachment A

### Offender Demographics

**Table 1.16: In Custody Population by California Static Risk Assessment Score**

In Custody Population	12/31/2017 Total	12/31/2017 Rate	12/31/2018 Total	12/31/2018 Rate	12 Month Change
Low Risk to Reoffend (1)	63,410	48.7%	63,607	49.8%	+ 0.3%
Moderate Risk to Reoffend (2)	31,050	23.8%	29,428	23.0%	- 5.2%
High Risk to Reoffend for a Drug Offense (3)	3,356	2.6%	2,912	2.3%	- 13.2%
High Risk to Reoffend for a Property Offense (4)	7,299	5.6%	6,939	5.4%	- 4.9%
High Risk to Reoffend for a Violent Offense (5)	23,204	17.8%	23,121	18.1%	- 0.4%
No Score	1,944	1.5%	1,702	1.3%	- 12.4%
<b>Total In Custody Population</b>	<b>130,263</b>	<b>100.0%</b>	<b>127,709</b>	<b>100.0%</b>	<b>- 2.0%</b>

Note: The California Static Risk Assessment utilizes an offender’s demographic and criminal history data to predict a low, moderate, or high risk to reoffend. The California Static Risk Assessment scores range from one (1) at the lowest to five (5) at the highest. Some offenders may have no score because they have not been scored or their information has not yet been entered into the Strategic Offender Management System.

**Figure 1.16: Graph of In Custody Population by California Static Risk Assessment Score**

