

PUBLIC SAFETY REALIGNMENT



California at a Crossroads

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It's time to fix California's broken criminal justice system

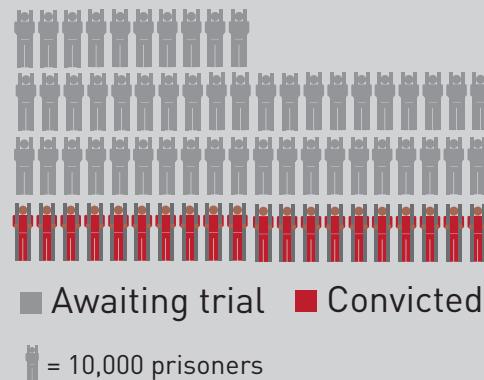


California's prison system has become a revolving door.

Evidence-based alternatives to incarceration will reduce recidivism rates.¹

Most people in California jails
HAVE NOT BEEN CONVICTED OF A CRIME.

More than 50,000 of the 71,000 Californians held in a county jail on any given day are awaiting trial: that's 71% of county jails' average daily population.²



In addition to the human cost, there is a high financial cost of pretrial incarceration.



\$100 per day to keep someone in jail awaiting trial.



\$2.50 per day to monitor people with pretrial programs.³

1. The Pew Center on the States, State of Recidivism: The Revolving Door of America's Prisons (Apr. 2011), p. 26. 2. Corrections Standards Authority, Jail Profile Survey Third Quarter Results (2011). 3. Justice Policy Institute, Baltimore Behind Bars (2010), p. 30

CONTENTS

1	Executive Summary
3	Introduction
5	Methodology
6	California at a Crossroads
7	Realignment In Practice
8	Putting Evidence Into Practice
10	Funding Realignment
12	Improving the Funding Formula
14	Sentencing Reform and County Flexibility
15	Repeating the State's Mistakes: The High Costs of Jail Expansion
16	State Funding of Massive Jail Expansion
18	Incarcerated Without Trial: The Reality of Jail Overcrowding in California
19	It's All about Money: California's Broken Pretrial Detention System
20	A One-Size-Fits All Bail System
21	Money-based Bail: A Discriminatory System
22	Unnecessary Risks to Public Safety
23	Reserving Jails for Public Safety: Alternatives to Pretrial Detention
25	California Models for Pretrial Policies
26	National Models for Pretrial Policies
27	Adopting Pretrial Best Practices
28	Access to Pretrial & Alternative Sentencing Programs for Noncitizens
30	Protecting Communities: Investing in Individual Outcomes
31	Risk and Needs Assessments
33	Programming to Reduce Recidivism
34	Pre-Booking Diversion to Health Services
35	Day Reporting Centers
36	Graduated Sanctions
37	Flash Incarceration
38	Making Realignment Work
38	Joint Planning, Implementation and Accountability
39	Standardized Reporting and Evaluation
40	Adequate and Explicit Funding
41	Recommendations
43	Conclusion
Appendices	
Appendix A:	County Profiles
Appendix B:	Best of the Best: Model Evidence-based programs from County Implementation Plans
Appendix C:	"Education and Job Training Programs are Key to a Successful Realignment Initiative" prepared by the National Employment Law Project and Rubicon Programs
Appendix D:	"Drug Courts: Alternatives and Practices" prepared by the Drug Policy Alliance

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EXECUTIVE SUMMARY

California is at a criminal justice crossroads. After decades of “tough on crime” policies and draconian sentencing practices, the state correctional system—one of the largest incarcerators in the largest incarcerating country in the world—finally buckled under its own weight. Faced with a historic U.S. Supreme Court order requiring the state to reduce overcrowding, California made a momentous decision: it would no longer take into state facilities or under state custody most people convicted of low-level, non-violent offenses, instead tasking counties with dealing with these individuals at the local level.

Legislatively codified as the Public Safety Realignment Act, or Assembly Bill 109 (AB 109), this major policy shift has put California’s 58 counties in the driver’s seat. Each county will choose its own path, but their futures are intertwined. Poor implementation in one county will inevitably affect others. All will affect California taxpayers.

The ACLU has conducted an in-depth review of all 53 available county realignment implementation plans, and we have analyzed the statutory changes and related state laws and budget allocations. We have identified four major interrelated themes:

- A troubling lack of state monitoring, data collection, outcome measurements and funding incentives to help counties successfully implement realignment.
- A dramatic increase in spending on county jails—facilitated by billions of dollars in state funding—particularly in those counties that have historically sent more people to state prison for low-level, non-violent offenses.
- A shockingly high number of people who present no real threat to public safety being held in county jails before having their day in court, incarcerated without trial simply because they cannot afford bail.
- A promising commitment—though not yet realized—by many counties to adopt alternatives to incarceration and evidence-based practices to reduce recidivism. A few counties are adopting innovative programs and approaches that can serve as models for the rest of the state, but all too often our analysis revealed few, if any, resources allocated for such programs.

In light of these findings, the ACLU makes the following recommendations to state and local policymakers:

- **Data Collection.** Mandate standardized data collection and analysis across the 58 counties in order to monitor which policies and programs are working to reduce recidivism and reliance upon incarceration, and base policy and budget decisions on those findings.
- **Funding Formula.** Revise the state funding allocation formula to incentivize counties to reduce recidivism and incarceration.
- **Sentencing Reforms.** Enact statewide front-end sentencing reforms to help counties implement realignment.
- **Pretrial Detention Reform.** Amend statewide pretrial detention laws and implement new local pretrial release policies to keep behind bars only those who truly pose a risk to public safety.
- **Alternatives to Incarceration.** Create and fund concrete plans to develop community-based alternatives to detention for both the pretrial and sentenced population.
- **Utilize New Sentencing Options.** Encourage local courts to utilize realignment's new sentencing options that authorize judges to replace all or part of a jail sentence with community sanctions or treatment programs.
- **Stop Jail Expansion.** Halt or significantly reduce jail expansion and construction plans, including AB 900 funding and projects.
- **Limit Use of Immigration Detainers.** Review the impact of immigration status and immigration detainees on inmates' detention to prioritize public safety needs.

INTRODUCTION

Our criminal justice system is broken. The United States, with less than five percent of the world's population, has nearly 25 percent of the world's incarcerated population.¹ The state of California has long held the dubious distinction of housing one of the largest prison and jail populations within the U.S.² Despite extremely high state and local incarceration rates, California's recidivism rate—the rate at which people released from prison are returned to prison—is among the highest in the nation, at 67.5 percent.³ At the same time, our state and local governments are facing the most significant budget disaster since the Great Depression.⁴

Unequal treatment in the criminal justice system—especially in drug law enforcement—is one of the primary drivers of inequality in our society today. A higher proportion of African Americans are incarcerated in California today than were blacks in Apartheid South Africa.⁵ Latinos are now the largest group incarcerated in California state prisons.⁶ The criminal justice system selectively incarcerates to deal with mental health, drug abuse, and economic and social problems that can never be solved simply by locking more people behind bars.

With this crisis, though, comes opportunity. The Public Safety Realignment Act (AB 109) and subsequent amending legislation have tasked counties with implementing the most significant change in criminal justice in California in more than three decades—indeed, according to some commentators, since statehood.⁷

The state government has officially recognized that we cannot simply incarcerate our way out of this mess; in the words of the legislature in enacting realignment, “Criminal justice policies that rely on building and operating more prisons to address community safety concerns are not sustainable, and will not result in improved public safety.”⁸ Realignment is based upon a fundamental acknowledgement that counties are better positioned to integrate public health and social services as part of rehabilitation and reentry in ways that the state cannot.⁹

Realignment makes fundamental changes to California’s correctional system, shifting from the state to counties certain responsibilities for most people convicted of low-level, non-violent offenses. The intent of realignment is to reserve expensive state prisons for individuals convicted of serious offenses and to encourage counties to develop and implement evidence-based practices and alternatives to incarceration to limit future crimes and victims—something the state, as AB 109 acknowledges, has failed to accomplish.¹⁰

This momentous policy shift followed a historic U.S. Supreme Court decision (*Brown v. Plata*¹¹), which found overcrowding in California’s prisons to be so severe as to constitute cruel and unusual punishment. The Plata decision requires California to reduce the state prison population by about 33,000 people by May 2013.¹² Between October 1, 2011, and February 22, 2012, the state prison population decreased by about 17,000 inmates “primarily attributable” to realignment.¹³ In adopting

realignment, the state opted against meeting the court mandate through prison construction, prisoner release, or more modest reforms to its failed parole policies. Should the state fail to meet its total population reduction targets—or aim to exceed those targets—it will need to implement additional changes, such as sentencing reform, to further safely reduce overcrowding.

While realignment encourages counties to use alternatives to incarceration, state funding allocations to the counties thus far send a contradictory message. On the one hand, the state urges counties not to repeat at the local level the mistakes that led to the state prison overcrowding crisis. On the other hand, the state has allocated more money to counties that have historically incarcerated the most people, *and* on top of AB 109 funding is providing hundreds of millions of dollars *more* earmarked for county jail expansion, incentivizing the very practices that led to prison overcrowding in the first place.

The decisions counties are making right now about how to implement realignment will have dramatic and long-lasting impacts on public safety and on local taxpayers. Will counties focus on expanding incarceration at the expense of good public safety policy? Or will they tackle complex criminal justice challenges by implementing policies and practices based upon evidence rather than upon the politics of fear? Will counties ask only what is to be done with the realigned population? Or will they ask the broader, much more important question: how should local public safety systems and structures change to provide the best public safety return on the taxpayers' investment?

The decisions counties are making right now, how they choose to implement realignment, will have dramatic and long-lasting impacts on public safety and on local taxpayers.



The ACLU of California produced this report to aid policymakers and policy advocates at the state and county levels working to implement public safety realignment. We published our first realignment report, *Community Safety, Community Solutions*,¹⁴ in August 2011, a month after the passage of AB 109, just as counties were developing their implementation plans. *Community Safety, Community Solutions* provided an overview of AB 109's legal provisions, twelve guidelines and recommendations on implementation planning, and real-world examples of safe and effective alternatives to incarceration. In this new report, the ACLU examines realignment five months after implementation began to determine how local governments are dealing with it on the ground.

Methodology

For this new report, the ACLU reviewed all 53 of the county realignment implementation plans that had been completed as of late February 2012. We conducted an in-depth analysis of the realignment plans and funding allocations made in the 25 counties that received the most AB 109 funding in FY 2011-12 (the “Big 25”) (see Figure A; see also Appendix A for individual profiles of each of these 25 counties).

In addition to reviewing county realignment documents and data that were in the public domain, we contacted individual counties and submitted Public Records Act requests to obtain additional information. We also reviewed data published by the state Department of Justice, the California Department of Corrections and Rehabilitation (CDCR), the state Department of Finance (DoF), the Legislative Analyst’s Office (LAO), the California State Association of Counties (CSAC), the Chief Probation Officers of California (CPOC) and other state and local government representatives, agencies and departments. For each county, our analysis included, among other elements, reviews of:

- crime rates;
- jail population, including pre-sentenced population;
- any jail capacity expansion plans;
- whether the public was afforded an opportunity to participate in the planning process;
- the local allocation of AB 109 funds between the individual counties’ sheriff’s department, probation, and public health or social services agencies;
- any pretrial detention or release programs;
- any programs and strategies being adopted or expanded as alternatives to incarceration for pretrial, sentenced and post-release populations; and
- whether clear performance or outcome measurements are defined and how the program will be evaluated.

We invite other researchers, advocates, and county or state officials to contact us for additional information about our methodology.

California at a Crossroads

Based upon our review, at least 32 of California's 58 counties have plans to expand jail capacity using AB 109 funds or other tax dollars, even though realignment provides more effective and affordable options for addressing jail overcrowding.

FIGURE A
**BIG 25 COUNTIES AND THEIR AB 109
 ALLOCATION AMOUNTS**

COUNTY	Realignment Program Allocation*	Percent of Statewide Total
Alameda	\$9,200,000	2.60%
Contra Costa	\$4,572,950	1.29%
Fresno	\$8,838,368	2.49%
Kern	\$10,834,289	3.06%
Kings	\$2,862,035	0.81%
Los Angeles	\$112,558,273	31.77%
Monterey	\$3,846,989	1.09%
Orange	\$23,078,393	6.51%
Placer	\$2,986,395	0.84%
Riverside	\$21,074,467	5.95%
Sacramento	\$13,140,278	3.71%
San Bernardino	\$25,785,600	7.28%
San Diego	\$25,100,000	7.08%
San Francisco	\$5,049,838	1.43%
San Joaquin	\$6,785,908	1.92%
San Mateo	\$4,222,902	1.19%
Santa Barbara	\$3,878,876	1.09%
Santa Clara	\$12,566,312	3.55%
Shasta	\$2,988,875	0.84%
Solano	\$3,807,662	1.07%
Sonoma	\$3,240,562	0.91%
Stanislaus	\$6,010,700	1.70%
Tulare	\$5,657,817	1.60%
Ventura	\$5,696,790	1.61%
Yolo	\$2,974,703	0.84%
Total		92.23%

*This excludes CCP Planning, Training and DA/PD set aside amounts. These Program Allocation amounts are those provided by each county in its realignment plan. These Program Allocation amounts may differ slightly from the final allocation amounts as provided by CSAC; the "percent of statewide total" amounts shown here are based upon the CSAC data.

Widespread jail expansion is not necessary to protect public safety or hold individuals accountable for criminal behavior. As discussed below, counties can choose from a range of less expensive and more effective alternatives, including ending unnecessary incarceration of people awaiting trial. In this report, we evaluate early realignment implementation efforts by counties across the state, bringing to light innovation as well as ineffective and costly policies. We identify necessary alternatives to incarceration practices, including pretrial supervision options, and we suggest ways the state can incentivize evidence-based criminal justice practices, including by adjusting the state funding allocation formula to better reflect the intent of public safety realignment, by requiring standardized data collection and analysis across the state, and by protecting county flexibility through state-wide sentencing reform.

California is at a crossroads. Counties can either cling to past habits and perpetuate the revolving door that has given California one of the highest recidivism rates in the country, or instead seize the new opportunities presented by realignment to transform the way they address crime, public safety, punishment and rehabilitation. Counties can see realignment as simply

a transfer of incarceration responsibilities and insist upon business as usual, jailing people convicted of non-serious, non-violent offenses at great cost to county budgets and even greater cost to individuals, families, and communities. Or counties can take the smarter, evidence-based path and implement cost-effective alternatives to incarceration that will reduce recidivism and improve public safety.

The choice is clear: we can no longer afford to simply lock people up. It is time for California and its counties to fix our broken criminal justice system and to take a new approach to keeping our communities safe.

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REALIGNMENT IN PRACTICE

On October 1, 2011, AB 109 and subsequent amending legislation took effect, shifting authority over most people convicted of lower-level, non-violent offenses from the state to counties. The law does not reduce any penalties, but it does allow and encourage counties to expand alternatives to incarceration in a variety of ways.¹⁵ The state provided \$367 million to counties for the first year of implementation with plans to lock in increased amounts of permanent funding via a ballot initiative on the November 2012 state ballot.¹⁶

AB 109 makes two key changes to California's criminal justice administration:

- 1) Most individuals newly convicted of low-level, non-serious offenses will stay at the county level.** Most individuals sentenced for a non-serious, non-violent, non-sex-registerable felony offense (a “non-non-non”) *and* who have no such prior convictions now remain under the jurisdiction of the county—in jail or under supervision—rather than being sent to state prison.¹⁷ The law encourages counties to develop community-based alternatives to incarceration for these low-level crimes and grants county sheriffs additional discretion to manage their jail populations through use of intermediate alternative sanctions other than incarceration or traditional probation supervision.¹⁸ It is important to note that AB 109 is prospective only from its October 1, 2011, effective date and *does not provide for the transfer or early release of any inmates currently serving sentences in state prison.*
- 2) Counties will assume greater post-release supervision responsibilities.** The new law makes significant changes to state parole. For many offenses, parole is abolished. Starting October 1, 2011 those released from prison whose convictions were for non-serious, non-violent felonies and who are not deemed high risk sex offenders will be placed on a new form of local monitoring

called “post-release community supervision.”¹⁹ Individuals who have completed their sentences and are released from a state correctional facility on or after October 1, 2011 whose *current* convictions were for a “non-non-non” offense and who are not deemed high-risk sex offenders are placed under the supervision of a county agency (designated by each county’s Board of Supervisors)²⁰ instead of being supervised by a state parole agent.²¹ (Technical violations by any individual on supervision, whether by a county or state agency, will be served in county jail. Only new felony offenses will return an individual to state prison.) Again, AB 109 is prospective only, and therefore anyone on parole before October 1, 2011 remains under state jurisdiction until they are discharged.²²

AB 109 required each of California’s counties to assemble an executive committee of its Local Community Corrections Partnership (LCCP), comprised of the county’s probation chief, sheriff, district attorney, public defender, presiding judge, a police chief and a public health or social services department head appointed by the Board of Supervisors.²³ By October 1, 2011, each county was expected to adopt a formal realignment implementation plan, written by its LCCP executive committee and adopted by its Board of Supervisors, explaining how the county planned to allocate funds and manage the new class of individuals now under its supervision. As of late February, 53 counties had made plans publicly available.²⁴ In many counties, the LCCP continues to hold regular public meetings to discuss implementation.

The success of realignment implementation will largely depend upon the ability of the LCCPs and other local agencies to collaborate effectively, and upon their combined willingness to abandon past habits in favor of approaches that are shown to work and be cost-effective. No one agency will be responsible for success, but just one uncommitted agency can lead the county to failure.

The success of realignment implementation will largely depend upon the ability of the LCCPs and other local agencies to collaborate effectively, and upon their combined willingness to abandon past habits in favor of approaches that are shown to work and be cost-effective. Joint planning and implementation, with close coordination and shared buy-in among probation, the sheriff, the district attorney, the public defender, courts and community-based organizations should determine what policies are adopted, how they are implemented and to what extent they are revised in future years based upon data-driven critical analyses of their results. No one agency will be

responsible for success, but just one uncommitted agency can lead the county to failure.

Putting Evidence into Practice

Public safety realignment represents a sea-change in ways much more significant than simply keeping more people convicted of low-level, non-violent felony offenses in local rather than in state facilities. AB 109, as expressed by the statute’s legislative findings and declarations section,²⁵ aims to strengthen “locally run community-based corrections” to “improve public safety outcomes among

adult felons and facilitate their reintegration back into society.” AB 109 urges counties to “manage and allocate criminal justice populations more cost-effectively, generating savings that can be reinvested in evidence-based strategies that increase public safety while holding offenders accountable.”

The state wants the counties to succeed where it has failed—both in reducing recidivism and in wisely allocating limited resources.

That is, the state wants the counties to succeed where it has failed—both in reducing recidivism and in wisely allocating limited resources. As AB 109’s legislative findings declare, “[d]espite the dramatic increase in [state] corrections spending over the past two decades, re-incarceration rates...remain unchanged or have worsened...”²⁶

Indeed, California’s state prison recidivism rate—67.5 percent as of October 2010—is among the highest in the nation.²⁷ Prior to realignment’s enactment, more than 10,000 people completed their sentences and were released from state prison *each month* in California.²⁸ And about 10,000 people each month replaced them.²⁹ California’s prisons had all but turned the metaphorical “revolving door” into a literal one. If properly implemented, realignment promises to interrupt this cycle by preventing crime, limiting future victims and more effectively allocating resources.

AB 109 gives counties broad discretion to implement realignment, while strongly encouraging counties to rely more on “evidence-based strategies”³⁰ to reduce crime. Realignment is primarily focused on reducing re-offending by individuals already involved in the criminal justice system—those who have been or who are at risk of walking through that revolving door. Evidence-based policies and practices are those demonstrated to reduce recidivism rates, often dramatically.³¹ The message is clear: counties should break past punishment-based habits and develop evidence-based criminal justice policies that have been proven to protect public safety and allocate resources effectively.

California’s prison system has become a revolving door



But evidence-based strategies can reduce recidivism rates

by 50%

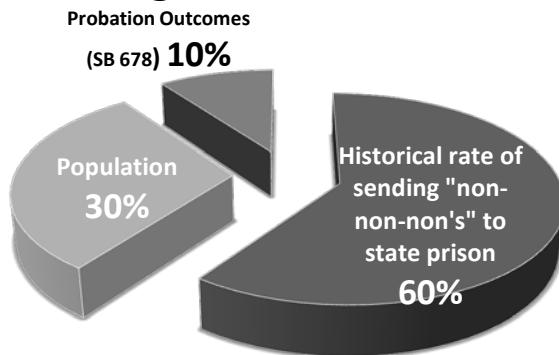
FUNDING REALIGNMENT

Unfortunately, the state distributed realignment implementation funds in a way that rewards those counties that have historically relied most heavily on incarceration.³² Rather than allocate funding based on the county's overall crime rates and public safety needs, or upon counties' demonstrated willingness and ability to employ cost-effective alternatives to incarceration, the state's funding allocation formula was based predominately on the rate at which each individual county historically sent people to prison for low-level, non-violent felonies: the higher the past incarceration rate, the higher that county's piece of the funding pie.

Sixty percent of each county's funding allocation was based on the county's historical average daily state prison population (ADP) of persons convicted of low-level, non-violent offenses from the particular county; 30 percent was based on the population of each county; and only 10 percent was based on each county's demonstrated success at improving the outcomes of individuals on probation.³³ (See Figure B).

FIGURE B

Incentive to Incarcerate: State Funding Allocation Formula for Each County's Implementation of Realignment in 2011-12



This funding formula provided proportionally more dollars to those counties—including Fresno, Kern, Kings, San Bernardino, Santa Clara, Shasta and Tulare—that have historically sent higher rates of people convicted of low-level, non-violent offenses to state prison. Counties that had historically relied more on local alternatives to incarceration—including Alameda, Contra Costa, Sacramento, San Diego and San Francisco—received proportionately less funding. In effect, this funding formula rewarded those county criminal justice policy choices that contributed most to the state prison overcrowding crisis in the first place. For example, San Francisco, with a population of about

805,000, received about \$5.2 million while Tulare, with a population of about half of San Francisco's (442,000), received *more* realignment funding than San Francisco, about \$5.9 million. Similarly, Fresno, with about 930,000 people, received over \$9 million—compare that to Contra Costa, with over a million people, which received about half as much realignment money, about \$4.7 million.

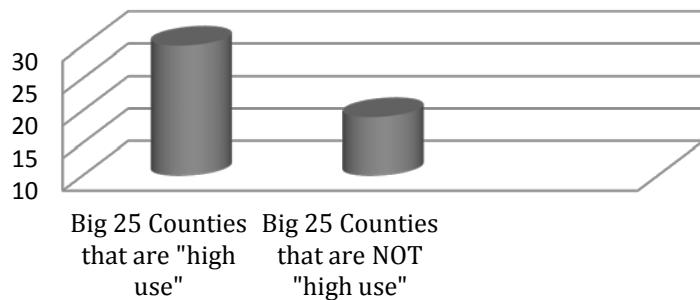
Santa Clara Law Professor David Ball has conducted an extensive analysis of the rates at which California counties have historically sent people to state prison for felony convictions, and developed a ranking of counties comparing county violent crime rates to the rates at which they sent people to prison over a ten year period.³⁴ The counties Ball denotes as “high use” counties have a greater disparity than other counties between their violent crime rate and imprisonment rate; that is, “high use” counties sent people to prison at higher rates than other counties with comparable violent crime rates. These differences cannot be explained by higher or lower violent crime rates—in other words, it is not a simple matter of counties with more violent crime sending more people to prison, nor is it that counties achieve lower violent crime rates by sending more people to prison. For example, Ball notes that Alameda and San Bernardino Counties have similar population levels and similar violent crime levels. Yet, over the past ten years, San Bernardino sent more than twice the number of people to state prison as Alameda County. As Professor Ball points out, “California’s prison overcrowding is due in large part to county decisions about how to deal with crime ... California’s counties use state prison resources at dramatically different rates...”³⁵

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A danger inherent in the wide latitude the state has given counties to implement realignment is that the counties that have historically sent disproportionate numbers of people to state prison will focus their realignment implementation efforts on increasing their jail capacity to incarcerate more people at the local level. The county realignment budgets the ACLU reviewed for this report seem to bear out this concern. Of the Big 25 counties, 10 were among Ball’s “high use” counties.³⁶ Those 10 counties spent an average of at least 30 percent of their realignment funds to expand jail capacity, compared to only 19 percent for the non “high use” counties among the Big 25.³⁷ (Figure C).

FIGURE C

**Business as Usual:
Percentage of County Realignment
Allocation Spent to Expand Jail Capacity**



Because AB 109 encourages counties to implement community-based alternatives to incarceration and evidence-based approaches to public safety without providing a formal mechanism for accountability, each county is free to spend its realignment implementation dollars as it sees fit. As a result, despite AB 109's emphasis on alternatives to incarceration, 24 of the Big 25 counties we reviewed have plans for jail expansion (all but Alameda County). This business-as-usual approach to local public safety will not accomplish the shared goals of reducing recidivism and conserving scarce public safety dollars.

Improving the Funding Formula

There are two levels to local decision making. First, counties decide how to distribute AB 109 funds among probation departments, sheriff's departments, public health, treatment and other social services, district attorneys, public defenders and local police departments. Second, counties decide how the portion of the funds they allocate to the sheriffs' departments will be used. These funds may be used for alternatives to jail confinement, such as electronic monitoring and day reporting; by improving jail conditions, such as by enhancing mental health and medical care; or by expanding jail capacity.

Counties cannot be held accountable for implementing evidence-based practices if they collect no evidence. At the same time, without standardized, consistent data collection across the state, it will be difficult for the state to identify successful programs worthy of further study, replication or investment—or unsuccessful programs that should be discontinued or revised.

In determining the funding formula going forward, the legislature should better incentivize counties to adopt evidence-based public safety policies and practices. Eventually, state funding allocations must be based upon counties demonstrating the sorts of positive outcomes realignment was meant to achieve; primarily, lower recidivism rates and increased use of cost-effective alternatives to incarceration, particularly for the pretrial population. This will require counties to collect and report

standardized data on public safety outcomes, something that the state should have required in AB 109 but did not. This is an unacceptable omission. Counties cannot be held accountable for implementing evidence-based practices if they collect no evidence. At the same time, without standardized, consistent data collection across the state, it will be difficult for the state to identify successful programs worthy of further study, replication or investment—or unsuccessful programs that should be discontinued or revised.

The ACLU therefore advocates a multi-phased approach. Beginning fiscal year 2012-13, the state should provide funding to counties specifically earmarked for data collection and reporting. The state should mandate standardized data collection and analysis across the 58 counties and partner with academic institutions, think-tanks and advocacy organizations to develop a robust outcome measurement program that enables policymakers to monitor which policies and programs are working to reduce recidivism and reliance upon incarceration. The state should identify data that counties are required to report, such as recidivism rates (using a consistent statewide definition of recidivism), pretrial percentage of jail population, and implementation of community-based alternatives to incarceration. The state also should make clear that in future years, county realignment funding allocations will be based upon this outcome data; counties that fail to collect and report the data will miss out on future allocations based on those outcome measurements.³⁸

Until outcome measurement data is available, the legislature should adopt an interim funding allocation formula based upon currently-available data, but *not* driven by past years' average daily prison populations (ADP). The funding formula should be based upon risk factors—such as a county's crime rate—that measure current and ongoing burdens experienced by local criminal justice systems. Those counties with higher serious and violent crime rates need more state assistance to run effective local criminal justice systems and should receive higher amounts of state realignment funding.

The funding formula also should consider counties' efforts to adopt cost-effective alternatives to incarceration. One readily available measurement is county success under SB 678, a program that provided counties financial incentives for reducing the rate at which felony probationers violated probation and were sent back to prison.³⁹ Once realignment took effect, counties could no longer send individuals to state prison for such violations, meaning that SB 678 effectively ceased to operate after October 1, 2011. However, data is available for the first nine months of 2011. This factor should be used as one variable for an interim funding allocation formula and should be weighted more heavily than the mere 10 percent weight it was given in the first year's allocation formula. Similarly, the interim funding formula might factor in the counties' past years' felony probation work-loads; again, this data is readily available and is indicative of the extent to which counties are utilizing probation rather than incarceration in state prison—precisely the sort of outcome the state should be incentivizing with realignment funding allocations.

When realignment was enacted last year, the legislature and the governor made the political decision to delegate creation of the realignment funding allocation formula to the California State Association

of Counties (CSAC). Because county cooperation was essential to making realignment work, the state government placed a premium upon leaving the counties considerable flexibility and autonomy in deciding how to allocate the funding and implement realignment. While it makes sense for the state to consult with CSAC to determine the realignment funding formula, the legislature and governor are ultimately responsible to taxpayers and should modify the funding formula to maximize public safety return for taxpayer investment. It appears overly optimistic of the legislature and administration to assume that counties will adopt meaningful criminal justice reforms on their own without any state mandates, incentivizes, or oversight. The incarceration habit is deeply engrained and the politics and practice of change across multiple local agencies are difficult.

SENTENCING REFORM AND COUNTY FLEXIBILITY

Beyond data collection, outcome measurements and funding incentives, there is yet another fundamental way in which the state can improve the counties' ability to successfully implement realignment: sentencing reform. For far too long, California has locked up too many people with excessive sentences for low-level offenses. Rolling back draconian penalties for low-level offenses is essential to provide counties the flexibility to manage their local criminal justice populations.

A primary example is reducing drug possession crimes to misdemeanors. As this report was going to print, State Senator Mark Leno (D-San Francisco) had introduced Senate Bill 1506, which would revise the penalty for possession of a controlled substance for personal use from a felony, which is punishable by up to three years behind bars, to a misdemeanor, which is punishable by up to a one-year jail sentence. This common sense reform would bring California into line with the federal government, the District of Columbia, and 13 other states that already punish these offenses as misdemeanors. The new legislation would help alleviate overcrowding in state prisons and county jails and ease pressure on California's court system. The Legislative Analyst's Office (LAO) estimates this single sentencing reform will save counties about \$159 million annually, in addition to \$64.4 million in yearly savings for the state.⁴⁰

Senator Leno has pointed out that, "There is no evidence to suggest that long prison sentences deter or limit people from abusing drugs. In fact, time behind bars and felony records often have horrible unintended consequences for people trying to overcome addiction because they are unlikely to receive drug treatment in prison and have few job prospects and

"There is no evidence to suggest that long prison sentences deter or limit people from abusing drugs. In fact, time behind bars and felony records often have horrible unintended consequences for people trying to overcome addiction because they are unlikely to receive drug treatment in prison and have few job prospects and educational opportunities when they leave. This legislation will help implement public safety realignment and protect our communities by reserving prison and jail space for more serious offenders."

—State Senator Mark Leno

educational opportunities when they leave. This legislation will help implement public safety realignment and protect our communities by reserving prison and jail space for more serious offenders.”⁴¹

Additional examples of sentencing reform the state should enact to make realignment work better at the local level include reducing some low-level property crimes to misdemeanors; reforming marijuana laws (the LAO estimates that legalizing marijuana could save tens of millions of dollars annually); and requiring sentencing judges to consider specified information about the likelihood of recidivism and the costs of available sentencing options when deciding which sentence to impose.⁴²

REPEATING THE STATE'S MISTAKES: THE HIGH COSTS OF JAIL EXPANSION

Counties that have chosen a path of jail expansion—as many of the Big 25 county realignment plans indicate they have—are trying to solve the wrong problem. They seek to absorb the realigned population without changing their local approaches to public safety. Left unchecked, these counties will build larger jail systems that will cost more tax dollars than they do now and hold more people than they do now. Such counties, however, cannot reasonably expect to see any improvement in public safety or reduction in recidivism because, as the legislature acknowledged in enacting AB 109, continually increasing our capacity to incarcerate over the past 30 years has simply not worked.⁴³ We cannot incarcerate our way out of this problem. Overuse of incarceration is itself a large part of the problem.

According to the county realignment implementation plans reviewed by the ACLU, approximately \$45.1 million in realignment funding provided to the Big 25 counties has already been allocated for jail capacity expansion costs, including 7,002 new jail beds and 722 new corrections-related staff.

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Given the incomplete and sometimes vague county realignment plans produced thus far, these figures are conservative. We only counted funding for new jail beds and new corrections-related positions where these were explicitly designated in one of the 25 county implementation plans we studied. This almost certainly results in an *underestimation* of the extent to which AB 109 funds are being used to increase jail capacity.

For instance, Orange County clearly intends to use AB 109 funds to expand jail capacity, but because no specific amount is budgeted in the county’s implementation plan, we did not include any amount

from Orange County in arriving at the \$45.1 million figure.⁴⁴ San Bernardino has set aside \$350,000 for jail remodeling, but it is unclear whether this will result in additional beds. Solano identified currently shuttered jail space that may be reopened if the need arises.⁴⁵ Similarly, in San Francisco, millions of dollars may go toward re-opening and operating a currently shuttered 360-bed facility but it is unclear how much funding will come from AB 109 and how much will come from San Francisco's general fund.⁴⁶ None of these amounts are included in our calculations.

The \$45.1 million figure only begins to scratch the surface in terms of the total amounts being spent to expand incarceration capacity throughout the state using other government funding streams. For instance, Los Angeles plans to add 4,234 beds under its realignment plan, but also is separately considering a \$1.4 billion plan to replace one jail and expand another, adding 400 additional beds. The county is first in line to receive a \$100 million award under a state jail and prison construction bond program, Assembly Bill 900 (AB 900), but the award would still leave the county to bear the remaining \$1.3 billion in construction costs—not to mention ongoing costs to maintain and staff the expanded facilities in perpetuity. San Mateo county plans to spend its own county taxpayer dollars to increase its jail capacity by more than 500 beds. The Board of Supervisors has approved construction of a new jail at a cost of \$145-160 million to be completed in 2014.⁴⁷ Annual operating costs of the new facility are estimated at about \$30 million.

State Funding of Massive Jail Expansion

Despite the state's recognition that relying heavily on incarceration has failed to improve public safety, it is nonetheless subsidizing massive incarceration at the local level. Of the Big 25 counties (which received \$327 million, or 92 percent of the total state allocation), only one, Alameda County, has completely forgone expanding its jails. The remaining twenty-four counties have either designated realignment dollars for jail capacity expansion or hope to tap into separate state funds earmarked for jail construction through AB 900—or both.

AB 900 authorized the issuance of up to \$7.3 billion⁴⁸ in state revenue bonds to finance the construction of new state prisons and county jail facilities, as well as to renovate or build state correctional facilities.⁴⁹ With interest on the bonds factored in, the total cost to taxpayers of this massive jail and prison expansion project will likely be over \$19 billion. And if any county defaults on its payments under these bonds, taxpayers throughout the state—not just in the individual county—will be stuck with the bill.⁵⁰

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By November 2009, eleven counties had received Phase I AB 900 awards.⁵¹ Nearly \$7 million was distributed to these counties to create an estimated 5,185 new jail beds. At least six of the 11 counties plan to tap into *both* realignment and AB 900 state funds to expand local jail capacity—and these six are among the Big 25 counties.⁵² All but one (San Bernardino) of these six counties also have explicit plans to add additional jail beds using AB 109 funding.⁵³ Five Phase I construction projects have already broken ground, or have an estimated construction start date in 2012.⁵⁴

As of January 11, 2012, twenty counties had applied for AB 900 Phase II funds.⁵⁵ San Benito and Santa Barbara are seeking to exchange their Phase I awards, which require the counties to match 25 percent of the construction costs, for Phase II awards, which require a match of only 10 percent. Madera was awarded \$30 million in Phase I awards and has applied for \$3 million more in Phase II funds. As this ACLU report was being finalized, the Board of the Corrections Standards Authority (CSA) was scheduled to hear recommendations on Phase II awards (on March 8, 2012) and to announce the awards shortly thereafter.⁵⁶

Although invited by the state to apply for as much as \$100 million in AB 900 jail construction funds, Santa Clara County recently refused the state's offer, citing concerns about the decades-long ramifications that such a decision would have on county criminal justice policies. County Supervisor Dave Cortese explained, "It's not only a lot of money, but it's going to literally cement in a direction that you know will be relatively irreversible for probably three decades."⁵⁷ While rejecting new jail construction, however, Santa Clara did budget nearly \$5 million of its realignment allocation to add jail capacity (about 40 percent of its overall realignment funds).

Jail overcrowding is a serious issue—for the health, safety and humane treatment of those in jails, and for the safety of the staff, as well as for effective criminal justice administration. Indeed, at least twenty counties already operate under court-ordered population caps.⁵⁸ But expanding jail capacity is not the answer. Simply building new jails or re-opening and re-staffing previously closed jail space

In Sacramento County, it's estimated that reopening
a closed jail will cost the county

**\$700,000
per month**



treats the symptom but not the underlying disease. Constructing new jails requires significant financing through bond measures and tax increases. Once a jail is built, it must be maintained and staffed, which poses significant long-term costs to taxpayers. Similarly, reopening shuttered facilities also imposes significant staffing and maintenance costs. For example, in Sacramento County, it's estimated that reopening a previously-closed jail will cost the county \$700,000 per month.⁵⁹

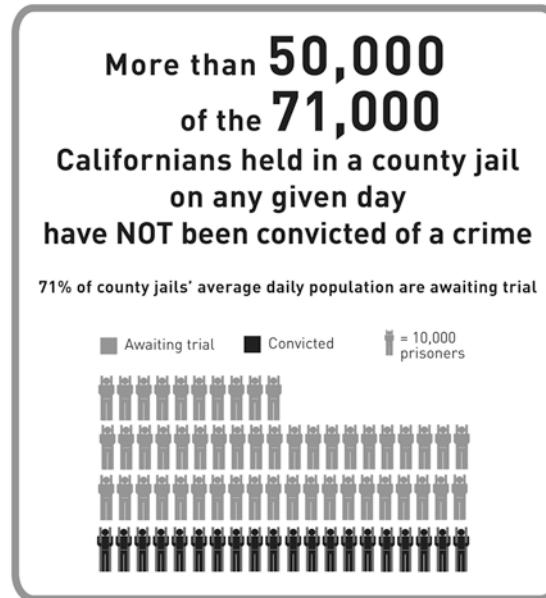
Instead of taking extraordinary and expensive measures to finance jail construction, maintenance and staffing or to open closed facilities—especially in a time of fiscal crisis with critical social services and education funding being cut across the board—counties would do better to implement smart, effective policies that reduce the number of people unnecessarily taking up expensive jail space. Jail beds should be reserved for those who present a significant threat to public safety. Counties should not be spending the lion’s share of AB 109 funding to expand jail capacity. *The state should either suspend all AB 900 funding until such time as less costly and more effective community-based alternatives have been fully implemented, or expand the AB 900 grant criteria to allow counties to use AB 900 monies for non-jail community sanctions and alternatives to incarceration.*

INCARCERATED WITHOUT TRIAL: THE REALITY OF JAIL OVERCROWDING IN CALIFORNIA

Because the state will no longer take most people convicted of low-level felony offenses into state facilities, there is a common—but mistaken—perception at the local level that jail construction is essential. Indeed, as noted above, all but one (Alameda) of the Big 25 counties intend to add jail capacity, and of those all but three dedicated some portion of AB 109 money to do so.⁶⁰ However, efforts to create new jail capacity not only ignore the utterly failed state prison expansion and overcrowding experience; they also turn a blind eye to the reality of jail overcrowding in California and to the new powers given to counties to better manage their jail populations. Rather than expand jail capacity, counties should implement evidence-based practices to manage both pretrial and sentenced populations.

As sheriffs have readily admitted, county jails are not full of individuals who have been convicted of crimes, or even individuals thought to present a high public safety risk to the community. Rather, most of those filling up scarce and expensive jail beds are individuals waiting for their day in court but unable to afford bail. It is hard to overstate the severity of this crisis. Years before the enactment of realignment, the California State Sheriffs’ Association bemoaned the fact that there was “no room for sentenced inmates” in county jails due to the rising pretrial detainee population.⁶¹

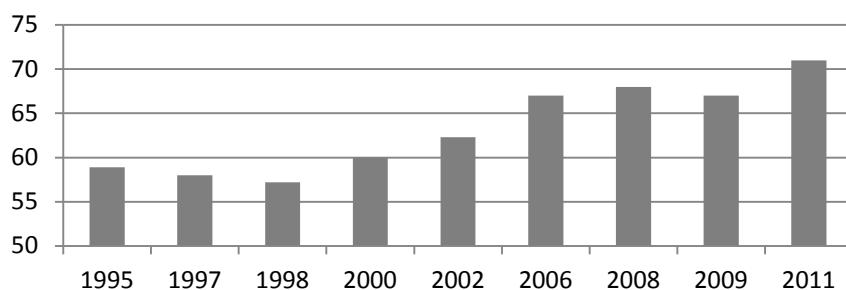
California far exceeds the national average of 61 percent of jail space occupied by pretrial jail populations.⁶² More than 50,000 of the 71,000 Californians held in county jail on any given day have not been convicted of a crime but rather are awaiting trial—71 percent of county jails’ average daily



population.⁶³ The percentages of non-sentenced and sentenced detainees were roughly equal in California's county jails throughout the 1980s.⁶⁴ However, the proportion of pretrial detainees in jails began rising in the 1990s, and since 1995 has risen by twelve percentage points.⁶⁵ (See Figure D). *State policymakers should adopt reforms to ensure that no person remains incarcerated simply because they are cannot afford to post bail.*

FIGURE D

**Growing Percentage of
California County Jail Population
Who Are Awaiting Trial**



Jail overcrowding due to the pretrial population is likely, in part, an unintended consequence of three factors: rising bail amounts, courts' lack of information on defendants' public safety risk (or lack thereof), and the limited authority of sheriffs to address this issue. Prior to realignment, sheriffs were required to detain defendants in county jail until their court date if the defendants were denied bail or failed to post bail—regardless of the individual's assessed risk level and the availability of jail beds.⁶⁶ In some circumstances, misdemeanor defendants could have their bail eliminated if they participated in pretrial diversion programs. This option, however, has not been available in all counties.⁶⁷

High rates of pretrial detention are a threat both to public safety and civil liberties. People with financial resources are able to get out of jail and return to their jobs, families, and communities. People who are unable to pay for bail or raise the necessary collateral, however, must stay in jail awaiting a trial date that could be months away. Or, they may more readily decide to accept a plea bargain as a means of getting out of jail. These results have nothing to do with public safety. They have everything to do with wealth and poverty. People with money are able to buy their freedom while poor people cannot.

It's All about Money: California's Broken Pretrial Detention System

Anyone charged with a crime is entitled to a number of important legal rights under federal and California law. First and foremost, those charged with crimes are presumed innocent until proven guilty. They have a right to counsel, a right against self-incrimination, a right to due process of law, a right to equal protection under the law. They also have a right to bail that is not "excessive."⁶⁸

Bail is some form of property, usually money, that a defendant deposits or pledges to the court in exchange for being released from jail pending trial. Bail is the court's collateral against the risk that, once released, a defendant will fail to appear for trial. If the defendant fails to appear, he or she

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forfeits the entire amount of bail posted or pledged to the court. California operates on what is known as a "money-based" bail system. County courts set their own bail schedules, assigning dollar amounts to various crimes. The result is a patchwork of 58 divergent bail schedules across the state.

Those who do not have enough money to post bail—virtually everyone accused of a crime in county courts—may choose to post a surety bond (known as a "bail bond") with the court instead. The defendant pays a fee of approximately 10-15 percent of the total bail amount to a bail

bondsman who, in turn, posts or pledges the full bail amount to the court. If the defendant fails to appear, the bail bondsman is held responsible and may be required to forfeit the entire bail amount to the court.

According to a 2010 investigative series by National Public Radio, in California and across the country, however, bail bond companies routinely fail to pay counties when their clients do not show up for court. The series reported that, in California, bonds companies owed counties \$150 million.⁶⁹

A One-Size-Fits All Bail System

California law requires that judges take a number of considerations into account when setting bail and deciding the terms of pretrial release of defendants, including public safety, ensuring the defendant's appearance at trial and the impact of pretrial release on victims.⁷⁰ California's money-based bail scheduling system, however, has warped into a presumptive bail system, in which judges commonly fix the amount of bail according to the county schedule without meaningfully considering the specific circumstances of the individual defendant or the alleged crime including for example, low risk to public safety and low flight risk.

Outside of California, some courts have held that such presumptive bail practices violate the due process rights of defendants.⁷¹ Additionally, as noted above, the bail schedules set among California counties vary widely. For example, for simple drug possession the presumptive bail amount is \$5,000 in Fresno and Sacramento, \$10,000 in Alameda and Los Angeles, and \$25,000 in San Bernardino and in Tulare.⁷² (See Figure E).

FIGURE E

COMPARISON OF PRESUMPTIVE BAIL FOR SELECT FELONIES IN TEN COUNTIES

(OBTAINED FROM BAIL SCHEDULES AVAILABLE ON EACH COUNTY'S SUPERIOR COURT WEBSITE)

County	Presumptive Bail Amount for Possession of a Controlled Substance <small>(Cal. Health & Safety Code § 11350)</small>	Delivering a Check with Insufficient Funds <small>(Cal. Penal Code § 476a)</small>
Alameda	\$10,000	\$10,000
El Dorado	\$7,500	\$10,000
Fresno	\$5,000	\$1,000
Los Angeles	\$10,000	\$5,000
Orange	\$20,000	\$20,000
Sacramento	\$5,000	\$5,000
San Bernardino	\$25,000	\$25,000
San Diego	\$5,000	\$20,000
San Francisco	\$15,000	\$15,000
Tulare	\$25,000	\$10,000

Under the money-based bail system, bail bondsmen and insurance industries earn profits on virtually every bail bond posted to the court. Unsurprisingly, the bail bonds industry opposes most of the pretrial alternatives that would do the most to alleviate jail overcrowding in California. One lobbying organization for the industry states on its website, “For decades government sponsored pre-trial release programs have been expanding beyond their mandated purpose. These programs have become the direct competition of surety bail. We are steadily losing bail premium dollars to a government agency that is working within the jail and court facilities.”⁷³

Money-Based Bail: A Discriminatory System

The financial terms of bail also result in disparate outcomes based on race and ethnicity.



Defendants with little money or collateral to post for bail, but with stable employment, strong community ties and no history of violence or other risk-predictive factors may nonetheless be forced to remain for weeks or even months in jail pending trial simply because the local bail schedule dictates a bail amount beyond their means.

By definition, the money-based bail system discriminates against the poor and working class. The mortgage crisis has further exacerbated this problem. Historically,

individuals and families used their homes as collateral to raise funds to pay for bail. However, bankruptcies, foreclosures, and plunging home values mean that fewer people are able to use their homes as collateral.⁷⁴

The financial terms of bail also result in disparate outcomes based on race and ethnicity. Latino and black defendants are more likely than white defendants to be held in jail because of an inability to post bail.⁷⁵

Furthermore, pretrial detention makes it more difficult to mount an adequate defense in court. It is difficult to meet with defense attorneys while detained in jail, and the disruption of incarceration to family, employment, and community ties stigmatizes defendants.⁷⁶ Defendants who are detained pending trial are more likely to plead guilty and receive longer sentences if convicted, compared to those released pending trial. This is true even controlling for other relevant factors, such as current charge, criminal history, and whether represented by appointed or retained counsel.⁷⁷

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Unnecessary Risks to Public Safety

Most importantly, California's money-based bail system fails to accurately assess and manage risk among pretrial populations. There is no evidence that a defendant's ability to afford bail correlates to their risk of committing a new crime while out on bail, or even their likelihood of appearing in court. Pretrial risk assessment research over the past 30 years, however, has identified common factors that do accurately predict court appearance and/or danger to the community. These factors include:⁷⁸

- Current charge
- Whether the defendant had outstanding warrants at the time of arrest
- Whether the defendant had pending charges at the time of arrest
- History of criminal convictions
- History of failure to appear in court
- History of violence
- Residence stability
- Employment stability
- Community ties
- History of substance abuse.

The money-based bail system, with bail amounts determined by pre-set, one-size-fits-all schedules, fails to take any of these risk factors into account. Not only do many people who present no public safety or “failure to appear” danger remain unnecessarily behind bars pending trial, but sometimes people who *do* present a public safety risk are nonetheless released simply because they are able to afford to post the scheduled bail amount.

The tragic story of Maurice Clemons in Washington state is a poignant example. In November of 2009, Clemons killed four police officers in the city of Lakewood after having been released on bail twice for charges of assaulting police officers and rape of a 12-year-old girl.

Following this incident, the International Association of Chiefs of Police aptly stated, “A suspect’s release or detention pending trial currently is not based on an informed assessment of whether or not he or she is a danger to society [and/or] is likely to return to court for trial, but on whether the suspect has enough money to bail himself or herself out of jail.”⁷⁹

“A suspect’s release or detention pending trial currently is not based on an informed assessment of whether or not he or she is a danger to society [and/or] is likely to return to court for trial, but on whether the suspect has enough money to bail himself or herself out of jail.”

—International Association of Chiefs of Police

Each day in California, hundreds of bail determinations are made according to bail schedules and without the benefit of individualized assessments of risk to public safety or likelihood of returning to court.

RESERVING JAILS FOR PUBLIC SAFETY: ALTERNATIVES TO PRETRIAL DETENTION

AB 109 directly addresses the systemic crisis of pretrial over-detention by giving county sheriffs (subject to approval by the Board of Supervisors) new authority to manage their pretrial population and to reserve detention for those individuals who pose a risk to the community or for failure to appear in court. Specifically, AB 109 added a section to the California Penal Code that permits home detention for pretrial inmates in lieu of bail.⁸⁰ This means that even if a defendant does not have enough money to post bail, counties have new authority to keep those who do not pose a significant threat to public safety out of jail pending trial, under some less costly form of supervision, such as day reporting or electronic monitoring with or without GPS tracking.

Despite this new authority and despite high pretrial detention rates, only nine⁸¹ of the Big 25 counties committed in their realignment plans to better manage or reduce their pretrial population—for example, by implementing a pretrial risk assessment tool for determining whether defendants should

be released on their own recognizance, or making pretrial defendants eligible for existing home detention programs previously available only to sentenced inmates.

Only two of the county plans clearly specified an actual budget allocation for pretrial programs: Fresno and Sacramento. A third, San Joaquin, allocates \$70,000 from the AB 109 training and implementation grant to implement a Pretrial Assessment tool for the Court to utilize in determining which individuals are appropriate for release. However, the plan does not provide for any pretrial services or programming beyond the assessment tool.

The 17 remaining counties either made no mention of the pretrial population, or perfunctorily acknowledged that supervised release and alternatives to custody were authorized for the pretrial population under AB 109 without making any commitment to institute them.

California's average pretrial population (71 percent of the total jail population) is significantly higher than the national average (61 percent).⁸² All but five of the Big 25 counties struggle with pretrial jail populations exceeding the national average. Of the remaining twenty counties, all but four exceed even the bloated state-wide average. (See Figure F). California counties ought to be aggressively pursuing innovative strategies to reduce their pretrial populations, rather than seeking to expand jail capacity.

In early 2012, the proportion of county jail populations in California that were pretrial began to fall not because the pretrial population declined, but because the number of *sentenced* inmates increased,

FIGURE F
**COUNTY PERCENTAGE OF JAIL POPULATION
UNSENTENCED FOR MONTHS OF JULY - SEPT. 2011
COMPARED TO STATE AND NATIONAL AVERAGES**

	Percent of Total Jail Population Unsentenced	Comparison to State Average	Comparison to National Average
Alameda	83	+12	+22
Contra Costa	85	+14	+24
Fresno	88	+17	+27
Kern	85	+14	+24
Kings	56	-15	-5
Los Angeles	70	-1	+9
Monterey	78	+7	+17
Orange	53	-18	-8
Placer	65	-6	+4
Riverside	76	+5	+15
Sacramento	57	-14	-4
San Bernardino	81	+10	+20
San Diego	62	-9	+1
San Francisco	83	+12	+22
San Joaquin	67	-4	+6
San Mateo	71	0	+10
Santa Barbara	79	+8	+18
Santa Clara	71	0	+10
Shasta	82	+11	+21
Solano	80	+9	+19
Sonoma	52	-19	-9
Stanislaus	82	+11	+21
Tulare	59	-12	-2
Ventura	73	+2	+12
Yolo	81	+10	+20

because pursuant to AB 109, individuals sentenced for low-level, non-violent felonies were no longer being transferred to state correctional facilities. In light of AB 109's impact on newly-sentenced jail populations, it is now more essential than ever that counties address their failed pretrial policies and reserve jail space for people who pose a risk to public safety.

Allowing greater numbers of low-risk individuals to be released, with monitoring where necessary, pending trial will improve public safety outcomes and cost less than incarceration. In addition to freeing jail space for those who present the highest public safety risk, expanded pretrial release policies allow defendants to maintain employment and provide family support, minimizing the disruption to individual lives and communities that all too often leads to further destabilization and crime.

California Models for Pretrial Policies

Some forward-thinking counties took steps to manage their jail populations through pretrial alternatives well before realignment. Napa and Santa Cruz counties provide models of best practices that other counties should adopt.

Napa County's Day Reporting Center

Like almost all California counties, Napa County faced a jail overcrowding and associated fiscal crisis by 2000. After determining that more than 80 percent of their jail population were individuals awaiting trial, the sheriff, district attorney and courts began working together to develop pretrial alternatives to incarceration.⁸³ Instead of constructing a costly new jail, Napa built a “Community Corrections Service Center,” which serves as the headquarters for all risk-assessment, supervision and services for those released from jail pending trial, or who have been released on probation. The programs and services provided through the Center include day reporting, drug screening, electronic monitoring, various substance abuse and mental health treatment services and other classes and training designed to address the needs that have been shown to drive criminal behavior.⁸⁴ A decade later, the county’s pretrial detention rate has dropped below the state-wide average to 65 percent.⁸⁵

Santa Cruz County's Pretrial Services Program

Santa Cruz County's Main Jail was over capacity soon after opening its doors in 1981. By 2004, overcrowding reached such proportions that a Grand Jury Report deemed the jail dangerous for inmates and staff alike.⁸⁶ After analyzing its jail population, Santa Cruz County found that many low-risk pretrial defendants were likely unnecessarily occupying jail beds. In 2005, the probation department began working with the sheriff's detention staff to introduce a validated risk assessment tool to identify whether pretrial defendants posed significant risks to the community. They recommended that the courts release low-risk defendants on their own recognizance, without requiring bail. Probation staff also developed a supervision program and reporting rules for those released pretrial. After two years, Santa Cruz found that fully 92 percent of supervised pretrial participants did not re-offend, and 89 percent made all of their court appearances.⁸⁷ Ninety jail beds a day were saved (a 25 percent reduction in average daily population), thus amounting to significant

cost savings to the county.⁸⁸ In 2011, Santa Cruz's pretrial detention rate was 56 percent, far below the state-wide average.⁸⁹ Santa Cruz County's realignment implementation plan calls for no expansion at all of jail capacity; in fact, the Santa Cruz County Sheriff has repeatedly informed the county CCP that he has been able to reduce his jail population after realignment by expanding the use of electronic monitoring.

National Models for Pretrial Policies

Jurisdictions outside of California have had to contend with severe jail overcrowding and fiscal crises, and many have looked to pretrial reform as a workable solution that protects public safety and ensures appearances for court dates while managing jail populations.

- **Baltimore, Maryland.** A Justice Policy Institute report on the City of Baltimore's Pretrial Release Services Program found that of the 6,000 to 7,000 pretrial defendants supervised by the program annually, ninety-six percent (96 percent) of supervisees are not arrested on new charges while awaiting trial.⁹⁰ Additionally, ninety-four percent (94 percent) of supervisees appear for their scheduled court date.⁹¹

Monitoring a pretrial defendant through the program costs the city only \$2.50 per day, as opposed to \$100 per day to incarcerate the same person.⁹²



- **Camden County, New Jersey.** The Camden Correctional Facility in Camden, New Jersey endured chronic jail overcrowding for more than 20 years. By 2004, it was operating at 142 percent of its designed capacity.⁹³ The severe overcrowding problem prompted a class action lawsuit, which ultimately resulted in the implementation of a jail reduction initiative. After analyzing its jail population, Camden found that adopting validated risk assessment tools and alternatives to incarceration for low-risk pretrial defendants could significantly ease the burden on its system. Camden made a number of changes to its management of the jail system, the pretrial programs chief among them. As a result, the average daily jail population fell by 21 percent over one year, amounting to a cost avoidance of over \$9 million annually.⁹⁴
- **Washington, D.C.** The problems of the money-based bail system were perhaps more glaring in Washington, D.C. than in any other jurisdiction. Even as early as 1963, commentators criticized the discriminatory nature of the bail system and its failure to reduce public safety risks.⁹⁵ Over the next four decades, the D.C. Pretrial Services Agency instituted the gold

standard for pretrial programming—validated risk assessments reported to courts in preparation for bail decisions, programming for those released pending trial, and effective pretrial supervision. As a result, by 2008, 80 percent of all defendants were released without a money bond (as opposed to the previous rate of 80 percent being held in jail, as is the case in many California counties). Fifteen percent are typically held by the court without bail. Only five percent have financial bail. None are released on commercial surety bail (bail bonds).⁹⁶ Furthermore, the high non-financial release rate has been accomplished without sacrificing the safety of the public or the appearance of defendants in court. Agency data show that 88 percent of released defendants make all court appearances, and 88 percent complete the pretrial release period without any new arrests.⁹⁷

Adopting Pretrial Best Practices

California counties have a wealth of research and experience to draw from in developing and implementing pretrial detention policies. The Pretrial Justice Institute (PJI), formed by the U.S. Department of Justice, has published best practices with regard to local administration of pretrial justice.⁹⁸ Counties must prioritize and fund these proven methods to manage jail populations, protect public safety and ensure a fair and functioning criminal justice system. Drawn primarily from PJI's best practices, the ACLU recommends that all California counties take the following steps to address pretrial detention at the local level:

- Adhere to consistent principles when using assessment tools to make bail decisions based on risk, not just the charged offense;
- Implement pretrial diversion programs to address drug addiction and mental illness through special courts;⁹⁹
- Employ cite and release programs to address those charged with misdemeanors;¹⁰⁰
- Increase appearance rates among released defendants using cost-effective tools, including court date reminders;¹⁰¹
- Ensure legal representation at initial appearances where bail is set;¹⁰²
- Supervise defendants based on individualized conditions and, where appropriate, intermediate sanctions short of incarceration;¹⁰³ and
- Define and measure performance outcomes.¹⁰⁴

In addition to these county-level reforms that can dramatically reduce the pretrial jail population, the ACLU recommends simple but effective statewide pretrial reforms that will greatly assist the counties in reducing jail populations, such as:

- Create a presumption of release on own recognizance (“O.R. release”) for felony charges that are non-violent, non-serious, and non-sex offenses (the “non-non-nons”) unless a judge finds that the defendant presents a risk of flight or danger to the community pretrial.
- Provide direction to courts concerning the factors to be considered when ordering release, determining whether or which conditions to require, and setting bail, focusing upon imposing

conditions of release other than monetary bail that will reasonably assure appearance for court proceedings and public safety;

- Include best practices and evidence-based factors in pretrial investigation report to provide the court more and credible information by which to determine release, monitoring and/or set bail.

The legislature's inclusion of pretrial alternatives in AB 109 reflects a growing national consensus that there are simply too many low-risk, non-sentenced people behind bars. As U.S. Attorney General Eric Holder recently noted, "Almost all of these [non-sentenced, pretrial] individuals could be released and supervised in their communities—and allowed to pursue or maintain employment, and participate in educational opportunities and their normal family lives—without risk of endangering their fellow citizens or fleeing from justice."¹⁰⁵

Improving California's pretrial system matters now more than ever to policymakers and the public, not only because of the system's risks to public safety and discriminatory effects, but because reducing the number of people held in jails who are awaiting trial is one of the most immediate and cost-effective ways for counties to reduce jail overcrowding and ensure successful implementation of realignment. Pretrial custody reform also can significantly improve public safety and court efficiency by accurately assessing individuals' risk of failing to appear and individuals' likelihood of committing offenses if released from jail pending court appearances.

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—U.S. Attorney General Eric Holder

Access to Pretrial & Alternative Sentencing Programs for Noncitizens

As discussed above, California's overreliance on a flawed and inequitable bail system and a lack of pretrial alternatives have contributed to overcrowded county jails. Jail crowding is further exacerbated by counties' unnecessary use of limited jail beds and law enforcement resources to carry out federal immigration policy.

Rapid expansion of immigration enforcement in the criminal justice system coupled with widespread confusion and misunderstanding among California law enforcement agencies regarding their legal obligations to cooperate with the Bureau of Immigration & Customs Enforcement (ICE) has resulted in widespread bias against immigrants in the criminal justice system. It has resulted in a two-tiered system of justice, in which noncitizens who would otherwise qualify are routinely denied bail, jailed for longer periods, and disqualified from alternative release programs.

Counties can free up jail beds by taking simple steps to reduce the number of inmates in county jails who are held based on discretionary detainees or ICE holds. An ICE hold or detainer is a *request* that a law enforcement agency, such as a jail, notify ICE prior to release of a noncitizen so that ICE can arrange to assume custody for the purpose of arresting and removing the individual. Contrary to common perception by law enforcement officials, enforcement of ICE holds is not mandatory. ICE holds are merely requests, enforceable at the discretion of local officials.¹⁰⁶ Constitutional separation of powers prohibits the federal government from coercing any state or local agency into utilizing its own resources for the purpose of enforcing a federal regulatory scheme, such as immigration.

At least two California counties have adopted policies limiting enforcement of ICE holds in order to minimize costs and preserve public safety by building community trust with immigrant communities. In June 2011, San Francisco adopted a policy that significantly curtails enforcement of ICE holds.¹⁰⁷ San Francisco does not submit to ICE holds issued for inmates who are arrested for infractions and cite-eligible misdemeanors and who have not been previously convicted of two misdemeanors or a felony.¹⁰⁸ In addition, San Francisco will not enforce holds for individuals arrested for non-citable misdemeanors if the charges are subsequently dismissed.¹⁰⁹ San Francisco has tailored its policy to reflect local enforcement priorities by incorporating more stringent requirements for the release of domestic violence arrestees who are subject to ICE holds.¹¹⁰

In October 2011, the Santa Clara County Board of Supervisors adopted a policy providing that the county would not submit to ICE hold requests for any person until the county is fully reimbursed for the costs associated with ICE holds.¹¹¹ If the county is reimbursed by the federal government in the future, it will exercise its discretion to enforce ICE holds against those individuals who have been convicted of a violent or serious felony as defined in the California Penal Code.¹¹² The policy also provides that “ICE agents shall not be given access to individuals or be allowed to use county facilities for investigative interviews or other purposes, and county personnel shall not expend county time or resources responding to ICE inquiries or communicating with ICE regarding individuals’ status or release dates.”¹¹³

In addition to limiting the enforcement of ICE detainees, counties can further reduce costs and improve public safety by ensuring that immigration status does not preclude individuals from participating in pretrial release or alternative sentencing programs. It is a common but faulty assumption that persons with ICE holds will be deported (and, therefore, are flight risks) and that counties should not expend the resources offering alternative detention programs to such individuals. In fact, people with ICE holds may not be deportable at all, may have a defense to deportation, or may return to the community while their immigration case is pending for months and even years. Because their reentry to the community is possible, their participation in rehabilitative programs at the outset is critical in order to reduce recidivism and increase public safety. Allowing low-level offenders with ICE holds to participate in these programs will also cost counties less money than incarceration and free up jail bed space for higher-risk individuals.

PROTECTING COMMUNITIES: INVESTING IN INDIVIDUAL OUTCOMES

In addition to expanding county discretion in how to address the pretrial population, realignment also gives counties new options for holding individuals accountable once they have been convicted of committing a misdemeanor or low-level felony offense. AB 109 encourages counties not to repeat the state's failed policy of relying upon incarceration. Instead counties are urged to implement community sanctions and programs that both conserve limited resources (including jail space) and improve the outcomes of individuals within the criminal justice system—which means less crime and fewer future victims.

The new law explicitly provides that, "Consistent with local needs and resources, the [realignment implementation] plan may include recommendations to maximize the effective investment of criminal justice resources in evidence-based correctional sanctions and programs, including, but not limited to, day reporting centers, drug courts, residential multiservice centers, mental health treatment programs, electronic and GPS monitoring programs, victim restitution programs, counseling programs, community service programs, educational programs, and work training programs."¹¹⁴

Realignment also creates important new opportunities for counties to expand alternative-to-incarceration policies. County sheriffs now have broadened discretion to manage those in their custody with alternatives to jail incarceration such as home detention or work release programs.

The new law explicitly provides that, "Consistent with local needs and resources, the [realignment implementation] plan may include recommendations to maximize the effective investment of criminal justice resources in evidence-based correctional sanctions and programs, including, but not limited to, day reporting centers, drug courts, residential multiservice centers, mental health treatment programs, electronic and GPS monitoring programs, victim restitution programs, counseling programs, community service programs, educational programs, and work training programs."

Courts may continue to sentence individuals to jail or to probation in lieu of incarceration; alternatively, they may now sentence an individual convicted of a non-non-non offense to a "split sentence," under which the individual is committed to county jail for the first part of the term and then placed under the mandatory supervision of the local probation department for the concluding portion of the term.

AB 109 encourages counties to expand the use of "community-based punishment," and provides specific examples such as intensive community supervision; home detention with non-GPS electronic monitoring (such as telephone check-ins) or GPS monitoring; community service;

restorative justice programs such as mandatory victim restitution and victim-offender reconciliation; work, training, or education in a furlough program, or work in lieu of confinement; day reporting;

residential or nonresidential substance abuse treatment programs; mother-infant care programs; and community-based residential programs offering structure, supervision, drug treatment, alcohol treatment, literacy programming, employment counseling, psychological counseling, mental health treatment, or any combination of these and other interventions.¹¹⁵ Alternatives like these can hold people accountable for their actions and reduce the likelihood of future criminal behavior, and cost dramatically less than incarceration.

The ACLU has analyzed the extent to which these types of evidence-based alternatives to incarceration for sentenced offenders were included in the county realignment implementation plans. While we found some promising developments, we also found that many of the plans lack specific commitments, including financial commitments, to ensure that alternatives to incarceration actually are implemented. The lack of uniformity in structure, depth and detail among county plans made systematic comparative assessments difficult.¹¹⁶

Despite a lack of consistency and transparency making it difficult to ascertain exactly what counties are doing with taxpayer funds awarded under AB 109, some clear findings emerge. Most county realignment plans express little more than an intention to move toward evidence-based practices, including alternatives to incarceration for both pretrial and sentenced individuals. The plans claim commitment to these principles, but provide few details on how funds will be allocated or how these proposals will be operationalized, including project timelines, reporting requirements or outcome measurements. The lack of detail provided in many of the plans, and especially the absence of data collection and outcome measurements, means that counties may be paying more in lip service to jail alternatives than in the actual funding and genuine institutional support necessary for their success.

No county realignment plan includes all of the evidence-based practices that could be utilized; all counties have significant room for improvement. Only a handful of realignment implementation plans include significant attention to the elements discussed below. These include the plans from Butte, Colusa, Del Norte, Madera, Merced, Napa, San Diego, San Francisco, Santa Cruz, and Tuolumne. (See Appendix B for an overview of some of the best elements from the 53 available county implementation plans). Far too many counties' plans fail to meaningfully include any of these practices, or to specify how they will be funded, operated and evaluated.

Risk and Needs Assessments

According to their realignment implementation plans, most counties intend to adopt (or expand the use of) an evidence-based risk and needs assessment instrument. Risk assessment tools are used to assess the level of risk to public safety posed by an individual and can be used for both the pretrial and sentenced populations. A needs assessment tool assesses what types of supports or programming an individual needs to succeed—that is, to reduce the chance of recidivism and increase the chance of successfully exiting the criminal justice system. Needs assessments typically are reserved for the sentenced population.¹¹⁷

The county realignment plans vary considerably in addressing risk and needs assessment tools. Twenty-four of the Big 25 counties (all but Kings County) at least indicate the possibility that some form of a risk and needs assessment will be conducted for those under post-release community supervision.¹¹⁸ However, only eight of these counties indicated in their plans that they will use some form of risk assessment for the pretrial population to determine the suitability of lowering bail, releasing the defendant on his or her own recognizance, or placing the defendant in some form of alternative to incarceration.¹¹⁹

In San Diego County, for example, according to its realignment plan, probation agents will employ a risk and needs assessment tool throughout individuals' experience within the criminal justice system.¹²⁰ For the pretrial population, the tool will be used to determine who may be safely released to await trial and, if so, whether they will be released with conditions, such as home detention, electronic monitoring, alcohol monitoring, GPS, work furlough or residential drug treatment. The results of the assessment will also be made available to all parties at sentencing in order to encourage "evidence-based sentencing." Once sentenced, the county plans to use an assessment tool to determine where best to hold that individual accountable—in jail, on work release, on home confinement or under some other arrangement.

In Madera County, according to its realignment plan, probation staff will administer a risk and needs assessment tool to every person being released to community supervision after completing a jail term for a low-level, non-violent felony offense.¹²¹ The tool will be used to develop an individualized plan for each individual that will include supervision intensity, program referrals and case management efforts.

When effectively employed, risk assessment tools can play an important role in determining whether individuals charged with an offense should remain incarcerated before trial or can be released on their own recognizance or with some more limited form of supervision. Similarly, for the sentenced population, risk and needs assessment tools can provide guidance concerning whether an individual should remain in jail, or, if they do not pose a significant risk to public safety, whether they can complete their sentence in home detention, on work furlough or other appropriate supervision in the community. Case managers and supervisors can use these tools to develop individualized plans that span the period of incarceration and the period of post-release supervision and ultimately reentry into the community. This kind of "end-to-end" case management can ensure that the resources counties dedicate to rehabilitation have the greatest impact possible on reducing recidivism rates.

It is critical to remember that not all risk assessment tools available to counties are statistically validated by research, nor are they necessarily created with a pretrial population in mind. The National Institute of Corrections offers the following guiding principles for use of risk assessment tools:¹²²

- A pretrial risk assessment instrument should be demonstrated through research to predict risk of failure to appear and danger to the community pending trial;

- The instrument should equitably classify defendants regardless of their race, ethnicity, gender, or financial status;
- Factors utilized in the instrument should be consistent with applicable state statutes—that is, bail statutes and pretrial services acts should be consulted to ensure that factors included in a pretrial risk assessment instrument are allowable for the purposes of bail consideration; and
- Factors that are often considered for sentenced offenders, such as those related solely to recidivism or needs, which do not demonstrate a relationship to predicting pretrial risk (court appearance or danger to the community), should not be included in pretrial risk assessment instruments.

A number of risk and needs assessment tools exist, but counties must be mindful that some tools are better than others and that all tools have limitations. Unless counties carefully select risk and needs assessment instruments and provide adequate training for those tasked with conducting assessments, counties may be wasting precious money and time on inaccurate tools.

Programming to Reduce Recidivism

Some county realignment plans include promising discussions of programming aimed at reducing recidivism; however, they often suffer from a lack of explicit (or adequate) funding allocations and evaluation measures. Evidence-based correctional practices call for individualized programming for people at all stages of their incarceration and supervision in order to reliably reduce their chances of recidivism. Research consistently supports the finding that improved access to housing, employment and other basic resources—not a lengthy jail sentence—reduces the likelihood that individuals convicted of low-level, non-violent offenses will commit new crimes.¹²³ (See Appendix C, *Education and Job Training Programs are Key to a Successful Realignment Initiative*, prepared by the National Employment Law Project and Rubicon Programs).

Comprehensive, evidence-based programming includes:

- Education programs, especially GED and remedial studies
- Career and job opportunity development
- Drug and alcohol services
- Mental health treatment
- Domestic violence and anger management counseling
- Family and community networking
- Motivational interviewing
- Cognitive behavioral therapy.

Within the criminal justice system, recidivism reduction programming should be made available as soon as possible, whether the person is behind bars or being supervised in the community.

Programming that begins while individuals are in custody should continue if they move to an alternative custody program—that is, both for those individuals who have been sentenced by the court to serve time in the county jail, as well as to those on post-release community supervision who

have completed their sentence. Some counties (San Diego, for example) plan to require participation in programming as a condition of release for some of the pretrial population.

Effectively operating these programs is no easy task. That is why many counties have contracted with or are otherwise working in partnership with community-based organizations and/or vendors with expertise in providing evidence-based programming designed specifically to reduce recidivism.

Alameda County, for example, plans to install a transition center in its Santa Rita Jail.¹²⁴ According to the county's realignment plan, the transition center will be staffed by personnel from probation, the county's health services agency, its social services agency, and possibly community-based organizations that offer relevant services. Through these newly formed partnerships, the sheriff's department will create a support network to connect program recipients with community-based organizations and outside service providers upon release. This continuum of support and services will allow program recipients the opportunity to create a bridge of contacts to improve their likelihood of success post-release.

Similarly, in Butte County's realignment plan, the sheriff's department proposed a partnership with other county departments, community-based organizations and/or vendors with expertise in providing evidence-based programming designed to reduce recidivism.¹²⁵ The plan states that programming will begin while inmates are in custody and continue during an alternative custody program. The program will include GED and remedial studies, employment assistance, drug and alcohol treatment services, mental health treatment and a variety of additional life skills trainings.

Pre-Booking Diversion to Health Services

Some counties currently employ diversion programs which allow defendants charged with certain offenses to be "diverted" into drug treatment or other programs, but only *after* the defendant enters a guilty plea. These programs save the county money by avoiding the expense of further court proceedings. Additional savings could be realized, however, by allowing some defendants to enter the very same programs, but *before* being charged (pre-filing diversion) or even before being booked into the jail (pre-booking diversion). Although novel sounding in the criminal justice system, in practice, this is the approach used by colleges, universities, private high schools and upper middle class families to deal with people with drug problems every day.

Only four of the county plans the ACLU reviewed make any mention of pretrial diversion. These plans are from San Diego, Tulare, Santa Barbara, and San Mateo.¹²⁶ Only two of the county realignment implementation plans we reviewed (Napa and Siskiyou) included any mention of *pre-filing* diversion programs.¹²⁷ None of the plans we reviewed indicated a willingness to explore *pre-booking* diversion programs as a means of reducing jail populations and improving recidivism.

Counties should seriously consider such programs. Pre-booking diversion would have a significant impact on the rates of incarceration for drug offenses. California already has a program that allows

individuals arrested for drug possession to be diverted to court-supervised probation; if they successfully complete probation, the case is dismissed. (This program, set out in Penal Code 1000, is separate and distinct from the state’s post-conviction treatment-instead-of-incarceration law, Proposition 36.)

A new program in Seattle, Washington provides a workable model to take the diversion idea a step further. The city’s pre-booking diversion program called Law Enforcement Assisted Diversion (LEAD)—a collaborative effort that includes law enforcement, defense attorneys and social services among others—aims to reduce the number of people entering the criminal justice system for a low-level drug law violation by providing linkages to community-based treatment and support services.¹²⁸ Trained law enforcement officers have the discretion to call a social worker rather than book an individual into jail for certain low-level, drug offenses. The social worker directly connects that individual with an assessment and services, thus allowing the individual to access supports without acquiring a criminal record.

Day Reporting Centers

Day Reporting Centers (DRCs) serve as hubs of supervision, programming and services for individuals who are being monitored in the community, whether as an alternative to incarceration or after having completed their sentence. Creating one central location for accessing services, particularly those that are required as a condition of release, has a significant positive impact on individuals’ compliance and success.¹²⁹ It reduces the time and cost required for compliance and reduces interruption with other important activities that help reduce recidivism, including childcare, employment and education.

A number of counties plan to build or expand DRCs, including Sacramento, which plans to serve up to 600 individuals annually through its DRC;¹³⁰ Butte County, which hopes its DRC frees up 100 jail beds;¹³¹ and Merced County, which incorporated a DRC in 2008.¹³² Other counties that included clear DRC plans in their realignment strategies include Kern, Lake, Madera, Napa, Orange, San Luis Obispo, and Yuba counties.¹³³

Humboldt County allocated the largest portion of its AB 109 funds (39 percent) toward the development of a new DRC. At full implementation, Humboldt’s DRC is expected to serve an average daily population of 150 formerly incarcerated individuals. According to the county plan, “Depending on the offender’s assessed needs, the four phase program can last between 9 to 12 months with aftercare for up to an additional six months. The DRC includes drug testing, cognitive-behavioral treatment classes, referrals to community-based organizations, and access to employment training and placement.”¹³⁴

Tuolumne County decided against adding new jail capacity with realignment funds; instead, the centerpiece of Tuolumne’s realignment plan is the creation of a new DRC.¹³⁵ According to the county’s plan, the day reporting center will have services to access basic personal needs such as

housing, food, transportation, clothing, education, and employment. All current inmates in the county jail whose most serious conviction is a misdemeanor will be shifted into alternatives to incarceration, such as community corrections supervision and programming, in order to make room in the jail for individuals convicted of more serious offenses.

Graduated Sanctions

Another cost-effective evidence-based practice employs the use of graduated or intermediate sanctions against those who violate their terms of probation or other post-conviction release. Instead of automatically returning someone to jail if they commit a minor violation, which can significantly disrupt the very aspects of their lives most linked to positive outcomes (such as stable employment), case managers and supervisors should use their judgment or create formal policies to employ sanctions short of incarceration in appropriate instances.

These graduated sanctions can include community service, mandatory residential or outpatient substance abuse treatment, or electronic monitoring with or without GPS. Realignment also allows short-term incarceration to be used as an alternative to being returned to custody to complete one's sentence. (See discussion of "flash incarceration below.)

Few county plans mention specific information about utilizing graduated sanctions. San Francisco's plan states that graduated sanction are a key component of effective supervision. Santa Cruz County's plan notes that even before AB 109 implementation began the County was already employing graduated sanctions with probationers through the California Risk Assessment Pilot Project. Santa Cruz will expand the use of graduated sanctions during Phase 2 of its AB 109 implementation from October 2011 to March 2012.

Madera County provides perhaps the most detail concerning its planned use of graduated sanctions. Madera's probation department will employ graduated sanctions before revoking PRCS. The implementation plan goes into great detail about this: the probation department has been in the process of reviewing various graduated sanctions programs and processes, and will be collaborating with probation departments in the Central Valley to determine the best sanctions matrix system utilized by other agencies across the state and nation. The department is currently reviewing systems and sanction matrix' currently used by the Pennsylvania Department of Corrections, the Oregon Department of Corrections and the Napa County Probation Department. The Madera plan specifies that its graduated sanction strategies for violating supervision conditions will include: imposition of up to 10 days jail (flash incarceration); increased supervision and reporting requirements, increased drug and alcohol testing; and referrals to community service, self-help alcohol and drug treatment, and inpatient programs.

Flash Incarceration

Although graduated sanctions may include short-term incarceration for people who commit minor violations of the terms of their release, such “flash incarceration” raises serious due process concerns when individuals are subjected to imprisonment without having an opportunity to dispute the facts and findings of the supervising authority. Any deprivation of liberty, even for a short time, must be accompanied by sufficient due process protections to ensure the fairness and accuracy of underlying fact-finding determinations.

To comply with the minimal requirements of constitutional due process, there must be a prompt probable cause hearing by an “independent officer”—an objective individual within the parole authority or county supervising agency who was not involved in the initial decision to detain the individual. Counties should incorporate written guidelines to limit the discretion of decision-makers in determining whether the jail sanction is appropriate for a given violation, and, if so, for what length of time. Counties should also provide a process by which those who are subjected to a jail sanction may obtain some form of appellate review. Even if, as a practical matter, the period of incarceration may have already been served before the review process can be completed, review should be available in order to mitigate potential future adverse consequences, beyond the incarceration itself, flowing from an inaccurate factual finding and improper imposition of a term of incarceration.

Sonoma County’s realignment plan provides for the rights of individuals to request a formal court revocation hearing in these instances.¹³⁶ Other counties should integrate similar due process protections into their use of this sanction, if they intend to use it.

Merced County has also proposed an innovative solution to the due process problems of “flash incarceration.” Merced’s realignment plan envisions a reentry or “progress” court, which would add an intermediate layer of supervision, referral to services, and accountability between the supervision and return-to-incarceration phase.¹³⁷ Should someone be found in violation of the terms of release, he or she will be eligible for referral to this court. The court will require the individual to appear regularly to provide an update on his or her progress. When not in compliance, the court may impose further alternatives to jail sanctions or order the individual returned into custody for a period of confinement.

In addition to due process concerns, once in practice, “flash incarceration” may become popular among supervising agents and have a significant negative impact by taking up jail space. Research has demonstrated, for example, that individuals in some drug courts have spent more time behind bars *while in drug court* than they would have if they had received traditional sentencing.¹³⁸ Indeed, in a Baltimore drug court, participants were incarcerated more often than a control group of probationers—and served just as much time behind bars—generally for program violations.¹³⁹

Counties that use this incarceration sanction are advised to do so sparingly, to gather data on its use, and to monitor its use by supervising agents. Policies should state clearly when and how severely this sanction is to be used (including length of stay). Keeping the use of “flash incarceration” in check will require cooperation between agencies and a shared commitment to investing in outcomes, rather than simply continuing a mentality some described to us as “trail ‘em, nail ‘em, and jail ‘em.”

MAKING REALIGNMENT WORK

Joint Planning, Implementation and Accountability

The first year’s realignment planning occurred quickly, with counties having only the time from the July enactment to the October 1 effective date to do most of their planning. Though not currently explicit in the realignment legislation, it makes sense for, and the state should require, counties to submit new or revised plans for each annual budget cycle, making changes in light of past years’ practice and additional time and thought for research and program development. The state should specify questions and plan elements that each county should consider, even if the state does not mandate uniform adoption of all of these elements. Santa Cruz County’s plan explicitly provides for such ongoing implementation planning, and should serve as a model for other counties in this respect.¹⁴⁰

As noted above, the success of alternatives to incarceration largely depends on the ability of various agencies to collaborate effectively in the administration of the criminal justice system. Joint planning and implementation, with close coordination and shared buy-in among probation, the sheriff, the district attorney, the public defender, courts and community-based organizations will largely determine whether these alternatives will work. Only a handful of counties indicate such an intent or capacity in their realignment plans.

Santa Cruz County’s realignment plan, for example, describes a joint risk assessment pilot program between the court and probation department.¹⁴¹ District attorneys and courts have an important role to play in reducing recidivism by requesting and handing down sentences that include alternatives to jail time in cases where other forms of supervision and programming are more likely to reduce future offenses. Validated risk and needs assessments can inform the court’s sentencing decisions if they are administered before the sentencing phase, as is planned in Santa Cruz.

In the San Francisco plan, the local community corrections partnership (LCCP) noted that the district attorney will need to develop creative and effective sentencing approaches based on risk and needs assessments of defendants, and the district attorney is rolling out a plan to equip prosecutors with a “Recidivism Reduction Approach” to assessing sentencing options. According to the plan, the district attorney will organize staff trainings on alternative sentencing and develop tools prosecutors can use to identify sentencing strategies most likely to reduce recidivism. The district attorney also aims to

create new “Alternative Sentencing Planner” staff positions to help develop potential alternatives to both pretrial detention and jail or prison at sentencing.

Alameda discusses an innovative post-release initiative in its realignment plan.¹⁴² The district attorney will create an “Ambassador Team” of representatives from multi-disciplinary agencies to reach out to the business community, job training programs, educational institutions, and other relevant organizations, to create a network of private programs that will engage, employ and create opportunities for formerly incarcerated individuals. Notably, Contra Costa’s plan includes funding for a “Clean Slate Paralegal” in the public defender’s office who will help eligible individuals expunge their criminal records.¹⁴³ Expungement removes barriers to gainful employment for people, thereby addressing a significant risk factor for criminal activity: lack of employment. Contra Costa’s plan also funds a social worker in the public defender’s office, who will prepare pre-sentence needs-assessments to facilitate appropriate sentencing.

These counties’ plans exemplify the kind of partnership among local criminal justice working groups—across actors, agencies and functions—necessary to the success of evidence-based alternatives to incarceration.

Standardized Reporting and Evaluation

AB 109 clearly spelled out the need for evidence-based practices to reduce recidivism, limit incarceration costs and invest criminal justice resources more efficiently. However, the realignment legislation fails to establish any systematic data collection or evaluation. The state has missed an important opportunity to support its own call to put evidence into practice.

This is cause for great concern. How will California know whether it is in fact fixing its broken system if there is no coordinated data collection, analysis or reporting among the counties?

Several counties lay out clear plans for measuring the success of their programs under realignment. The state can support counties in this effort by establishing, with input from counties, standard reporting across the state so that counties will be able to identify both promising and less successful practices from other jurisdictions.¹⁴⁴

Placer County, for instance, spells out a very detailed vision for evaluation in its realignment plan.¹⁴⁵ Because its realignment implementation strategies fall under the management of distinct county departments, each of these departments will be expected to collect and report relevant data to assure that programs are implemented successfully and in alignment with evidence-based practices. Each program or agency will be required to uniquely identify the realignment population as distinct from existing populations and to report on over a dozen data points specified in Placer County’s plan.

Contra Costa is involving community-based organizations in its evaluation process.¹⁴⁶ Contra Costa convened a Community Advisory Board (CAB) of 12 community members who live or work in

Contra Costa County and have expertise in the realignment population. Four of the 12 CAB members are formerly incarcerated individuals who have successfully reentered the community. The CAB will review data on outcomes, provide input on community needs and assessments of implementation, and advise the county on community engagement strategies.

Adequate and Explicit Funding

Even the most thorough, well-intentioned plans to institute evidence-based alternatives will fail in the absence of adequate funding and staffing. Too few counties' realignment plans explicitly allocate funds to make these programs work. Among the counties that allocated funds specifically for evidence-based programming, such as job counseling, family reunification, behavioral therapy, and mental health and substance abuse treatment, the allocations were all too often insufficient to carry out the stated plans or fail to provide access to the estimated number of individuals in need.

For example, the Probation Department in Orange County plans to open "several regional adult day reporting centers, as collaborative and evidence-based one-stop delivery sites" to serve 50 supervisees each, but the plan allocates only nine percent of the programming budget to contract with service providers, or one-sixth that of the sheriff's allocation. Kings County's plan acknowledges that "live-in drug treatment programs will be essential to help reduce overcrowding in the jail" and that mental health staffing must be increased, but allocates a paltry two percent of its total AB 109 programming budget to health, treatment, and other services—less than the allocations made to both the Human Resources and the County Counsel. This is in stark contrast to counties like Alameda, Placer, San Joaquin, Santa Clara, Shasta, and Solano, which allocate anywhere from a quarter to a third to such programming.

The widespread lack of detail and specific funding for alternatives to incarceration is glaring in light of the nearly uniform plans among the Big 25 counties to dedicate substantial state funds to expanding jail capacity. Counties with jail expansion plans have explicitly allocated anywhere from 16 to 88 percent of their realignment funds to increase jail capacity, while their budget allocations for evidence-based alternatives remain unacceptably opaque.

Counties can, and must, both do more to implement evidence-based practices and be more specific about how they will fund them, especially in light of the billions of dollars in state funding that has recently been awarded to counties to build new jails or otherwise expand jail capacity.¹⁴⁷ The breadth of innovative and validated programs discussed in many county plans is promising, but a close analysis of where most of the money is going (to expand jails) belies these promises. As discussed above, the state should suspend all AB 900 funding until such time as less costly and more effective alternatives have been fully implemented and exhausted.

RECOMMENDATIONS

It's time to fix California's broken criminal justice system. California is far from the only state experiencing the confluence of fiscal crisis and prison overcrowding. But realignment has created a unique opportunity to take California's public safety policies down a new path. There has never been more public, political or financial support for counties to reduce reliance on incarceration in favor of evidence-based public safety practices.

As the architect of realignment, the state has a responsibility to support its successful implementation. To this end, the state should:

- **Mandate standardized data collection and analysis** across the 58 counties and partner with academic institutions, think-tanks and advocacy organizations to develop a robust outcome measurement program that enables policy-makers to monitor which policies and programs are working to reduce recidivism and reliance upon incarceration, and to base policy and budget decisions on those findings.
- **Revise the realignment allocation formula** that determines how billions of state dollars will be divided among the counties over the coming years; the funding formula must be used to incentivize counties to reduce recidivism and increase use of cost-effective alternatives to incarceration, particularly for the pretrial population.
 - Once county-level outcome data is being collected and reported throughout the state on a regular and uniform basis, the funding formula should be based upon that data and should create incentives for counties to adopt the policies and programs that are working best.
 - Before such data is available, the formula should be based upon currently available data that measure actual risk factors and burdens experienced by local criminal justice systems that are not merely the result of policy choices some counties have made to disproportionately incarcerate low-level offenders.
- **Enact statewide front-end sentencing reforms** to expand county flexibility to manage jail space and to support successful reentry. Examples of sensible reforms include revising penalties to make low-level, non-violent drug and property crimes misdemeanors instead of felonies, reforming marijuana laws, and requiring sentencing judges to consider the likelihood of recidivism and the costs of available sentencing options when deciding which sentences to impose.
- **Amend statewide pretrial detention laws** to keep behind bars only those who truly pose a risk to public safety while increasing the number of people released on their own

recognition or under community-based supervision without necessarily requiring money bail.

- **Require counties to submit new or revised realignment plans each year**, making changes in light of previous years' practice and additional time and thought for research and program development. The state should specify questions and plan elements that each county should consider, even if the state does not mandate uniform adoption of all of these elements.
- **Discourage further county jail expansion and construction plans**. The state should either suspend all AB 900 funding until such time as less costly and more effective community-based alternatives have been fully implemented in each county seeking AB 900 funds, or expand the AB 900 grant criteria to allow counties to use AB 900 monies for non-jail community sanctions and alternatives to incarceration.

As the frontline implementers of realignment, counties have the discretion to develop and adopt policies that most wisely allocate resources and best protect the public's safety. To fulfill this role, counties should:

- **Halt or significantly reduce jail expansion and construction plans**. Counties should consider expanding jail capacity only as a last resort after first implementing pretrial release programs and evidence-based alternative approaches to managing their pretrial and sentenced populations.
- **Create and fund concrete plans for community-based alternatives to detention** for both the pretrial and sentenced populations. Research and experience clearly point toward the factors that successfully reduce re-offending by people at risk for repeat petty crime and for cycling in and out of jail: housing, employment, drug and alcohol treatment, mental and physical health care and other stabilizing influences.
- **Implement and fund new local pretrial release policies** to reserve expensive jail space for those who truly pose a risk to public safety while increasing the number of people released on their own recognition or under community-based supervision without requiring money bail while they await trial. Whenever possible, allow individuals to remain employed and with their families while awaiting trial.
- **Review the impact of immigration status and immigration detainees** on inmates' detention to prioritize public safety needs. Limit voluntary enforcement of immigration detainees and do not use immigration detainees or perceived immigration status to deny access to pretrial release and alternative sentencing.

- **Ensure that community corrections practices are based on evidence** by collecting and analyzing data, by identifying best practices from other jurisdictions, and by adjusting both policy and budget decisions based on those findings.
- **Encourage local courts to utilize realignment's new sentencing options** that authorize judges to replace all or part of a jail sentence with community sanctions or treatment programs, in order to hold people accountable for their actions while supporting their successful reentry to the community. Successful reentry means less crime and fewer future victims.

CONCLUSION

California is at a crossroads. At best, counties will meet realignment with a commitment to reducing over-imprisonment, to protecting public safety, and to wisely allocating limited resources. At worst, counties will react to realignment as a mere transfer of authority over bodies—and simply incarcerate people convicted of non-serious, non-violent offenses at the local level now that they cannot be shipped off to state prisons. Despite spending millions of taxpayer dollars on jail expansion, those counties will quickly see the same inexorable overcrowding and high recidivism rates that the state prison system has produced.

California must not go down that road. The state has an important role to play in facilitating the successful implementation of realignment. But it must act now, ahead of the first full year of realignment implementation. State government leaders must show commitment to this public safety policy by incentivizing and encouraging best practices through state financial support and oversight.

Counties have the opportunity to demonstrate that it is evidence, not past habits, that will produce the maximum public safety reform for taxpayer investment. Unfortunately for some unlucky California taxpayers, it appears that some counties remain committed to the same old failed “tough on crime” policies. Fortunately for others, some counties are taking the opportunity to set an example. Success in these counties will demonstrate to the rest of the state that evidence is the way to go. It is time for California and its counties to fix our broken criminal justice system and take an evidence-based approach to keeping our communities safe.

ENDNOTES

¹ See Adam Liptak, *Inmate Count in U.S. Dwarfs Other Nations*', New York Times, April 23, 2008, available at <http://www.nytimes.com/2008/04/23/us/23prison.html?pagewanted=all>.

² In 2008, the Pew Center on the States reported that California's overall prison population was second only to that of Texas, and that, “[r]emarkably, 13 states now devote more than \$1 billion a year in general funds to their corrections systems. The undisputed leader is California, where spending totaled \$8.8 billion last year. Even when adjusted for inflation, that represents a 216 percent increase over the amount California spent on corrections 20 years earlier.” Pew Center on the States, *One in 100: Behind Bars in America 2008*, available at <http://www.pewcenteronthestates.org/uploadedFiles/One%20in%20100.pdf>. As of December 31, 2010, California ranked second in the country in terms of overall prison population, and corrections spending has since reached \$10 billion. See Bureau of Justice Statistics, Bulletin: Prisoners in 2010 (Dec. 2011), Appendix Table 1, Prisoners under the jurisdiction of state and federal correctional authorities, by jurisdiction, p. 14, available at <http://bjs.gov/content/pub/pdf/p10.pdf>; California Department of Corrections and Rehabilitation, CDCR Annual Report (Fall 2011), CDCR Budget Breakdown 2011-12 Budget and Non-Budget Act, p. 11, available at http://www.cdcr.ca.gov/News/docs/2011_Annual_Report_FINAL.pdf.

³ See California Department of Corrections And Rehabilitation, 2010 Adult Institutions Outcome Evaluation Report, p. 11, available at http://www.cdcr.ca.gov/Adult_Research_Branch/Research_Documents/ARB_FY0506_Outcome_Evaluation_Report.pdf. See also table comparing state recidivism rates in: The Pew Center on the States, State of Recidivism April 2011: The Revolving Door of America's Prisons, pp. 10-11 , available at http://www.pewcenteronthestates.org/uploadedFiles/Pew_State_of_Recidivism.pdf.

⁴ See, e.g., Michael A. Fletcher, *Governors Plan Painful Cuts Amid Budget Crises Across the U.S.* (Feb. 8, 2011), Washington Post, available at <http://www.thefiscaltimes.com/Articles/2011/02/08/WP-Governors-Plan-Painful-Cuts.aspx#page1> (“Faced with the most severe budget crisis since the Great Depression, governors across the ideological spectrum are embracing the politics of austerity in a desperate effort to balance the books.”)

⁵ African-Americans are incarcerated at a rate of approximately 2,121 per 100,000 in California prisons; these figures do not include those incarcerated in county jails or federal prisons located in California. California Department Of Corrections and Rehabilitation, Offender Information Services Branch Estimates and Statistical Analysis Section, Data Analysis Unit, California Prisoners and Parolees, p. 19 (2009) [hereinafter CDCR Estimates and Statistical Analysis], available at http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Annual/CalPris/CALPRISd2009.pdf (last visited August 8, 2011) (48,990 blacks were incarcerated in CDCR intuitions at year-end 2009); U.S. Census Bureau, CenStats Databases, USA Counties, General Profile California (2010) , available at <http://censtats.census.gov/usa/usa.shtml> (last visited August 8, 2011) (there were approximately 2,309,745 African-Americans in California in 2010). Under apartheid South Africa blacks were incarcerated at a rate of approximately 851 per 100,000. Prison Policy Initiative, Section IV: Global Comparisons, Crime and incarceration around the world: U.S. vs. South Africa, available at http://www.prisonpolicy.org/prisonindex/us_southafrica.html (last visited August 8, 2011); see also Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* pp. 6-7 (2010).

⁶ See CDCR, *supra* note 5 (Hispanics make up 39.3% of the CDCR institution population, while whites, blacks and others represent 25.6%, 29.0%, and 6.1% respectively).

⁷ See, e.g., Roger Warren, *Viewpoints: Realignment can boost public safety* (Nov. 13, 2011), available at <http://www.courts.ca.gov/partners/documents/realignmentpublicsafety.pdf>. The author is a retired 20-year veteran of Sacramento County trial court and is President Emeritus of the National Center for State Courts.

⁸ Cal. Penal Code § 17.5(a).

⁹ See., e.g. Marissa Lagos, SG Gate, September 21, 2011, *Gov. Jerry Brown promises constitutional amendment to fund realignment*, available at <http://blog.sfgate.com/nov05election/2011/09/21/gov-jerry-brown-promises-constitutional-amendment-to-fund-realignment/>, “The governor and other supporters believe that city police and county sheriffs, probation departments and social service programs will do a better job helping low-level offenders stay out of trouble.” *See also* comments from local government officials from around the state concurring that local governments can do a better job than the state, e.g., at, “Keeping individuals closer to the community, keeping them closer to their families, and connecting them with community-based resources that they’re going to need to be successful when they get out, because they are going to get out.”

¹⁰ Cal. Penal Code § 17.5. The legislative findings underlying the realignment legislation include the following: “Despite the dramatic increase in corrections spending over the past two decades, national reincarceration rates for people released from prison remain unchanged or have worsened. National data show that about 40 percent of released individuals are reincarcerated within three years. In California, the recidivism rate for persons who have served time in prison is even greater than the national average.”

¹¹ *Brown v. Plata*, 131 S.Ct. 1910 (2011).

¹² California state prisons were designed to hold 79,858 prisoners. However, they housed approximately 143,000 prisoners at the time of the *Plata* decision, which ordered California to reduce its prison population by approximately 33,000 prisoners to 137.5% of design capacity, or approximately 109,800 prisoners. California Department of Corrections and Rehabilitation, *State Responds to Three-Judge Court’s Order Requiring a Reduction in Prison Crowding* (Jun. 7, 2011), CDCR Today, available at <http://cdcertoday.blogspot.com/2011/06/state-responds-to-three-judge-courts.html>; *Plata*, 131 S.Ct. at 1943-47.

¹³ Defendant’s January 2012 Status Report in Response to June 30, 2011 Order (Jan 6. 2012), p. 3, available at <http://www.cdcr.ca.gov/News/docs/Jan-2012-Pop-Status-Update.pdf>. Updated figures are available at http://www.cdcr.ca.gov/News/3_judge_panel_decision.html.

¹⁴ ACLU of California, *Community Safety, Community Solutions: Implementing AB 109: Enhancing Public Safety, Saving Money and Wisely Allocating Limited Jail Space* (Aug. 2011), available at http://www.aclunc.org/issues/criminal_justice/asset_upload_file85_10684.pdf.

¹⁵ See, e.g., the legislative findings codified at Cal. Penal Code § 17.5, which include the following: “California must reinvest its criminal justice resources to support community-based corrections programs and evidence-based practices Realigning low-level felony offenders who do not have prior convictions for serious, violent, or sex offenses to locally run community-based corrections programs, which are strengthened through community-based punishment, evidence-based practices, improved supervision strategies, and enhanced secured capacity, will improve public safety outcomes among adult felons and facilitate their reintegration back into society. Community-based corrections programs require a partnership between local public safety entities and the county to provide and expand the use of community-based punishment for low-level offender populations. Each county’s Local Community Corrections Partnership . . . should play a critical role in developing programs and ensuring appropriate outcomes for low-level offenders.” Section 17.5 defines “community-based punishment” as “correctional sanctions and programming encompassing a range of custodial and noncustodial responses to criminal or noncompliant offender activity.” Examples of community-based punishment include: intensive community supervision; home detention with non-GPS electronic monitoring (such as telephone check-ins) or GPS monitoring; mandatory community service; restorative justice programs such as mandatory victim restitution and victim-offender reconciliation; work, training, or education in a furlough program, or work, in lieu of confinement, in a work release program; day reporting; residential or nonresidential substance abuse treatment programs; mother-infant care programs; and community-based residential programs offering structure, supervision, drug treatment, alcohol treatment, literacy programming, employment counseling, psychological counseling, mental health treatment, or any combination of these and other interventions.

¹⁶ Information about the ballot initiative, including the official title and summary and links to the full text are available at [http://ballotpedia.org/wiki/index.php/Jerry_Brown's_California_Tax_Increase_Initiative_\(2012\)](http://ballotpedia.org/wiki/index.php/Jerry_Brown's_California_Tax_Increase_Initiative_(2012)).

¹⁷ California Assembly Bill No. 117, 2011-2012 Regular Session, Ch. 39 (Cal. 2011). See Cal. Penal Code § 1170.

¹⁸ See, e.g., California Assembly Bill No. 109, 2011-2012 Regular Session, Ch.15 (Cal. 2011); Cal. Penal Code § 1203.018 (authorizing counties to offer electronic monitoring for inmates being held in lieu of bail in county jail); Cal. Penal Code § 3450 (authorizing a range of incarceration alternatives).

¹⁹ See Cal. Penal Code §§ 3450-58.

²⁰ See Cal. Penal Code § 3451(a)-(c).

²¹ See Cal. Penal Code § 3000.08(a)-(c).

²² See Cal. Penal Code § 3000.09.

²³ See Cal. Penal Code §§ 17.5(a)(6), 1230.1, 1230(b)(2). The Local Community Corrections Partnerships (LCCPs) were previously established in Penal Code Section 1230(b)(2). AB 109 and 117 added Penal Code section 1230.1 to create an Executive Committee for each LCCP, responsible for developing the implementation plan and presenting it to the county Board of Supervisors for vote and adoption. The remaining members of the LCCP are the county's chief administrative officer; the head of the county department of mental health; the head of the county department of employment; the head of the county alcohol and substance abuse programs; the head of the county office of education; a representative from a community based organization with experience in successfully providing rehabilitative services to persons who have been convicted of a criminal offense; and an individual who represents the interests of victims.

²⁴ As this report was going to print in March, 2012, five counties had not yet released draft plans: Alpine, Amador, Calaveras, Inyo and Tehama.

²⁵ Cal. Penal Code § 17.5(a).

²⁶ Cal. Penal Code § 17.5.

²⁷ See *supra* note 3.

²⁸ California Department of Corrections and Rehabilitation, *Prison Census Data as of June 30, 2011* (2011), available at http://www.cdcr.ca.gov/reports_research/offender_information_services_branch/Annual/Census/CENSUSd1106.pdf

²⁹ *Id.*

³⁰ See Cal. Penal Code § 17.5.

³¹ See The Pew Center on the States, *State of Recidivism: The Revolving Door of America's Prisons* (Apr. 2011), p. 26, available at http://www.pewcenteronthestates.org/uploadedFiles/Pew_State_of_Recidivism.pdf.

³² See Dean Mischynski, *Rethinking the state-local relationship: Corrections* (Aug. 2011), Public Policy Institute of California, available at http://www.ppic.org/content/pubs/report/R_811DMR.pdf. See also California Department of Finance, *2011-2012 State Budget: Enacted Budget Summary* (Jun. 30, 2011), available at <http://2011-12.archives.ebudget.ca.gov/pdf/Enacted/BudgetSummary/FullBudgetSummary.pdf>.

³³ The last component of the formula refers to Senate Bill 678, also known as the California Community Corrections Performance Incentives Act, which in 2009 created a fiscal incentive for counties to improve probation outcomes. See California Senate Bill No. 678, 2009-2010 Regular Session, Ch. 608 (Cal. 2009); Cal. Penal Code §§ 1228, 1233.4; Chief Probation Officers of California, *SB 678 Implementation Guide*, p. 1, available at <http://www.cpac.org/php/Information/sb678/sb678guide.pdf>.

³⁴ W. David Ball, *Tough on Crime (on the State's Dime): How Violent Crime Does Not Drive California Counties' Incarceration Rates—And Why It Should*, 28 GA. ST. U. L. REV. (forthcoming 2012), available at <http://digitalcommons.law.scu.edu/facpubs/162/>

³⁵ *Id.*

³⁶ Those 10 counties are Fresno, Kern, Orange, Placer, Riverside, San Bernardino, Santa Barbara, Santa Clara, Kings and Shasta. Kings County plans to spend an astonishing 70% of its entire AB 109 allocation on expanding jail capacity, and is also seeking additional state funds under AB 900 for additional jail construction.

³⁷ This 30 percent figure almost certainly underestimates the amounts being spent to expand jail capacity, because it is based upon specific amounts explicitly identified in the county realignment plans; many of the plans, however, do not provide specific budgeted amounts for jail capacity expansion despite clear indications in the plans that such expansion is indeed in the works. The 30 percent figure does not include any amount from Orange County's plan, for instance, but that plan allocates to the Sheriff \$13.6 million of its overall \$23 million (or about 59 percent) without specifying how much of this will go to expand jail capacity. The plan does note, however, that two facilities are currently partially closed due to a low jail census and ongoing repair work, and it is anticipated that all jail facilities will need to be fully operational within 6 to 12 months, which will require additional jail staffing and resources. Orange County's plan also contemplates applying for AB 900 funding to support the construction of approximately 750 new jail beds. See Orange County Public Safety Realignment and Postrelease Community Supervision 2011 Implementation Plan (Oct. 2011), available at http://calrealignment.org/component/docman/doc_download/79-orange-county-plan.html?Itemid.

³⁸ Senate Bill 92 (codified at Penal Code section 6024), one of the pieces of realignment legislation introduced after AB 109, created a new state Board which will, effective July 1, 2012, replace the Corrections Standards Authority (CSA). In addition to assuming all of the powers and duties of the CSA, the newly-created Board of State and Community Corrections (BSCC) is tasked with collecting all of the county realignment implementation plans and monitoring local implementation efforts. As the LAO has noted in a recent report, however, the precise role and duties of the BSCC need to be further specified: "The Legislature has defined BSCC's mission broadly, requiring that it collect and disseminate data and information, provide technical assistance to counties, and offer leadership in the area of criminal justice policy. However, the Legislature has not specifically laid out in statute BSCC's responsibilities in fulfilling this mission, leaving open a number of questions that need to be addressed. For example, how should BSCC be structured, what types of data should it collect, what form should its technical assistance take, and how can it help ensure local accountability and success?" LAO Report, *The 2012-13 Budget: The 2011 Realignment of Adult Offenders—An Update* p.9 (Feb. 22, 2012) , available at http://lao.ca.gov/analysis/2012/crim_justice/2011-realignment-of-adult-offenders-022212.pdf.

³⁹ SB 678, *supra* note 33.

⁴⁰ See Senator Leno's announcement of the bill and LAO estimates, available at <http://sd03.senate.ca.gov/news/2012-02-27-leno-bill-revises-penalty-simple-drug-possession>.

⁴¹ The text of the bill is at: http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_1501-1550/sb_1506_bill_20120224_introduced.html.

⁴² See September 9, 2009 LAO analysis of Proposition 19, the California ballot initiative that sought to remove criminal penalties for adult marijuana use and tax & regulate its sale, available at

<http://www.lao.ca.gov/ballot/2009/090512.aspx>. Some states have begun to require sentencing judges to take into account additional factors such as the comparative costs of the different available sentencing options, as well as empirical data comparing the likelihood of recidivism under the competing sentencing options. For instance, the Missouri Sentencing Advisory Commission provides to state judges, attorneys and probation officers empirical data about the risk of recidivism and the costs of sentences to help identify sentences that have the best chances for reducing recidivism and are most cost-effective. See Michael A. Wolff, *Missouri's Information-Based Discretionary Sentencing System*, Ohio State Journal of Criminal Law (Col. 4:95, 2006). The author is Chief Justice of the Supreme Court of Missouri and Chair of the Missouri Sentencing Advisory Commission.

⁴³ See Cal. Penal Code § 17.5(a), which includes the following: “Despite the dramatic increase in corrections spending over the past two decades, national reincarceration rates for people released from prison remain unchanged or have worsened. National data show that about 40 percent of released individuals are reincarcerated within three years. In California, the recidivism rate for persons who have served time in prison is even greater than the national average. . . . Criminal justice policies that rely on building and operating more prisons to address community safety concerns are not sustainable, and will not result in improved public safety.”

⁴⁴ Orange County Plan, available at http://cams.ocgov.com/Web_Publisher_Sam/mainlist.asp?docid=00000021&docname=Agenda10_18_2011.htm&meeetdate=10_18_2011&pagendatypeid=1&pisagenda=0.

⁴⁵ Solano County identified 80 jail beds that it will reopen if it becomes necessary. See County of Solano 2011 Public Safety Realignment Act Implementation Plan (Nov. 1, 2011), available at http://calrealignment.org/component/docman/doc_download/95-solano-county-plan.html?Itemid.

⁴⁶ While San Francisco has not allocated realignment funds to staff the as yet unopened 360-bed San Bruno Jail 6, the county did allocate \$50,938 to the Sheriff for materials and supplies for that facility. See San Francisco Budget and Legislative Analyst, *Executive Summary* (Sep. 7, 2011), p. 109, available at http://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/bosagendas/materials/bag092011_110907.pdf.

⁴⁷ See Niko Kyriakou, *San Mateo County brews a fresh idea for new jail* (Oct. 9, 2011), San Francisco Examiner, available at <http://www.sfexaminer.com/local/peninsula/2011/10/san-mateo-county-brews-fresh-idea-new-jail>.

⁴⁸ Corrections Standards Authority, *AB 900 Phase II Construction or Expansion of County Jails Request for Applications* (Oct. 7, 2011), available at <http://www.cdcr.ca.gov/CSA/CFC/Docs/Request-for-Applications-Background.pdf>.

⁴⁹ Public Safety and Offender Rehabilitation Services Act of 2007, California Assembly Bill No. 900, 2007-2008 Regular Session, Ch. 7 (Cal. 2007). See also Cal. Gov't Code § 15819.40.

⁵⁰ Wayne Lusvardi, *Stealth Bonds Building New Prisons* (Dec. 16, 2011), CalWatchdog, available at <http://www.calwatchdog.com/2011/12/16/stealth-bonds-building-new-prisons/>. Lusvardi explains that AB 900 bonds are lease revenue bonds, rather than general obligation bonds. Among the differences between these forms of bonds is that in the event of a default of an AB 900 lease-revenue bond, the taxpayers of the specific county would not be on the hook to repay the bondholders. The legislature—that is, all the taxpayers in the state—would be responsible to pay off the bonds.

⁵¹ Amador, Calaveras, Kern, Madera, Santa Barbara, San Benito, San Bernardino, San Diego, San Joaquin, San Luis Obispo and Solano. See Corrections Standards Authority, *AB 900 Phase I Jail Construction Funding Awards* (Nov. 19, 2009), available at http://www.cdcr.ca.gov/CSA/CFC/Docs/AB_900_Phase_I_Funding_111909.pdf.

⁵² Kern, Santa Barbara, San Bernardino, San Diego, San Joaquin, and Solano.

⁵³ San Diego did not include jail expansion in its original realignment implementation plan but has since amended the plan to provide the sheriff's department with \$200,000 to take the first steps toward expanding the East Mesa Detention Facility by 400 to 500 beds. San Bernardino has set aside \$350,000 for jail remodeling, but it is unclear whether this will result in additional beds. See San Bernardino County Board of Supervisors, *Attachment B, Realignment Cost Estimates*, available at <http://cob-sire.sbcgov.org/sirepub/agdocs.aspx?doctype=summary&itemid=194959>.

⁵⁴ Corrections Standards Authority, *AB 900 Jail Construction Financing Program Corrections Standards Authority Project Status Update – Phase I Updated 10/07/2011* (Oct. 7, 2011), available at http://www.cdcr.ca.gov/CSA/CFC/Docs/AB900_Project_Status.pdf. With \$26,387,591 in Phase I funds, Calaveras broke ground on a new facility for a net gain of 95 beds, while Madera began construction on an additional 144 beds with a \$30,000,000 award. In San Bernardino, \$100,000,000 is being spent for a 1,368 bed expansion. San Diego will begin building a new women's facility for a net gain of 842 beds at a total project costs of \$268 million, \$100 million of which is the state's share. Solano will also begin construction sometime in 2012 on a new 362-bed facility using a \$61,545,000 AB 900 Phase I award, at a total cost of \$93 million.

⁵⁵ Corrections Standards Authority, *AB 900 Phase II Jail Construction Financing Program, Applications Received by January 11, 2012* (Jan. 11, 2012), available at <http://www.cdcr.ca.gov/CSA/CFC/Docs/ApplicationsSubmittedinAB900PhaseII1112forposting.pdf>.

⁵⁶ AB 900 Phase II RFA, *supra* note 48, p. 7. As this Report was being printed, the state announced the Phase II awards. The California Corrections Standards Authority allocated \$100 million each to Los Angeles, Orange and Riverside counties and lesser amounts to Imperial, Kings, Madera, Santa Barbara, Shasta, Stanislaus, Sutter and Tulare counties. CDCR announcement available online at: <http://cdcrtoday.blogspot.com/2012/03/state-awards-602-million-to-counties.html>.

⁵⁷ Dave Cortese, Board of Supervisors Meeting, Jan. 10, 2012, video of meeting available at <http://www.sccgov.org/portal/site/scc> (follow "Board Meeting Webcasts" hyperlink; then follow "Jan 10, 2012: Video" hyperlink).

⁵⁸ Corrections Standards Authority, *Jail profile survey: Annual report 2005* (2005), p. 7, available at http://www.cdcr.ca.gov/csa/FSO/Docs/JPS%20Docs/2005_jps_annual_Report.pdf. "According to the JPS [Jail Population Survey], of the current 62 jurisdictions, 24 have court-ordered population caps. Those 24 jurisdictions operate 67 facilities of which 58 have population caps. The 58 facilities with population caps house 66.5% of the state's ADP."

⁵⁹ Sacramento County Community Corrections Partnership Public Safety Realignment Plan Discussion Topic: Reopening of the Roger Bauman Facility (RBF) at the Rio Cosumnes Correctional Center," prepared by the Sacramento County Sheriff's Department and Criminal Justice Research Foundation (Aug. 18, 2011), p. 7 (estimated budget). The estimated cost was calculated by dividing the total nine-month budget for the Roger Bauman Facility (\$6,484,734) by nine months.

⁶⁰ Two of those counties, Orange and San Diego, plan significant jail expansion using AB 900 funding. The third, San Mateo, plans to spend its own county taxpayer dollars to increase its jail capacity by more than 506 beds. As noted above, the San Mateo County Board of Supervisors has approved construction of a new jail at a cost of \$145-160 million to be completed in 2014.

⁶¹ California State Sheriffs' Association, *Do the crime, do the time? Maybe not in California: Jail cell shortage is upsetting the balance* (2006), p. 16, available at <http://www.calsheriffs.org/resource-center/cssa-library/jail-overcrowding-report.html>.

⁶² The Bureau of Justice Statistics reports that at mid-year 2010, 61% of local jail inmates were on unconvicted status (*see* Bureau of Justice Statistics, *Jail Inmates at Midyear 2010 - Statistical Tables* (Apr. 14, 2011), available at <http://bjs.ojp.usdoj.gov/content/pub/sheets/jim10st.zip>.

⁶³ Corrections Standards Authority, *Jail Profile Survey Third Quarter Results* (2011), available at http://www.cdcr.ca.gov/CSA/FSO/Docs/2010_3rd_Qtr_JPS_adp_m_f.pdf.

⁶⁴ Corrections Standards Authority, *Jail Profile Survey Annual Report* (2002), p. 12-13, available at http://www.cdcr.ca.gov/csa/FSO/Docs/JPS%20Docs/2002_JPS_Annual_Report-updated.pdf.

⁶⁵ Jail Profile Surveys 2011 and 2002, *supra* notes 63, 64.

⁶⁶ Cal. Penal Code §§ 1001.51, 1001.53. The sheriff did have some limited authority to release pretrial defendants under specified circumstances. *See* Cal. Penal Code § 4000; *See also* *Board of Supervisors v. Superior Court*, 33 Cal.App.4th 1724, 1743 (1995).

⁶⁷ Cal. Penal Code §1001.53.

⁶⁸ For an overview of the foundations for these legal principles, *see*: Marie VanNostrand, Crime and Justice Institute and the National Institute of Corrections, *Legal and evidence-based practices: Application of legal principles, laws and research to the field of pretrial services* (Apr. 2007), p. 5-9, available at <http://www.dccs.virginia.gov/corrections/documents/legalAndEvidence.pdf>.

⁶⁹ Laura Sullivan, *Bail Burden Keeps U.S. Jails Stuffed With Inmates* (Jan. 21, 2010), NPR, available at <http://www.npr.org/2010/01/21/122725771/Bail-Burden-Keeps-U-S-Jails-Stuffed-With-Inmates>.

⁷⁰ *See* Cal. Const. art. I, §§ 12, 28(b), 28(f); Cal. Penal Code §§ 1269c, 1275, *Clark v. Superior Court*, 11 Cal. App. 4th 455, 458 (1992), *In re Christie*, 92 Cal. App. 4th 1105, 1107 (2001), *In re Burnette*, 35 Cal. 2d 358, 360 (1939), *People v. Gilliam*, 41 Cal. 3d 181, 191 (1974), and *Ex Parte Ruef*, 7 Cal. 750, 753 (1908); and California Judges Benchguide § 55.3.

⁷¹ *See* Lindsey Carlson, *Bail Schedules: A Violation of Judicial Discretion?*, Criminal Justice, Volume 26, Number 1 (2011), available at http://www.americanbar.org/content/dam/aba/publications/criminal_justice_magazine/cjsp11_bail.authcheckdam.pdf, discussing *Clark v. Hall*, 53 P.3d 416 (Okla. 2002) and *Pelekai v. White*, 75 Haw. 357 (1993).

⁷² Obtained from bail schedules available on each county's Superior Court website.

⁷³ *See* California Bail Agents Association website, <http://www.cbba.com/>.

⁷⁴ Dawn Wotapka, *Underwater and in the Tank: Defendants Find It Tougher to Make Bail as Bond Agents Shun Homes as Collateral* (Apr. 25, 2011), Wall Street Journal, available at <http://online.wsj.com/article/SB10001424052748703648304576265422469205008.html>.

⁷⁵ Stephen Demuth, *Racial and Ethnic Differences in Pretrial Release Decisions and Outcomes: A comparison of Hispanic, Black, and White Felony Arrestees*, Criminology, 41 (2003), p. 873-907.

⁷⁶ *Id.*

⁷⁷ *Id. See also* E. Britt Patterson and Michael J. Lynch, *Bias in formalized bail procedures*, Race and Criminal Justice (1991); S.H. Clark and S.T. Kurtz *The Importance of Interim Decisions to Felony Trial Court Dispositions*, Journal of Criminal Law and Criminology, 74 (1983), p. 476-518; A. Rankin, *The Effects of Pretrial Detention*, New

York University Law Review, 39 (1964); Caleb Foote, *Compelling Appearance in Court – Administration of Bail in Philadelphia*, University of Pennsylvania Law Review 102 (1954), p. 1031-1079.

⁷⁸ See VanNostrand, *supra* note 68.

⁷⁹ International Association of Chiefs of Police, *Law enforcement's leadership role in the pretrial release and detention process* (2011), available at <http://www.theiacp.org/LinkClick.aspx?fileticket=32EOi2UoJ04%3d&tabid=392>.

⁸⁰ Cal. Penal Code § 1203.018. This section additionally specifies that eligible inmates must be held in confinement in lieu of bail on a misdemeanor charge for at least 30 days and have no holds or outstanding warrants.

⁸¹ Alameda, Fresno, Kern, Placer, Sacramento, San Diego, San Francisco, San Joaquin and Solano.

⁸² The state's jail inmate population was 71 percent as of the third quarter of 2011, and the same in 2010. The percentage of jail inmates nationwide who were unsentenced as of July 2010 was 61 percent, holding steady between 61 and 63 percent since 2005. Corrections Standards Authority, *Average Daily Population, Non-sentenced / Sentenced Male / Female, California County Jails* (for July – Sept. 2011), available at http://www.cdcr.ca.gov/CSA/FSO/Surveys/Docs/2011_3rd_Qtr_JPS_adp_m_f.pdf. See also *Average Daily Population, Non-sentenced / Sentenced Male / Female, California County Jails* (for July – Sept. 2010), available at http://www.cdcr.ca.gov/CSA/FSO/Docs/2010_3rd_Qtr_JPS_adp_m_f.pdf; Bureau of Justice Statistics, *Jail Inmates at Midyear 2010 - Statistical Tables*, *jim10stt07*, (Apr. 14, 2011), available at <http://bjs.ojp.usdoj.gov/content/pub/sheets/jim10st.zip>.

⁸³ Napa County Executive Office, *Adult Correctional System Master Plan – Phase I, Report to the Board of Supervisors* (Nov. 13, 2007), p. 45, available at <http://www.calrealignment.org/about-us/september-21st-conference.html>.

⁸⁴ *Id.*

⁸⁵ Third Quarter Survey, *supra* note 63.

⁸⁶ Scott MacDonald and Charlie E. Smith, *Addressing Jail Overcrowding: Safe Alternatives to Incarceration through Justice Partnership* (Sep. 21, 2011). Powerpoint presentation at *Solving the Crisis: Innovations in Corrections in California*, slide 8, available at <http://www.calrealignment.org/about-us/september-21st-conference.html>.

⁸⁷ *Id.* at slide 26.

⁸⁸ *Id.* at slide 28.

⁸⁹ Third Quarter Survey, *supra* note 63.

⁹⁰ Justice Policy Institute, *Baltimore Behind Bars* (2010), p. 30, available at [http://pretrial.org/CostDocuments/Baltimore%20Behind%20Bars%20\(JPI%202010\).pdf](http://pretrial.org/CostDocuments/Baltimore%20Behind%20Bars%20(JPI%202010).pdf)

⁹¹ *Id.*

⁹² *Id.*

⁹³ Marie VanNostrand, Luminosity Solutions, *Responsible Jail Population Reduction Case Study: Camden County, New Jersey*, available at http://www.luminosity-solutions.com/publications/CamdenCaseStudy_12-21-10.pdf.

⁹⁴ *Id.*

⁹⁵ The District of Columbia Junior Bar Association issued a report criticizing the bail system in 1963, and Georgetown Law School received funding to open the D.C. Bail Project to remedy problems within the bail system. Pretrial Justice Institute, *The D.C. Pretrial Services Agency: Lessons from Five Decades of Innovation and Growth*, Case Studies: Volume 2, Number 1, available at <http://www.pretrial.org/Reports/PJI%20Reports/Case%20Study%202%20-%20DC%20Pretrial%20Services.pdf>.

⁹⁶ For data from 1962 through 1975, see Wayne H. Thomas, Jr., *Bail Reform in America* (1976), University of California Press. For 2008 data, see also District of Columbia Pretrial Services Agency, *Leading in the Field: District of Columbia Pretrial Services Agency FY 2008 Annual Report*, available at <http://www.dcpsa.gov/foia/PSAfoiaDocuments/PSA-Annual-Report-FY2008.pdf>.

⁹⁷ D.C. Pretrial, *supra* note 95.

⁹⁸ See the Pretrial Justice Institute website at www.pretrial.org.

⁹⁹ For studies and reports, see <http://www.pretrial.org/DiversionPrograms/Pages/default.aspx>.

¹⁰⁰ See <http://www.pretrial.org/AboutPJI/Pages/wherewestand.aspx>.

¹⁰¹ See <http://www.pretrial.org/Pages/increasing-appearance.aspx>.

¹⁰² Where We Stand, *supra* note 100.

¹⁰³ See <http://www.pretrial.org/Pages/supervising-defendants.aspx>.

¹⁰⁴ See <http://www.pretrial.org/Pages/performance-measures.aspx>.

¹⁰⁵ Remarks as Prepared for Delivery by Attorney General Eric Holder at the National Symposium on Pretrial Justice (Jun. 1, 2011), available at http://www2.americanbar.org/sections/criminaljustice/CR203800/Pages/pretrialjustice_holder.aspx.

¹⁰⁶ Elise Foley, *Detainers are Not Mandatory* (Oct. 31, 2011), Huffington Post, available at http://www.huffingtonpost.com/2011/10/31/dhs-hold-undocumented-immigrants_n_1067558.html?1320087816. According to internal Department of Homeland Security documents, local law enforcement agencies are not required to hold immigrants at the request of the federal government.

¹⁰⁷ Sheriff Michael Hennessey, *Inter-Office Correspondence: Immigration & Custom Enforcement Procedures* (May 3, 2011), available at http://www.wbez.org/sites/default/files/San_Francisco_policy_on_ICE_detainers.pdf.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ Santa Clara Board of Supervisors, Summary of Proceedings, Board Agenda Item 11 (Oct. 18, 2011), available at <http://www.sccgov.org/SCC/docs%2FSCC%20Public%20Portal%2FAttachments%2FBOS%20Summary%2F2011%2FSummary101811.pdf>.

¹¹² Santa Clara Board of Supervisors, Resolution of the Board of Supervisors of the County of Santa Clara Adding Board Policy 3.54 Relating to Civil Immigration Detainer Requests (2011), available at

<http://www.sccgov.org/keyboard/attachments/BOS%20Agenda/2011/October%202018.%20202011/203452112/TMPKeyboard203715832.pdf>.

¹¹³ *Id.*

¹¹⁴ Cal. Penal Code § 1230.1(d).

¹¹⁵ Cal. Penal Code § 17.5(a).

¹¹⁶ Similarly, the diverse programmatic and budgetary practices among the counties made it nearly impossible to accurately isolate the amount of realignment funding allocated specifically to community sanctions alternatives to incarceration. For example, in some counties, the Sheriff's Department may house the totality of alternative programs for sentenced defendants, while the Probation Department deals exclusively with the post-release community supervision population. In other counties, the Probation Department may begin to play an active role in supervising those who are released into the community as an alternative to serving a jail sentence, in addition to supervising those released after completing their sentence. Therefore, the funding breakdowns presented in the county profiles in Appendix A to this report convey only a general sense of how each county has apportioned its realignment monies to fund alternative sanctions amongst the Probation Department, Sheriff, jail expansion projects, health, treatment and other services and other law enforcement agencies.

¹¹⁷ See VanNostrand, *supra* note 68.

¹¹⁸ Crediting some of these twenty-four county plans with including the possibility of risk/needs assessment is generous; the ACLU analysis erred on the side of inclusivity. For instance, the only mention in the Stanislaus County plan is this single sentence: "Currently there are five probation officers assigned to work out of the Day Reporting Center (DRC), with one officer being assigned to work in the adult facilities conducting risk assessments for potential early release candidates."

¹¹⁹ Alameda, Fresno, Sacramento, San Diego, San Joaquin, San Mateo, Solano, and Tulare.

¹²⁰ See County of San Diego Public Safety Realignment and Post-Release Community Supervision Preliminary 2011 Implementation Plan, available at http://calrealignment.org/component/docman/doc_download/81-san-diego-county-plan.html?Itemid.

¹²¹ See County of Madera Public Safety Realignment Act of 2011 Local Implementation and Post Release Supervision Plan, available at http://calrealignment.org/component/docman/doc_download/46-madera-county-plan.html?Itemid.

¹²² As part of Second Chance Grant administration, the Bureau of Justice Assistance detailed the "Fundamental Principles of Evidence-Based Correctional Practice." The principles emphasize the importance of objective risk and needs assessment, cognitive behavioral therapy and providing supervision and services that match the identified risk and needs. Bureau of Justice Assistance, *Second Chance Act Adult Offender Reentry Program for Planning and Demonstration Projects FY 2011 Competitive Grant Announcement* (Dec. 16, 2011), p. 26-28, available at <http://www.grants.gov/search/search.do?mode=VIEW&oppId=94833>.

¹²³ Jail-based programs that include transition planning and comprehensive services that address housing, substance abuse, education and employment needs upon release are crucial for successful reentry. For examples of innovative programs throughout the United States, see Urban Institute, *Life After Lockup: Improving Reentry from Jail to the Community* (May 2008), p. 61, available at http://www.jjay.cuny.edu/Final_Life_After_Lockup.pdf.

¹²⁴ See County of Alameda Public Safety Realignment Act of 2011 Implementation Plan (2011), available at http://calrealignment.org/component/docman/doc_download/104-alameda-county-plan.html?Itemid.

¹²⁵ See Butte County Public Safety Realignment and Postrelease Community Supervision 2011 Implementation Plan (Sep. 2011), available at http://calrealignment.org/component/docman/doc_download/36-butte-county-plan.html?Itemid.

¹²⁶ San Diego's plan calls for expediting cases involving Prop 36 drug diversion and deferred entry of judgment as a strategy to effectively utilize jail capacity, estimating that since these defendants are released from custody upon settlement of their case, a minimum of four custody days per case may be avoided for an estimated annual population of 3,000 potentially eligible offenders. Additionally, the San Diego plan provides that the Probation Department will use a screening tool to determine who is eligible for diversion or deferred judgment. Tulare's plan provides that low-level offenders should be diverted from prosecution "wherever possible," and that drug and mental health courts should be seriously considered where diversion is not appropriate. Its pretrial assessment will consider the offender's suitability for diversion from prosecution. Santa Barbara and San Mateo only briefly mention diversion in their plans: Santa Barbara also mentioned Proposition 36 as an option to divert nonviolent defendants charged with simple drug possession offenses from incarceration into community-based treatment programs. San Mateo's plan includes nonprofit recommendations to the CCP, including pre-booking diversion substance abuse and mental health issues.

¹²⁷ See County of Napa Public Safety Realignment and Post Release Community Supervision 2011 Implementation Plan, available at http://calrealignment.org/component/docman/doc_download/74-napa-county-plan.html?Itemid; Siskiyou County Public Safety Realignment and Post Release Community Supervision Preliminary Plan (Oct. 11, 2011), available at http://calrealignment.org/component/docman/doc_download/86-siskiyou-county-plan.html?Itemid.

¹²⁸ See The Defender Association-Racial Disparity Project, *Law Enforcement Assisted Diversion (LEAD): A Pre-Booking Diversion Model for Low-Level Drug Offenses* (2010), available at <http://www.law.seattleu.edu/Documents/cle/archive/2010/032610%20Restorative%20Justice/215pm%20LEAD%20concept%20paper.pdf>.

¹²⁹ See, e.g., Bureau of Justice Assistance, *Utah: The Utah Day Reporting Center—Success With Alternative Incarceration*, available at <http://ucjc.law.utah.edu/wp-content/uploads/16.pdf>; Charlene Rhyne and Lailah Hamblin, *Multnomah County Day Reporting Center Evaluation* (2009), available at http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=8&ved=0CF8QFjAH&url=http%3A%2F%2Fweb.multco.us%2Fsites%2Fdefault%2Ffiles%2Fdccj%2Fdocuments%2Fdrc_final_document.doc&ei=0XIFT6K0DYa0iQLO85i7Dg&usg=AFQjCNGd9bdyPeaNq2DMYJQvbeFyEVjW5A&sig2=BXhIbChs3zT7SwfZ6uhxA.A.

¹³⁰ See Sacramento County Community Corrections Partnership Public Safety Realignment Plan (Nov. 1, 2011), available at http://calrealignment.org/component/docman/doc_download/101-sacramento-county-plan.html?Itemid.

¹³¹ See Butte County Plan, supra note 125.

¹³² See Merced County Public Safety Realignment and Post Release Community Supervision 2011 Implementation Plan, available at http://calrealignment.org/component/docman/doc_download/68-merced-county-plan.html?Itemid.

¹³³ See County of Kern Public Safety Realignment Act of 2011 Implementation Plan, available at http://calrealignment.org/component/docman/doc_download/77-kern-county-plan.html?Itemid; Lake County Realignment Implementation Plan, available at http://calrealignment.org/component/docman/doc_download/65-lake-county-plan.html?Itemid; County of Madera Public Safety Realignment Act of 2011 Local Implementation and Post Release Supervision Plan, available at http://calrealignment.org/component/docman/doc_download/46-madera-county-plan.html?Itemid; County of Napa Public Safety Realignment and Post Release Community Supervision 2011 Implementation Plan, available at http://calrealignment.org/component/docman/doc_download/74-napa-county-plan.html?Itemid; Orange County Public Safety Realignment and Postrelease Community Supervision 2011 Implementation Plan, available at http://calrealignment.org/component/docman/doc_download/79-orange-county-plan.html?Itemid; San Luis Obispo County 2011 Public Safety Realignment Act Implementation Plan, available at

http://calrealignment.org/component/docman/doc_download/72-san-luis-obispo-county-plan.html?Itemid; AB 109 Yuba County Implementation Plan 2011, available at http://calrealignment.org/component/docman/doc_download/87-yuba-county-plan.html?Itemid.

¹³⁴ See Humboldt County Public Safety Realignment Plan (Dec. 19, 2011), available at <http://www.cpoc.org/php/realign/coplans/humboldt.pdf>.

¹³⁵ See Tuolumne County Public Safety Realignment Act AB 109 Implementation Plan (2011), available at http://calrealignment.org/component/docman/doc_download/76-tuolumne-county-plan.html?Itemid. Note that the county plans to use funding received through a separate piece of legislation, SB 678.

¹³⁶ See Sonoma County Public Safety Realignment Interim Plan (2011), available at http://calrealignment.org/component/docman/doc_download/85-sonoma-county-plan.html?Itemid.

¹³⁷ See Merced County Plan, *supra* note 132.

¹³⁸ See Drug Policy Alliance, *Drug Courts Are Not the Answer* (Mar. 2011), available at http://www.drugpolicy.org/sites/default/files/Drug%20Courts%20Are%20Not%20the%20Answer_Final2.pdf.

¹³⁹ Denise C. Gottfredson, et al., *Long-Term Effects of Participation in the Baltimore City Drug Treatment Court: Results from an Experimental Study* (2006), *Journal of Experimental Criminology* 2, no. 1, p. 67-98.

¹⁴⁰ See Santa Cruz plan at pp. 24-25 (available at http://www.calrealignment.org/component/docman/doc_download/69-santa-cruz-county-plan.html?Itemid), which provides for a phased planning process: “Data from the initial cohort of offenders served will be available to help guide this process as well, so that planning is not solely dependent on archival data sources which may or may not reflect the nature of the target population. ... Phase Four is an evaluation process which will take place concurrent with all other phases and which continues into the future. This will feature a full review of system and program interventions; tracking and measurement of recidivism and other outcomes; attribution of outcomes to specific programmatic components; and assessment of fidelity to EBP delivery throughout the criminal justice system. Evaluation findings will be incorporated in continuous program improvement and redesign of implementation strategies.”

¹⁴¹ See Santa Cruz County Public Safety Realignment and Post Release Community Supervision 2011 Implementation Plan (Oct. 4, 2011), available at http://calrealignment.org/component/docman/doc_download/69-santa-cruz-county-plan.html?Itemid.

¹⁴² See Alameda County Plan, *supra* note 124.

¹⁴³ See Contra Costa County 2011/12 Public Safety Realignment Implementation Plan (Sep. 30, 2011), available at http://calrealignment.org/component/docman/doc_download/70-contra-costa-county-plan.html?Itemid.

¹⁴⁴ See discussion of the newly-created Board for State and Community Corrections (BSCC), its data collection and monitoring duties, and concerns about its unclear mandate and powers, *supra* note 38.

¹⁴⁵ See County of Placer Public Safety Realignment Act AB 109 2011 Implementation Plan, available at <http://www.placer.ca.gov/departments/~media/pro/documents/CCP/Final/CCP%20Plan%20final%2012162011.aspx>.

¹⁴⁶ See Contra Costa County Plan, *supra* note 143.

¹⁴⁷ For updates on AB 900, see Corrections Standards Authority, AB 900 Local Jail Construction Financing Program website at http://www.cdr.ca.gov/CSA/CFC/AB900_Program.html.

APPENDIX A

Profiles of the “Big 25” counties that received the largest realignment funding allocations from the state for fiscal year 2011-2012

County Profiles are presented alphabetically, and are preceded by an “Information Sources and Terminology Guide.” Endnotes for specific profiles appear at the back of this Appendix following the last County Profile.

County realignment implementation plans are available online at www.calrealignment.org.

County Profiles Information Sources and Terminology Guide

Rankings. Each profiled county is ranked from high to low in each category (i.e. County Population, Crime rate per 100,000, Non-Sentenced Jail Population, Probation Failure Rate, Pre-realignment Felony Probation Workload), as compared with all 58 counties. For example, the county with the highest probation failure rate is ranked #1, and the county with the lowest probation failure rate is ranked #58 in that category.

County Population. The county population includes individuals aged 18 to 64. This age group represents the vast majority of people at-risk for involvement with the criminal justice system. California Department of Finance, Demographic Profiles, Table 1: Population, Age and Sex Characteristics, April 1, 2010, available at http://www.dof.ca.gov/research/demographic/state_census_data_center/census_2010/view.php#DP.

Crime Rate per 100,000. The crime rate used for this report combines the violent crime rate and property crime rate per 100,000 of the county population gathered by the California Department of Justice. California Department of Justice, Statistics by City and County, Reported Crimes and Crime Rates, 2009, available at <http://ag.ca.gov/cjsc/statisticsdatatabs/CrimeCo.php>. The crime rate for some counties was not available on the Department of Justice website. The rate for these counties was calculated by dividing the number of reported violent and property crimes by the county's 2009 population, found at California Department of Finance, E-2. California County Population Estimates and Components of Change by Year — July 1, 2000–2010, available at <http://www.dof.ca.gov/research/demographic/reports/estimates/e-2/2000-10/view.php>.

Non-Sentenced Jail Population. Non-sentenced inmates are those inmates who have not been sentenced on all charges, i.e. awaiting sentencing on at least one charge. Based on this definition, used by the Corrections Standards Authority to guide county data collection, inmates re-incarcerated for a probation or parole violation, as opposed to a new criminal charge, are considered sentenced on all charges. Inmates subject to an immigration hold are placed into the non-sentenced or sentenced categories depending on the status of their charges. Although the number of non-sentenced inmates may include individuals sentenced on some, but not all charges, the majority of this group is believed to be pre-trial, or awaiting sentencing on all charges. Corrections Standards Authority, Jail Profile Survey, 2011 3rd Quarter Survey Results, Average Daily Population Non-sentenced / Sentenced Male / Female, California County Jails - For Months Of July - September 2011, available at http://www.cdcr.ca.gov/CSA/FSO/Surveys/Docs/2011_3rd_Qtr_JPS_full_report.pdf.

Immigration Detainees in Jail. This information was obtained through responses from County Counsel's Offices and Sheriff's Departments pursuant to a November 17, 2011 Public Records Act request sent by the ACLU of Northern California seeking the average daily population for a specified time period, and of those inmates, the number and/or percentage who for that time period were federal immigration detainees. Fourteen counties provided this information. Of the counties that did not provide this information, reasons for not doing so stated that data pertaining to immigration detainees in custody were not centrally collected or that to obtain this data would be overly burdensome.

State Prison “High Use” Counties. According to a 2012 study conducted by David Ball, Assistant Professor at the Santa Clara University School of Law, 10 of the 25 counties receiving the most in realignment funding for Fiscal Year 2011-2012 were determined to be “high use” counties – that is, counties that rely the most heavily on state prison to incarcerate newly convicted felons from their jurisdictions. High use counties had either an annual coverage rate or a new felon admissions (NFA) surplus, or both, in the top quartile for at least seven of the 10 years of the study. Both represent the degree to which a county responds to crime with incarceration. Coverage rates were calculated by dividing the number of new felon admissions by the number of reported violent crimes in each county. The NFA surplus was calculated by multiplying the state’s coverage rate for a given year by the number of reported violent crimes in the county that same year to determine the “crime justified” NFA. These “crime justified” NFA were then subtracted from a county’s actual NFA to determine the county’s surplus or deficit. W. David Ball, *Tough on Crime (on the State’s Dime): How Violent Crime Does Not Drive California Counties’ Incarceration Rates—And Why It Should*, 28 Ga. St. U. L. Rev. (forthcoming 2012), available at <http://digitalcommons.law.scu.edu/facpubs/162/> (examining the ways in which county governments contribute to overpopulation in the state prison system).

Probation Failure Rates. Probation failure rates were calculated by the California Department of Finance (DOF) with data collected for the 2010 calendar year in order to implement SB 678 (the California Community Corrections Performance Incentive Act) for the 2011-2012 fiscal year. At the end of each calendar year, DOF determines statewide and county specific probation failure rates. Data for calendar year 2011 are currently being collected and processed. The probation failure rate is calculated by dividing the number of revocations to state prison by the adult felony probation population. The current probation failure rate in each county is then compared to a baseline failure rate (a weighted average from calendar years 2006 through 2008). Counties with lower than baseline failure rates are then eligible for a performance grant. Administrative Office of the Courts, SB 678 Year 1 Report (Jun. 8, 2011), available at <http://www.courts.ca.gov/documents/SB678-Year-1-Report-FINAL.pdf>.

Ten percent of the AB 109 funding allocation made to each county for FY 2011-2012 was based on its performance under SB 678. As of October 1, 2011, however, SB 678 has been made obsolete. Because probation revocations (not involving a new criminal charge) no longer result in state prison commitments, the criteria for measuring performance have changed. While the same criteria will no longer be useful in administering high performance grants in future years, probation revocation rates from calendar year 2011 are currently being calculated and will be an essential variable in a revised funding formula.

Pre-Realignment Felony Probation Workload. This is the annual average of individuals making up the felony probation workload for each county from 2005 through 2009, which is the latest year reported by the Department of Justice’s Criminal Justice Statistics Center. California Department of Justice, Criminal Justice Statistics Center, Table 7: Adult Probation Caseload and Actions by Level of Offense and Percent Distribution, available at <http://ag.ca.gov/cjsc/datatabs.php> (select the “Adult Probation” subcategory of “Supervision and Corrections”).

Data for Each County Regarding Budget, AB 109 Jail Expansion, and Alternatives to Incarceration.

Incarceration. Unless otherwise indicated in an endnote, all information provided in the county profiles as to budget allocations, jail expansion plans, and use of alternatives to incarceration was gathered from each county's plan, as passed by the Board of Supervisors, or in its most recent draft at the time of writing this report. Since county plans varied widely in the amount of detail used to describe specific budget allocations and which evidence-based programs and alternatives would ultimately be adopted, a conservative interpretation of the plans was made, and endnotes were provided to offer additional explanation. County realignment implementation plans are available online at www.calrealignment.org.

Public Safety Realignment funding for FY 2011-2012. This is the county's AB 109 programs allocation for FY 2011-2012. Each county was given four separate allocations: one to fund programs, another to fund District Attorney and Public Defender activities, a one-time allocation for training, and a one-time allocation for Community Corrections Partnership planning. The "program allocations" comprised the vast majority of funds received by counties under AB 109, and this is the figure we used; we did not include in the county profiles the separately-designated DA/Public Defender, training or planning funds. The costs of Probation, Sheriffs, and other local government agencies were generally paid from this "programs allocations" funding pot. See California State Association of Counties, Allocation and Population Information: 2011-12 AB 109 Funding, One-Time Training Funds, and Average Daily Population by County at Full Implementation, available at http://www.counties.org/default_print.asp?id=3202.

Allocation of Each County's Public Safety Realignment funding for FY 2011-2012:

Each county profile includes a breakdown of the county's local distribution of its realignment allocation from the state for FY 2011-2012. We divided each county realignment budget, as provided in the county implementation plans, into five categories, each explained in more detail below. Each county profile presents the amount the county budgeted to each of the five categories as a percentage of the county's overall state realignment allocation (defined above). We were not able to ascertain with complete certainty all of the county budget allocations reflected in county profiles because not all county plans included complete budget information.

To the extent we were able to obtain additional budget information from the counties to supplement the county plans, we factored such information into the profiles and we have indicated the source of that additional information in the bullet points below or in the reference endnotes which follow the county profiles. The percentage breakdowns shown for many counties add up to more or less than 100%, for several reasons. First, we rounded to the nearest percentage point for each of our five categories, which may result in a variance of a few points when calculating the sum of those allocation percentages. Also, not all county budget allocations fit squarely into the five categories we used, and the amounts some counties budgeted are not equal to their total allocations from the state. Some counties supplemented their program allocation funds from the state with funds from other sources when creating their realignment plan budget. Many counties did not allocate some portion of their program funds, sometimes simply designating some portion as "unallocated," other times designating some portion as a contingency fund. Specific information explaining these variances is provided in the endnotes or below:

- **Contra Costa County:** The County Plan makes allocations that do not fit into the categories we created; \$67,500 was allocated to the District Attorney, and \$94,995 to the Public Defender, above and beyond the separate earmarked state allocation for District Attorney and Public Defender activities. This results in categorized amounts shown in the profile chart totaling less than 100% of the Public Safety Realignment allocation amount.
- **Kern County:** The County Plan designates \$94,256 of its Public Safety Realignment allocation Realignment funding for “contingencies,” which results in categorized amounts shown in the profile chart totaling less than 100% of the Public Safety Realignment allocation amount.
- **Kings County:** The County Plan makes allocations that don’t fit into the categories we created; \$79,163 to County Counsel, \$68,652 to Human Resources and \$42,521 to Victim Witnesses. This results in categorized amounts shown in the profile chart totaling less than 100% of the Public Safety Realignment allocation amount.
- **Los Angeles County:** The County Plan makes allocations that do not fit into the categories we created; \$10,000 to the Chief Executive Office and \$500,000 for Provisional Financial Uses. This results in categorized amounts shown in the profile chart totaling less than 100% of the Public Safety Realignment allocation amount.
- **Placer County:** According to the County Plan, state funding is not anticipated to fully fund county costs associated with realignment. The Placer County Executive’s Office (CEO) prepared a report that outlines \$1.7 million of gap funding to supplement the realignment funds allocated by the State. The profile chart reflects the actual amounts budgeted in the plan, which results in categorized amounts shown in the profile chart totaling more than 100% of the Public Safety Realignment allocation amount.
- **Riverside County:** The County Plan does not include a budget allocation. The total provided in the county profile, \$21,074,467, was obtained from the CSAC website. According to information provided to the ACLU by the Riverside County Probation Department, however, \$21,823,911 in local allocations were approved by the CCP Executive Committee, resulting in categorized amounts shown in the profile chart totaling more than 100% of the Public Safety Realignment allocation amount.
- **San Diego County:** The original County Plan allocated all of the state realignment funds but didn’t include jail expansion; it was subsequently amended to give the sheriff \$200,000 additional funding to expand the jail in East Mesa. This results in categorized amounts shown in the profile chart totaling more than 100% of the Public Safety Realignment allocation amount.
- **San Francisco County:** The County Plan supplements its Public Safety Realignment allocation with an additional \$4,800,000 from the county’s general fund, which results in categorized amounts shown in the profile chart totaling more than 100% of the Public Safety Realignment allocation amount.

- **San Joaquin County:** The County Plan designates \$233,442 of its Public Safety Realignment allocation Realignment funding for “contingencies” and \$31,500 for “transportation,” which results in categorized amounts shown in the profile chart totaling less than 100% of the Public Safety Realignment allocation amount.
- **San Mateo County:** Because the County Plan had not been finalized at the time of printing this report, approximate allocations among local agencies were calculated according to proposed budget allocations for FY 2011-12 distributed at a public CCP meeting on January 26, 2012. (See endnote 10 following the county profiles). The budget document referred to here only allocates \$3,966,425; thus, \$256,477 of AB 109 funds for FY 2011-12 are unallocated in the draft budget. This results in categorized amounts shown in the profile chart totaling less than 100% of the Public Safety Realignment allocation amount.
- **Santa Clara County:** The County Plan allocates money for programs from the separate state allocations intended to fund District Attorney and Public Defender activities, the one-time allocation for training, and the one-time allocation for Community Corrections Partnership planning. Essentially, the county moved funds from those earmarked allocations to supplement its programs allocation. This results in categorized amounts shown in the profile chart totaling more than 100% of the Public Safety Realignment allocation amount.
- **Shasta County:** The County Plan does not allocate \$240,000 of its Public Safety Realignment allocation Realignment funding, which results in categorized amounts shown in the profile chart totaling less than 100% of the Public Safety Realignment allocation amount.
- **Solano County:** The County Plan does not allocate \$195,522 of its Public Safety Realignment allocation, which results in categorized amounts shown in the profile chart totaling less than 100% of the Public Safety Realignment allocation amount.
- **Sonoma County:** The County Plan designates \$134,262 of its Public Safety Realignment allocation Realignment funding for “contingencies,” which results in categorized amounts shown in the profile chart totaling less than 100% of the Public Safety Realignment allocation amount.
- **Stanislaus County:** The County Plan does not allocate \$418,615 of its Public Safety Realignment allocation, which results in categorized amounts shown in the profile chart totaling less than 100% of the Public Safety Realignment allocation amount.
- **Ventura County:** The County Plan does not allocate \$1,443,907 of its Public Safety Realignment allocation, which results in categorized amounts shown in the profile chart totaling less than 100% of the Public Safety Realignment allocation amount.
- **Yolo County:** The County Plan makes allocations that don’t fit into the categories we created; \$82,000 was allocated to the District Attorney and Public Defender, above and beyond the separate earmarked state allocation for District Attorney and Public Defender activities. This results in

categorized amounts shown in the profile chart totaling less than 100% of the Public Safety Realignment allocation amount.

Add Jail Capacity. This figure represents the AB 109 funds used by a county to expand either the physical or operational capacity of its corrections facilities. This includes expenditures associated with the construction of new beds, re-opening a previously closed wing of the jail, installing bunks to dayrooms, and hiring new staff for duties relating to custody.

Other Law Enforcement. Included here are the allocations made to the District Attorney and city police departments from the programs grant to conduct, for example, prosecution activities or random compliance checks on members of the PRCS population.

Jail Expansion under AB 900. All information in the county profiles related to jail expansion under AB 900 was drawn from the Corrections Standards Authority website at

http://www.cdcr.ca.gov/CSA/CFC/AB900_Program.html. See *AB 900 Phase I Jail Construction Funding Awards* (Nov. 19, 2011), at

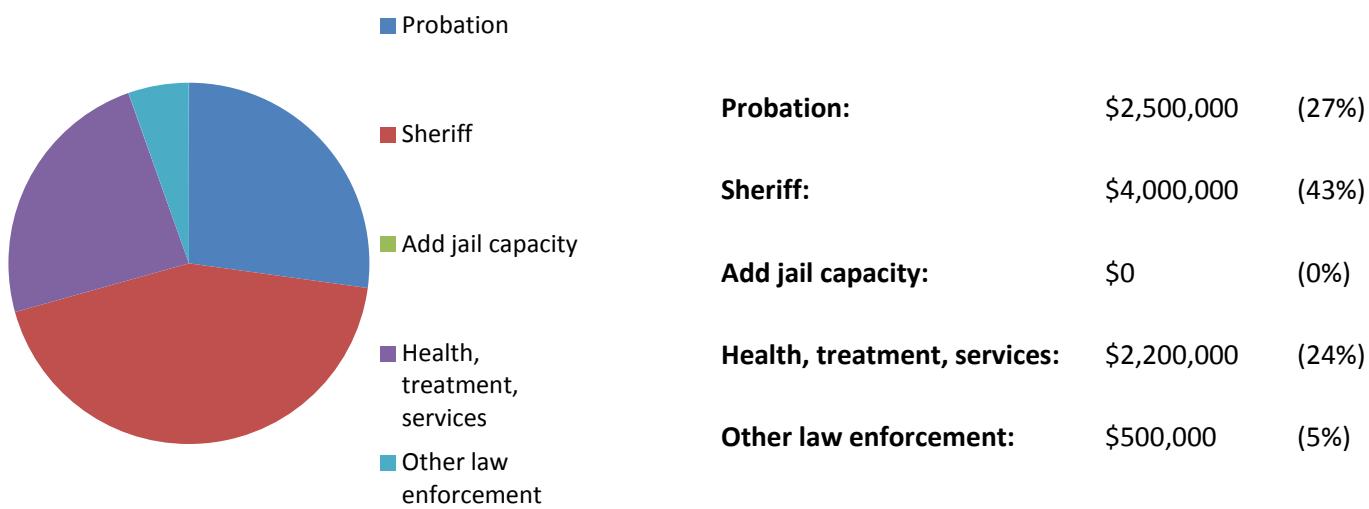
http://www.cdcr.ca.gov/CSA/CFC/Docs/AB_900_Phase_I_Funding_111909.pdf; *AB 900 Jail Construction Financing Program Corrections Standards Authority Project Status Update – Phase I October* (Oct. 7, 2011), at http://www.cdcr.ca.gov/CSA/CFC/Docs/AB900_Project_Status.pdf; and *AB 900 Phase II Jail Construction Financing Program Applications Received* (Jan. 11, 2012), at

<http://www.cdcr.ca.gov/CSA/CFC/Docs/ApplicationsSubmittedinAB900PhaseII1112forposting.pdf>.

Alameda

County Population/ranking:	#7	(1,001,904)
Crime Rate per 100,000/ranking:	#4	(2,841.8)
Non-Sentenced Jail Population/ranking:	#8	(83%)
Immigration Detainees in Jail:		Not available
State Prison "High Use" County?	No	
Probation Failure Rate/ranking:	#24	(5.54%)
Pre-realignment Felony Probation Workload/ranking:	#5	(15,394)

Public Safety Realignment allocation for FY 2011-2012: \$9,200,000



Jail expansion

AB 109: The County's plan does not provide for opening additional beds. A Transition Center will be established in order to "improve and expand the coordination of services, supports, and opportunities for inmates being released from Santa Rita Jail and coming home to the County."

AB 900: Alameda has not been awarded any AB 900 funding for new jail construction.

Alternatives to incarceration

Pretrial: Yes. Plan calls for creation of a pre-trial electronic monitoring (EM) program to provide alternatives to incarceration for individuals being held pre-trial but deemed to be a lower threat to public safety, based on a validated risk assessment. The plan specifies that alternatives will include the use of home detention, electronic monitoring and drug testing. The budget does not specify how much of the Sheriff's or Probation's funding allocation will be required to implement the EM program.

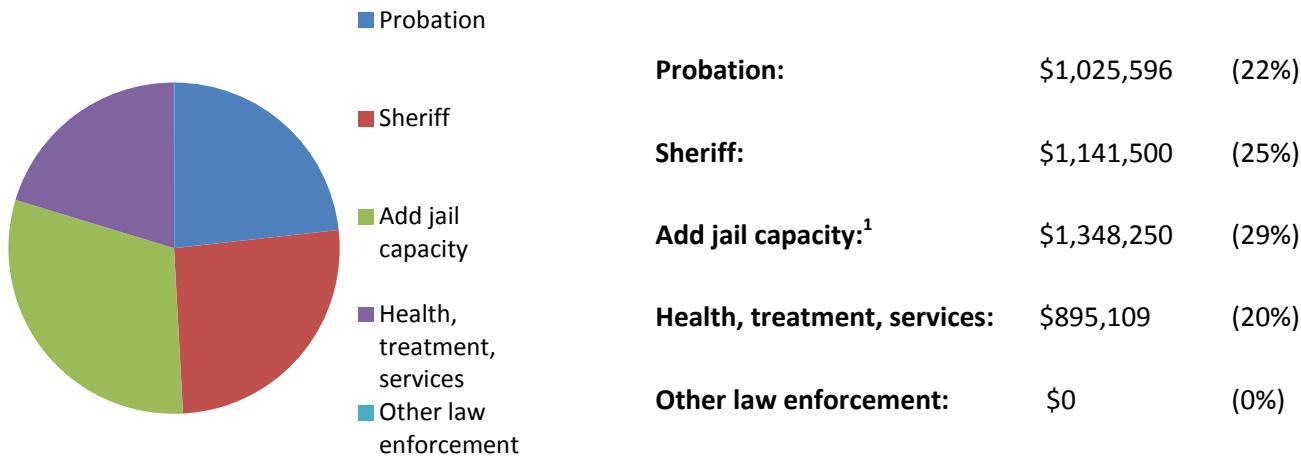
Sentenced: No. The County's plan does not discuss any alternatives to incarceration for newly-sentenced non-violent, non-serious, non-sexual offenders, nor allocate any funding for such alternatives. Instead, despite AB 109's encouragement to counties to use evidence-based alternatives to incarceration, based on the County's AB 109 plan, it will continue to rely upon incarceration as the primary way of supervising individuals who have been sentenced for non-violent, non-serious, non-sexual crimes. The plan does not discuss or fund, for example, expanded work furlough, community detention, electronic monitoring or any other alternatives to incarceration for sentenced offenders.

Post release community supervision: Yes. The Probation Department is implementing for the Post Release Community Supervision population a risk-needs assessment tool which will serve as the bases for an Individual Achievement Plan (IAP). The IAP will serve as a tool for connecting released offenders to community-based programming.

Contra Costa

County Population/ranking:	#9	(658,082)
Crime rate per 100,000/ranking:	#11	(2,254.9)
Non-Sentenced Jail Population/ranking:	#7	(85%)
Immigration Detainees in Jail:	7.8%	
State Prison "High Use" County?	No	
Probation Failure Rate/ranking:	#54	(1.19)
Pre-Realignment Felony Probation Workload/ranking:	#20	(3,213)

Public Safety Realignment allocation for FY 2011-2012: \$4,572,950



Jail expansion

AB 109: The county hired five Deputy Sheriffs and re-opened 200 inmate beds in the West County jail as of October 1, 2011. According to the plan, six additional Deputy Sheriffs are to be hired in the Marsh Creek jail, effective January 1, 2012, to staff 70 additional jail beds. Thus, the county has used AB 109 funding to expand its jail capacity by 270 beds.

AB 900: Contra Costa has not received AB 900 funding for new jail construction, nor was the county invited by the Corrections Standards Authority to apply for Phase II AB 900 funds.

Alternatives to incarceration

Pretrial: **Unclear.** Although the County's plan recognizes that Penal Code § 1203.018 authorizes the Sheriff supervise those inmates who are being held in lieu of bail by way of electronic monitoring (EM), the plan notes that such a program must be pre-approved by the District Attorney's Office and the Superior Court. There is no indication in the plan that such approval will be sought, or that an EM program for pre-trial inmates is even under consideration, despite the high percentage of pre-trial inmates in the county jails.

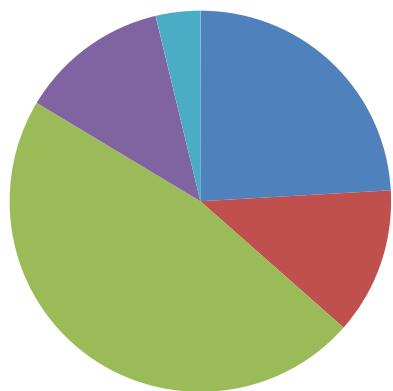
Sentenced: **Yes.** The Sheriff's Office has allocated \$864,000 to fund eight new staff positions (two beginning October 1, 2011 and six beginning January 1, 2012) and new equipment to expand the electronic monitoring (EM) component of its Custody Alternative Facility program. The program will now supervise up to 100 additional offenders. Fees for EM supervision will be reduced or waived for those who are unable to pay. Additionally, individuals who are sentenced to less than 30 days will be assigned to the Work Alternative program.

Post release community supervision: **Yes.** The Probation Department will create a specialized unit to provide intensive probation supervision to individuals on PRCS (depending on risk-needs assessment). The appropriate level of supervision will be assessed through the National Council on Crime and Delinquency's Criminal Assessment and Intervention (CAIS) tool. Individualized treatment plans will be developed, and the plans will include pre-release services, cognitive behavioral interventions and collaboration with multiple service providers. There is no mention of a day reporting center or other innovative program. Instead, the Probation Department will continue to provide the services they have historically provided, but in a more intensive way.

Fresno

County Population/ranking:	#11	(559,552)
Crime Rate per 100,000/ranking:	#7	(2,609.9)
Non-Sentenced Jail Population/ranking:	#4	(88%)
Immigration Detainees in Jail:	1.5%	
State Prison "High Use" County?	Yes	
Probation Failure Rate/ranking:	#17	(6.83)
Pre-realignment Felony Probation Workload/ranking:	#11	(6,831)

Public Safety Realignment allocation for FY 2011-2012:² \$8,838,368



■ Probation	Probation:	\$2,131,331	(24%)
■ Sheriff	Sheriff:	\$1,089,500	(12%)
■ Add jail capacity	Add jail capacity:	\$4,166,880	(47%)
■ Health, treatment, services	Health, treatment, services:	\$1,116,836	(13%)
■ Other law enforcement	Other law enforcement:	\$333,821	(4%)

Jail expansion

AB 109: The county re-opened 432 previously closed beds on October 1, 2011 and plans to re-open 432 more in April 2012 for a total of 864 beds. Additional beds may also be opened in a different jail due to "security concerns and classification issues." Twenty-three Correctional Officer positions were added effective October 3, 2011, and an estimated 23 more will be added in April 2012. Using the data from the first three months of AB 109 implementation, the Sheriff will complete a cost evaluation to determine the resources needed for the additional bed space in April 2012.

AB 900: Fresno has not been awarded any AB 900 funding for new jail construction. The county did not apply for Phase I AB 900 funds and, after submitting an interest statement to the CSA, was invited to apply for Phase II funds, but ultimately did not.

Alternatives to incarceration

Pretrial: Yes. The plan calls for the creation of a program to provide alternatives to incarceration for pre-trial individuals who are deemed to be a lower threat to public safety, based on a validated risk assessment. The plan specifies that alternatives will include the use of home detention, electronic monitoring and drug testing. The plan also calls for contracting with a private company for an automated court hearing notification system to notify individuals of upcoming court dates to reduce failures to appear. The Probation Department will add four positions to implement this pre-trial program at an estimated cost of \$349,418.

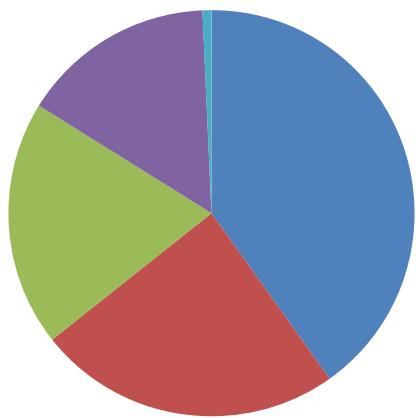
Sentenced: No. The County's plan does not discuss any alternatives to incarceration for newly-sentenced non-violent, non-serious, non-sexual offenders, nor allocate any funding for such alternatives. Instead, despite AB 109's encouragement to counties to use evidence-based alternatives to incarceration, the plan indicates that the county will continue to rely upon incarceration as the primary method of supervising individuals who have been sentenced for non-violent, non-serious, non-sexual crimes. The plan does not discuss or fund, for example, expanded work furlough, community detention, electronic monitoring or any other alternatives to incarceration for sentenced offenders.

Post Release Community Supervision: Yes. The Probation Department is implementing for the Post Release Community Supervision population a risk and needs assessment tool, an Adult Day Reporting Center, a cognitive behavioral program, motivational interviewing, and telephone and internet reporting.

Kern

County Population/ranking:	#13	(510,113)
Crime Rate per 100,000/ranking:	#3	(3,002.3)
Non-Sentenced Jail Population/ranking:	#6	(85%)
Immigration Detainees in Jail:	4.4%	
State prison “High Use” county?	Yes	
Probation Failure Rate/ranking:	#15	(7.43%)
Pre-realignment Felony Probation Workload/ranking:	#9	(7,268)

Public Safety Realignment allocation for FY 2011-2012: \$10,834,289



■ Probation	Probation:	\$4,310,964	(40%)
■ Sheriff	Sheriff:	\$2,596,885	(24%)
■ Add jail capacity	Add jail capacity:	\$2,099,780	(19%)
■ Health, treatment, services	Health, treatment, services:	\$1,655,480	(15%)
■ Other law enforcement	Other law enforcement:	\$76,924	(1%)

Jail expansion

AB 109: The County plans to reopen three barracks at the Lerdo Minimum Detention Facility and will use AB 109 funds to pay for a limited expansion of the Lerdo Pretrial Facility. In total, the Sheriff will open 236 new beds, increasing detention capacity to 2,862. The plan indicates that \$109,520 will pay for new bunk-bed frames and mattresses. In addition, the Sheriff has requested \$3,555,198 in personnel costs; however, the plan does not specify which of the new staffing positions are related to jail capacity.

AB 900: Kern has received a conditional award of \$100,000 for the construction of a new 790-bed facility as part of the Phase 1 Jail Construction awards. Kern applied for \$100,000,000 in Phase II funds.

Alternatives to incarceration

Pretrial: Yes. The “Sheriff will establish a home detention program and an electronic monitoring unit. These programs will be utilized for the management of pretrial and sentenced populations.”

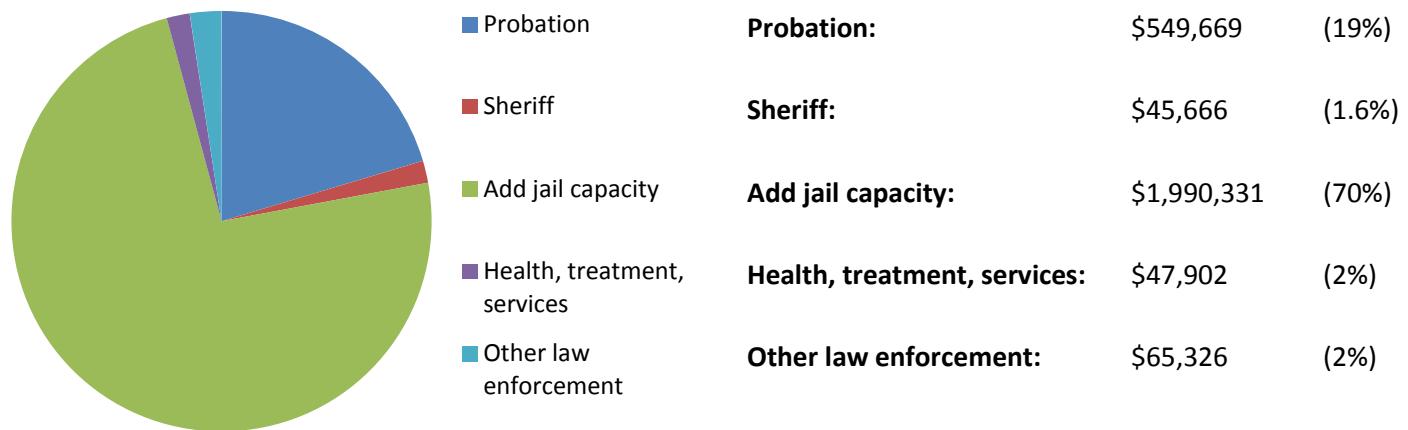
Sentenced: Yes. The Sheriff’s Office will implement a post-sentence electronic monitoring program, as well as expand its active work release program. “Additional armed Deputy Probation Officers (DPOs) will be added to supervise this population.” Non-non-nons will receive static risk assessments, which determine the risk of re-offending and the type of supervision services to be received. Two additional DPOs will be assigned to administer these assessments. The Probation Department’s capacity to serve offenders through the Day Reporting Center will expand from 50 to 100 offenders at any given time. The DRC will provide cognitive behavioral therapy, job readiness, substance abuse testing, daily reporting, sanctions, rewards and supervision in conjunction with BI Inc. and the assigned Deputy Probation Officer.

Post release community supervision: Yes. The Probation Department will utilize a risk and needs assessment tool, motivational interviewing, and electronic monitoring for the PRCS population. Those offenders shown to have the highest risk of re-offending will be placed on caseloads of 50 offenders to one Deputy Probation Officer, while other supervisees will be placed on larger caseloads. An Adult Transition Team will serve an additional 50 supervisees with severe mental illnesses, using an allocation of \$151,086 for the first fiscal year.

Kings

County Population/ranking:	#32	(98,404)
Crime Rate per 100,000/ranking:	#46	(1,341.3)
Non-Sentenced Jail Population/ranking:	#53	(56%)
Immigration Detainees in Jail:	7.5%	
State prison “High Use” county?	Yes	
Probation Failure Rate/ranking:	#21	(6.29)
Pre-realignment Felony Probation Workload ranking:	#37	(1,088)

Public Safety Realignment allocation for FY 2011-2012: \$2,862,035



Jail expansion

AB 109: Jail capacity will be increased from 361 to 441 inmates by adding bunk beds in designated housing units. The Plan includes the aggressive pursuit of funding under AB 900. According to a January 11, 2012, article the county has already added 126 bunk beds to day rooms.³

AB 900: Kings County requested \$30,000,000 for Phase I Jail Construction awards but was unsuccessful. The county applied for \$33,000,000 in Phase II funds and is ranked first to receive the award. Sheriff David Robinson has a jail expansion plan that would allow the facility to add 252 jail beds.⁴

Alternatives to incarceration

Pretrial: Yes. The Sheriff will administer an electronic monitoring programming for pre-trial inmates. However, the proposed budget does not indicate how much will be allocated toward the program.

Sentenced: Yes. An electronic monitoring program for sentenced offenders will be operated by the Probation Department and is expected to expand later in the fiscal year. The plan acknowledges the availability of alternative sanctions and specialized courts without making a commitment to use them. A live-in drug treat program “will be heavily considered.” Overall, the plan does not clearly state to what extent, if any, these alternatives will be utilized.

Post release community supervision: No. It is clear that Probation will be responsible for supervising individuals on post release community supervision; however, the plan does not specify any evidence-based practices to be used with this particular population.

Los Angeles

County Population/ranking:	#1	(6,350,698)
Crime Rate per 100,000/ranking:	#22	(2,020.7)
Non-Sentenced Jail Population/ranking:	#29	(70%)
Immigration Detainees in Jail:	Not available	
State prison "High Use" county?	No	
Probation Failure Rate/ranking:	#22	(6.21)
Pre-realignment Felony Probation Workload/ranking:	#1	(54,841)

Public Safety Realignment allocation for FY 2011-2012:⁵ \$112,558,273



Jail expansion

AB 109: The Plan includes a schedule for re-opening closed or curtailed jail space in order to provide additional jail beds, beginning October 16, 2011, and culminating on February 26, 2011. The Plan for reopening closed jail facilities will result in 4,234 new jail beds and 471 new personnel if followed. The First Quarter Budget includes \$9,018,000 and 234 positions for the Sheriff Department to re-open approximately 1,700 jail beds to house non-non-nons sentenced to county jail.

AB 900: Los Angeles has applied for, and is ranked first to receive, \$100,000,000 in Phase II funds.

Alternatives to incarceration

Pretrial: Yes. "There is a [Countywide Criminal Justice Coordination Committee] CCJCC subcommittee comprised of representatives from the Court, Public Defender, Alternate Public Defender, Sheriff and Probation currently working on improving and streamlining the Pre-Trial Release Decision-making process."

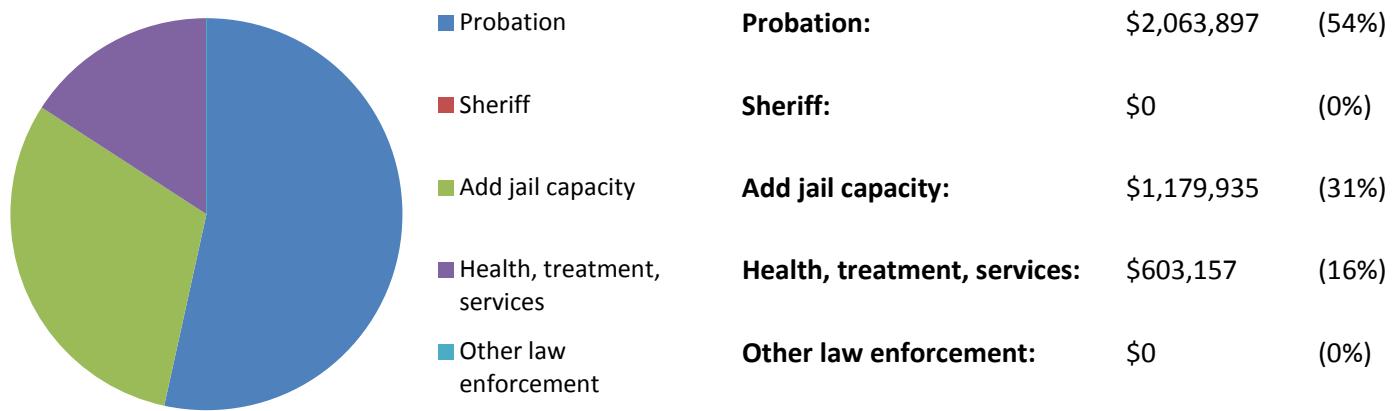
Sentenced: Yes. "The Sheriff's Department currently utilizes CBAC [Community-Based Alternatives to Custody] to manage the sentenced jail population. Alternative custody options under CBAC include: 1) Station Workers 2) Work Release and 3) Electronic Monitoring including GPS monitoring." "An enhancement to the program is the potential implementation of the Northpointe COMPAS Assessment (Correctional Offender Management Profiling for Alternative Sanctions) or other validated assessment tool." A risk assessment tool may also be utilized to identify offenders for early release "[s]hould the need arise."

Post release community supervision: Yes. The Probation Department is implementing for the Post Release Community Supervision population a risk-needs assessment tool (the Level of Service/Case Management Inventory); an Individualized Treatment Plan (ITP) including reassessment of treatment to ensure program effectiveness and client compliance; the Working Alliance Inventory Survey (WAI-SR) to measure working relationship between probation officer and supervisee; motivational interviewing techniques; GPS or electronic monitoring; and Probation Adult Alternative Work Service (PAAWS).

Monterey

County Population/ranking:	#20	(259,622)
Crime Rate per 100,000/ranking:	#19	(2,074.9)
Non-Sentenced Jail Population/ranking:	#18	(78%)
Immigration Detainees in Jail:	12.0%	
State Prison "High Use" County?	No	
Probation Failure Rate/ranking:	#10	(8.72%)
Pre-Realignment Felony Probation Workload/ranking:	#21	(3,211)

Public Safety Realignment allocation for FY 2011-2012: \$3,846,989



Jail expansion

AB 109: The plan does not discuss the expansion of jail facilities in detail, but mentions the need for a "more functional facility and higher number of beds." According to budget summary documents, all of the Sheriff's allocation will be used to add jail capacity. That is, \$1,093,931 will pay for additional beds, and \$86,004 will fund a new full-time Deputy Sheriff with custodial responsibilities.⁶

AB 900: Monterey applied for \$80,000,000 in Phase I funding and was denied. However, the County submitted an application for \$80,000,000 Phase II funding, with which the Sheriff proposes building a new facility for a net gain of 160 new beds.

Alternatives to incarceration

Pretrial: No. The plan authorizes Probation to employ investigative staff for recommending defendants for own recognizance release or other pretrial alternatives. However, the plan does not discuss which alternatives will be considered or how they will be administered. Funds in the budget have not been allocated for any pre-trial programming. The plan indicates that the District Attorney opposes pretrial release, based on the assertion that pretrial release will result in fewer dispositions of cases and more new crime.

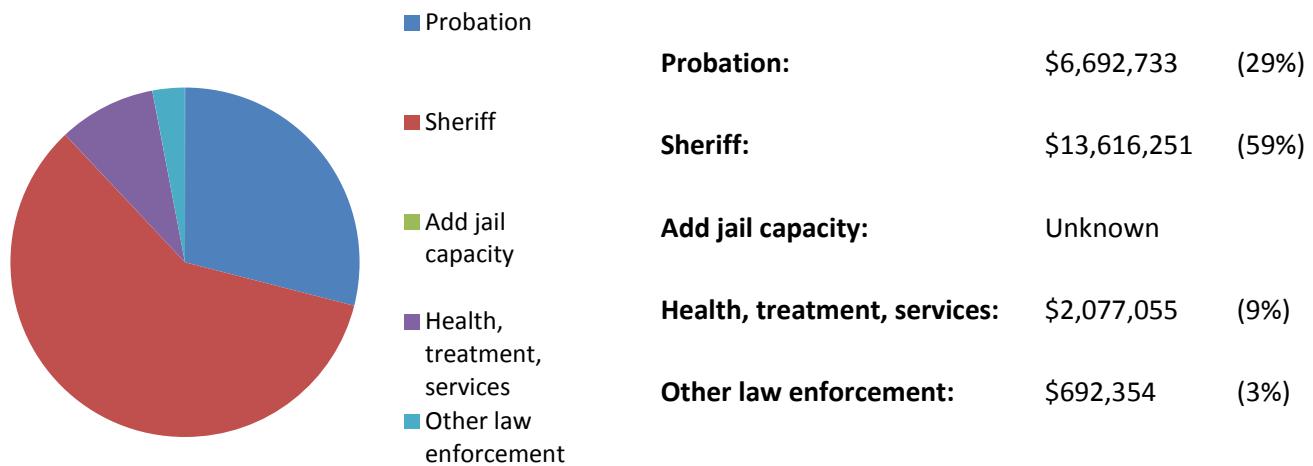
Sentenced: Yes. In an effort to release low-level offenders from custody to alternative programs, the County will utilize electronic monitoring, work furlough, and day reporting, as well as makes mention of residential treatment beds, transitional housing, restorative justice programs, and employment counseling. The County will evaluate an inmate's in-custody behavior, progress in jail programs, pre-sentence report and court commitment to determine which alternative to incarceration is most appropriate for the inmate.

Post Release Community Supervision: Yes. The Probation Department will utilize a risk and needs assessment tool, a system of graduated sanctions, family strengthening and cognitive skill building programs, and has proposed to create a Reentry Services Center modeled after day reporting programs to supervise the Post Release Community Supervision population.

Orange

County Population/ranking:	#3	(1,923,896)
Crime Rate per 100,000/ranking:	#51	(1,256.9)
Non-Sentenced Jail Population/ranking:	#56	(53%)
Immigration Detainees in Jail:	11.8%	
State prison “High Use” county?	Yes	
Probation Failure Rate/ranking:	#37	(4.19)
Pre-realignment Felony Probation Workload/ranking:	#6	(14,476)

Public Safety Realignment allocation for FY 2011-2012: \$23,078,393



Jail expansion

AB 109: The Plan mentions applying for AB 900 funding to support the construction of 750 jail beds. The Central Women's Jail with a 352-bed capacity is currently closed due to a low jail census and the Musick Facility is partially closed due to a low jail census and ongoing repair work. It is anticipated that all jail facilities will need to be fully operational within 6 to 12 months, which will require additional jail staffing and resources to meet operational needs.

AB 900: Orange has applied for \$100,000,000 in Phase II funds. The request for Phase I funding was unsuccessful.

Alternatives to incarceration

Pretrial: Yes. Plan acknowledges AB 109's statutory authorization to develop an electronic monitoring program.

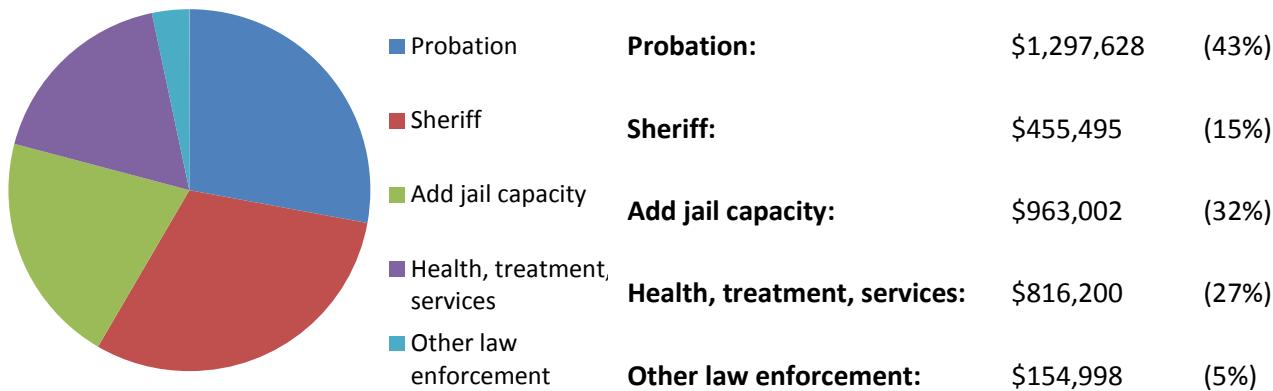
Sentenced: Yes. The Sheriff's Office and jail "will consider in-custody behavior, participation and progress in jail programs and services, the pre-sentence report and court commitment, eligibility based on current charges and prior convictions, and availability of the alternatives to incarceration best suited for the prisoner." The County will administer "the County Supervised Electronic (Home) Confinement Program as specified in CPC § 1203.016, in which inmates committed to the County jail or other County correctional facility or inmates participating in a Work Furlough program may voluntarily participate or involuntarily be placed in a home detention program during their sentence in lieu of confinement in the County Jail or other County correctional facility." The Plan notes alternatives to incarceration including "residential treatment beds, substance abuse services, parenting classes, employment counseling and services, community work programs and transitional housing."

Post release community supervision: Yes. The Plan expresses an intent to utilize "the full range of options for community supervision spanning intensive community supervision, home detention with electronic monitoring, day reporting, residential substance abuse treatment, outpatient behavioral health treatment (e.g., substance abuse, mental health, sex offender, batterer's intervention), urinalysis testing, cognitive behavioral interventions, restorative justice programs, community service, family strengthening strategies, referral to education, vocational training/employment services and housing resources." A validated risk assessment tool will also be employed.

Placer

County Population/ranking:	#22	(209,785)
Crime Rate per 100,000/ranking:	#39	(1,477.1)
Non-Sentenced Jail Population/ranking:	#35	(65%)
Immigration Detainees in Jail:	Not available	
State prison "High Use" county?	Yes	
Probation Failure Rate/ranking:	#27	(5.31%)
Pre-realignment Felony Probation Workload/ranking:	#29	(1,866)

Public Safety Realignment allocation for FY 2011-2012: \$2,986,395



Jail expansion

AB 109: While the Main Jail has decreased staffing during the last several years, it is expected that the County will need to re-open the entire jail due to realignment. The estimated cost for new corrections officers is \$2,618,556 for FY 2011-12 Positions.

AB 900: Placer applied for but was not awarded Phase I funding for new jail construction. Placer applied for, but is ranked last to receive, \$29,543,863 in Phase II funds.

Alternatives to incarceration

Pretrial: Yes. "Most recently, the Placer County Probation Department and Placer County Superior courts have instituted a program for pre-trial release of un-sentenced inmates using electronic monitoring."

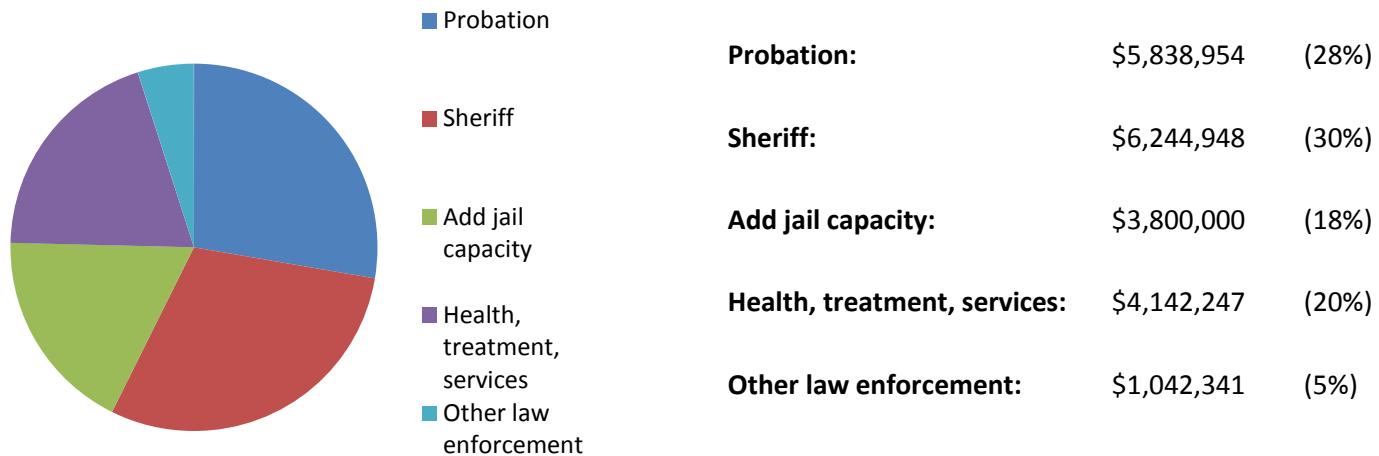
Sentenced: Yes. "Once an offender has been sentenced or booked into the county jail, jail, treatment and probation staff will collaborate on possible transition from county jail to an alternative to incarceration, if appropriate." Current alternatives include electronic monitoring and work release programs.

Post release community supervision: Yes. For the PRCS population, Probation will employ a risk and needs assessment and case plan, intensive community supervision, electronic monitoring, residential substance abuse treatment, outpatient behavioral health treatment, substance abuse and mental health services, batterer's intervention, urinalysis testing, cognitive behavioral interventions, community service, and referral to educational, vocational, and housing resources. The Probation Department will need \$1,097,628 to meet its obligations to PRCS supervisees.

Riverside

County Population/ranking:	#4	(1,310,947)
Crime Rate per 100,000/ranking:	#7	(2,119.2)
Non-Sentenced Jail Population/ranking:	#20	(76%)
Immigration Detainees in Jail	7.1%	
State prison "High Use" county?	Yes	
Probation Failure Rate/ranking:	#42	(3.88)
Pre-realignment Felony Probation Workload/ranking:	#7	(14,304)

Public Safety Realignment allocation for FY 2011-2012: \$21,074,467



Jail expansion

AB 109: The Sheriff's Department plans to maximize county jail capacity. The five jails have a combined maximum capacity of 3,904 beds. The Sheriff's AB 109 Plan, which was approved by the BoS on October 18, 2011, states that "the long term solution for Riverside County is the expansion of jail bed space and capacity." The plan attributes an additional 38 correctional deputies to meeting the floor staffing needs created by AB 109. Since 60 correctional deputies are estimated to cost approximately \$6 million, at the cost of \$100,000 per correctional deputy, the additional 38 would be \$3.8 million.

AB 900: Riverside did not apply for Phase I funding. Riverside applied for \$100,000,000 in Phase II funds, and is ranked second to receive it.

Alternatives to incarceration

Pretrial: Yes. Draft plan calls for the use of home detention and electronic monitoring. The Superior Court's Pretrial Services Division may play a role in developing the criteria.

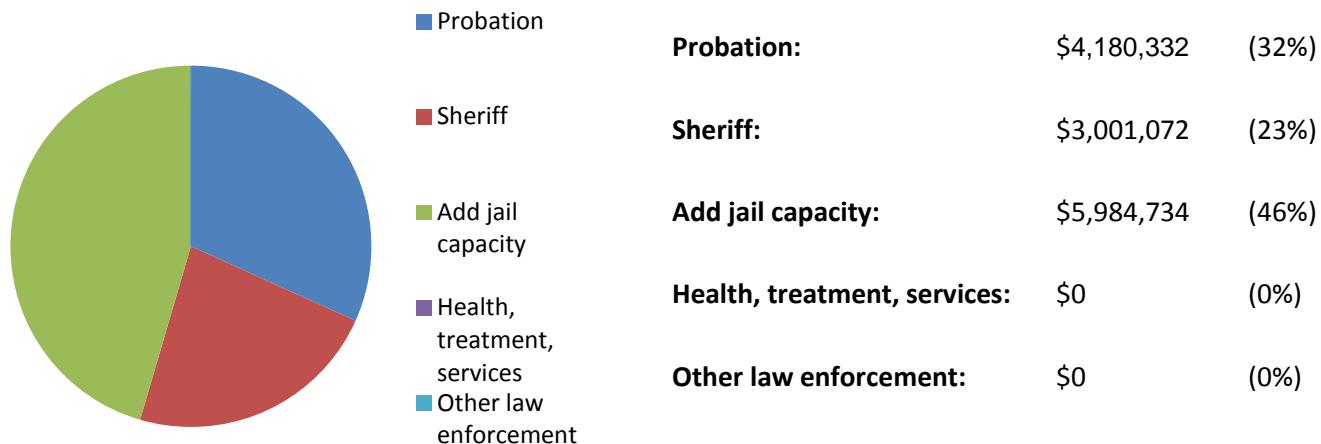
Sentenced: Yes. The Sheriff's Department plans to utilize alternatives to incarceration through the Riverside Alternative Sentencing Program (RASP). This includes the use of home detention and electronic monitoring, Work Release, and various Post Custody Support Programs (PCSP) to include but not be limited to Substance Abuse Treatment, Employment Counseling and Assistance, Social Skills Development, and Transitional Housing.

Post release community supervision: Yes. The PRCS population will receive services consistent with evidence-based supervision practices which include the following: supervision intake, assignment to supervision based upon assessment results, development of a supervision case plan, motivational interviewing, Courage to Change curriculum, referral to services according to criminogenic needs, and graduated sanctions as needed to promote rehabilitation.

Sacramento

County Population/ranking:	#8	(897,184)
Crime Rate per 100,000/ranking:	#5	(2,835.0)
Non-Sentenced Jail Population/ranking:	#50	(57%)
Immigration Detainees in Jail:	13.3%	
State prison "High Use" county?	No	
Probation Failure Rate/ranking:	#4	(10.58)
Pre-realignment Felony Probation Workload/ranking:	#4	(18,117)

Public Safety Realignment allocation for FY 2011-2012:⁷ \$13,140,278



Jail expansion

AB 109: The county plans to re-open 275 beds in the Roger Bauman Facility (RBF) at the Rio Cosumnes Correctional Facility. 39 new custodial staff will be hired for this purpose. As of February 2012, 60 to 75 individuals are being held in RBF.

AB 900: The county did not receive Phase I AB 900 funds in 2009. In 2011, the county applied for \$100 million in Phase II AB 900 funds. Sacramento is fifth in line to receive those funds, and is thus unlikely to receive them in this funding cycle.

Alternatives to incarceration

Pretrial: Yes. The county plans to implement a pre-trial release and supervised Released On Own Recognizance (OR) program through the Sheriff's Department, to be staffed by 11 new Records Specialists. The county will use the research-based Virginia Pretrial Risk Assessment Instrument to make the pre-release determination, and expects to screen 135 arrestees daily. An estimated 50-75 defendants in the supervised OR program will be electronically monitored. The FY 2011-12 budget for this program is \$582,434. As of March 2012, the program has not yet been put into operation.

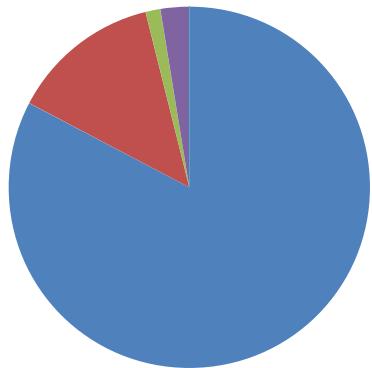
Sentenced: Yes. The Sheriff's Department will supervise individuals convicted of low-level offenses through electronic monitoring (EM) by GPS or other means, including through alcohol and drug monitoring and face to face contact. Individuals in this program will be allowed to seek employment and attend school, but must otherwise stay at home during all times except for pre-approved scheduled absences. The plan notes that up to 75 additional offenders will be supervised under the expanded EM program, but it is unclear if that additional capacity defendants in the new pre-trial release program. The county has set aside \$2,745,888 for the program, of which the Sheriff's Department expects to recoup \$800,000 in program participant fees. People under EM supervision who are unable to pay may obtain a waiver of the fee.

Post release community supervision: Yes. The Probation Department is opening a new Adult Day Reporting Center, in which Intensive Supervision Units will supervise up to 600 people on PRCS annually. Probation staff will use a validated, risk-needs assessment tool to determine the appropriate level of supervision for each offender and to develop an individualized case plan. Supervision will include: a cognitive behavioral treatment program; employment training and placement, including assistance obtaining necessary job documents; graduated sanctions; and Kiosk fingerprint reporting.

San Bernardino

County Population/ranking:	#5	(1,259,274)
Crime Rate per 100,000/ranking:	#13	(2,196.8)
Non-Sentenced Jail Population/ranking:	#14	(81%)
Immigration Detainees in Jail:	12.1%	
State Prison "High Use" County?	Yes	
Probation Failure Rate/ranking:	#8	(9.79%)
Pre-realignment Felony Probation Workload/ranking:	#2	(22,351)

Public Safety Realignment allocation for FY 2011-2012:⁸ \$25,785,600



■ Probation	Probation:	\$21,921,806	(85%)
■ Sheriff	Sheriff:	\$3,553,668	(14%)
■ Add jail capacity	Add jail capacity:	\$350,000	(1%)
■ Health, treatment, services	Health, treatment, services:	\$681,754	(3%)
■ Other law enforcement	Other law enforcement:	\$0	(0%)

Jail expansion

AB 109: The County plan does not discuss jail expansion; however, the budget allocates \$150,000 in AB 109 funds for remodeling the West Valley Detention Center and \$200,000 in AB 109 funds for remodeling the Glen Helen Rehabilitation Center.

AB 900: The County applied for and received \$100,000,000 in AB 900 Phase I funds for the expansion of Adelanto Detention Center. Expansion will result in a net gain of 1,368 new beds to the facility, which currently has only a 706-bed capacity. Estimated to cost a total of \$111,000,000, construction began in February 2011 and will be complete in August 2013. The County did not apply for Phase II funds.

Alternatives to incarceration

Pretrial: No. The plan does not discuss a strategy specific to managing the pre-trial population. The plan describes in detail alternatives to be used for the sentenced and PRCS populations, and it is unclear both in the plan or budget whether such alternatives, including home detention with electronic monitoring, will be used for individuals awaiting trial.

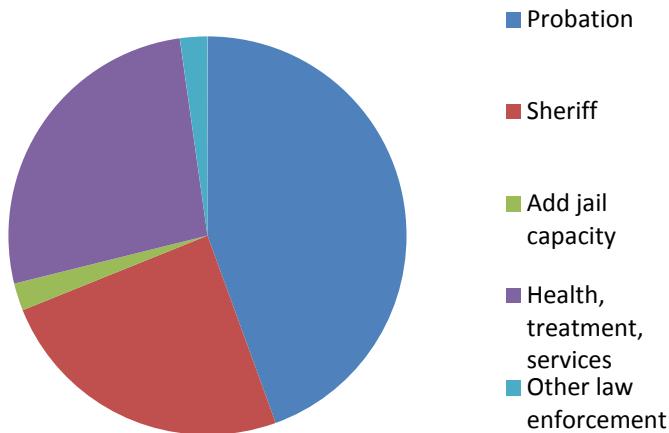
Sentenced: Yes. The plan provides for alternative custody programs such as educational, vocational, and counseling diversion, work release, and home detention with electronic monitoring. The Sheriff's Work Release unit will expand to eventually include other alternative programs, including county parole and voluntary work release encompassing community service and manual labor. However, it is unclear from the budget just how much money will be allocated to the Work Release Unit or expansion of alternative programs.

Post release community supervision: Yes. The Probation Department plans to establish three Day Reporting Centers the Central Valley, West Valley, and High Desert. Probation has previously operated Day Reporting Centers for the juvenile population and will expand this model to supervise the PRCS population. County representatives offering health, workforce, and transitional assistance will also be located in the DRC. Additionally, officers will use a risk and needs assessment tool, motivational interviewing and cognitive restructuring techniques, and a system of intermediate sanction to include home detention with electronic monitoring or GPS, mandatory community service, and assignment to a State Fire Camp.

San Diego

County Population/ranking:	#2	(2,019,720)
Crime Rate per 100,000/ranking:	#29	(1,754.8)
Non-sentenced Jail Population/ranking:	#40	(62%)
Immigration Detainees in Jail:	Not available	
State prison "High Use" county?	No	
Probation Failure Rate/ranking:	#18	(6.82%)
Pre-realignment Felony Probation Workload/ranking:	#3	(19,696)

Public Safety Realignment allocation for FY 2011-2012:* \$25,100,000



Probation:	\$5,000,000	(20%)
Sheriff:	\$2,800,000	(11%)
Add jail capacity:	\$200,000	(1%)
Health, treatment, services:	\$3,000,000	(12%)
Other law enforcement:	\$333,821	(1%)

*The CCP did not allocate \$13,766,179.

Jail expansion

AB 109: San Diego did not include jail expansion in its original realignment implementation plan but has since amended the plan to provide the sheriff's department with \$200,000 to take the first steps toward expanding the East Mesa Detention Facility by 400 to 500 beds.

AB 900: San Diego was awarded \$100,000,000 in Phase I funding for new jail construction. This consists of the replacement of the existing women's detention facility in Santee, constructing 1,270 beds for a net gain of 842 beds. Project costs are estimated at \$268 million, of which the State's share is up to \$100 million. This design-build project has an estimated construction start date of November 2012 with completion in November 2015.

Alternatives to incarceration

Pretrial: Yes. Plan calls for asking the court to consider modifying bail schedules and reducing bail for low risk offenders in accordance with risk assessment information. Plan calls for expediting the resolution of drug diversion and deferred entry of judgment cases, use of home detention and electronic monitoring, GPS, alcohol monitoring, work furlough and residential drug treatment.

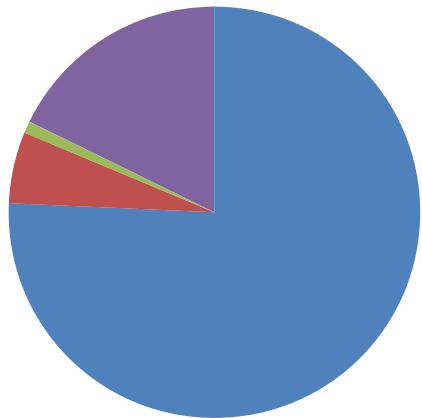
Sentenced: Yes. The County's plan calls for providing risk and needs assessments to all parties, training all parties on alternative sentencing, work release and work furlough, home confinement and electronic monitoring, and GPS supervision.

Post release community supervision: Yes. The County will employ risk based supervision according to the offender's assessed risk of committing a new crime, individual case plans, intervention services designed to address criminogenic needs and facilitate behavior change, swift and sure sanctions for violations, incentives for compliant behavior and community based treatment services. Sanctions may include community services; work projects; home detention; Electronic or GPS monitoring; referral to Reentry Court; and referral to Drug Court if deemed eligible; and up to 10 days of flash incarceration.

San Francisco

County Population/ranking:	#10	(587,869)
Crime Rate per 100,000/ranking:	#23	(2,016.4)
Non-Sentenced Jail Population/ranking:	#9	(83%)
Immigration Detainees in Jail:		Not available
State Prison "High Use" County?	No	
Probation Failure Rate/ranking:	#43	(3.37%)
Pre-Realignment Felony Probation Workload/ranking:	#10	(6,849)

Public Safety Realignment allocation for FY 2011-2012:⁹ \$5,049,838



■ Probation	Probation:	\$4,103,767	(81%)
■ Sheriff	Sheriff:	\$300,000	(6%)
■ Add jail capacity	Add jail capacity:	\$50,938	(1%)
■ Health, treatment, services	Health, treatment, services:	\$951,457	(19%)
■ Other law enforcement	Other law enforcement:	\$0	(0%)

Jail expansion

AB 109: The County operates one intake and release facility and five housing jails, one of which is closed due to low jail populations. However, the County plans to reopen this 360-bed facility when the others meet capacity.

AB 900: San Francisco has received no AB 900 funding. The County submitted an Interest Statement for Phase II funding, but was not invited to submit an application.

Alternatives to incarceration

Pretrial: Yes. The Sheriff will increase alternatives to incarceration, including involuntary home detention and electronic monitoring for the pretrial population. The District Attorney plans to hire Alternative Sentencing Planners to help develop potential alternatives to incarceration for both the pretrial and sentenced populations. Planners will consider input from Probation, the defense bar, and advocates for victim rights.

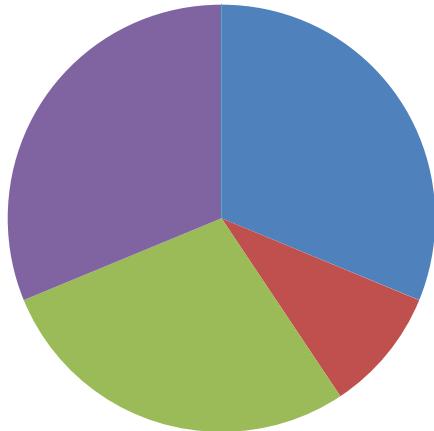
Sentenced: Yes. Alternatives to incarceration for sentenced offenders will include electronic monitoring, home detention, residential treatment beds, restorative justice classes, substance abuse services, parenting classes, the 5 Keys Charter High School, employment counseling and services, and transitional housing. An inmate's in-custody behavior, participation in jail programs, pre-sentence report and court commitment, and prior convictions will be evaluated before placement onto an alternative. According to appropriations documents, \$150,000 in AB 109 money has been allocated to alternatives.

Post Release Community Supervision: Yes. Probation will utilize a range of supervision techniques, including routine home visits, graduated sanctions, home detention with electronic monitoring, day reporting, residential substance abuse treatment, outpatient behavioral health treatment, and cognitive behavioral interventions, among others. Notably, the Sheriff and Probation will provide "pre-release reach-in services" through which staff will start developing a post-release plan 60 days prior to an inmate's release, using a risk and needs assessment tool.

San Joaquin

County Population/ranking:	#15	(413,401)
Crime Rate per 100,000/ranking:	#2	(3,250.7)
Non-Sentenced Jail Population/ranking:	#33	(67%)
Immigration Detainees in Jail:	4.9%	
State prison "High Use" county?	No	
Probation Failure Rate/ranking:	#33	(4.47%)
Pre-Realignment Felony Probation Workload/ ranking:	#12	(5,643)

Public Safety Realignment allocation for FY 2011-2012: \$6,785,908



■ Probation	Probation:	\$2,029,923	(30%)
■ Sheriff	Sheriff:	\$590,749	(9%)
■ Add jail capacity	Add jail capacity:	\$1,833,046	(27%)
■ Health, treatment, services	Health, treatment, services:	\$2,067,248	(30%)
■ Other law enforcement	Other law enforcement:	\$0	(0%)

Jail expansion

AB 109: The Sheriff's Office will use additional staff to increase jail capacity by an additional 210 beds. The plan budget provides for 10 newly hired correctional officers.

AB 900: The County applied for and received \$80,000,000 in AB 900 Phase I funds for the expansion of John J. Zunino Detention Facility for a net gain of 1,280 beds. However, construction has not begun, as the project has not yet been through the State Public Works Board approval process as of October 2011. The County did not apply for Phase II funds.

Alternatives to incarceration

Pretrial: No. The plan budget allocates \$70,000 from the County's AB 109 training and implementation grant to implement a Pretrial Assessment tool for the Court to utilize in determining which individuals are appropriate for release. However, the plan does not provide for any pretrial services or programming beyond the assessment tool.

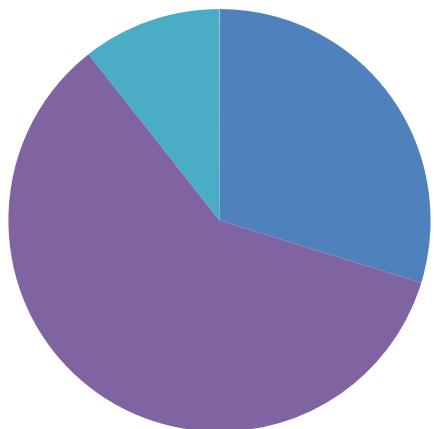
Sentenced: Yes. The Sheriff's Office currently utilizes a risk and needs assessment tool to place sentenced individuals on home detention with electronic monitoring and will use AB 109 funds to expand the program to include GPS and alcohol monitoring. The Sheriff will also expand an existing Alternative Work Program and reinstitute a parole program by which eligible inmates are released early. Particularly notable is the County's commitment, both in the plan and budget, to community-based pre-release transitional housing, where inmates receive life skills and employment training, as well as an opportunity to reconnect with family members.

Post release community supervision: Yes. With a risk and needs assessment tool, Probation will utilize motivational interviewing, cognitive behavioral therapy, anger management, parenting skills classes, residential and outpatient mental health and substance abuse treatment, and restorative justice programs to supervise the PRCS population. A system of graduated sanctions will include home detention with electronic monitoring or GPS, community service, and Re-entry Court. Both the plan and budget provide for a Day Reporting Center.

San Mateo

County Population/ranking:	#14	(462,417)
Crime Rate per 100,000/ranking:	#41	(1,432.4)
Non-Sentenced Jail Population:	#26	(71%)
Immigration Detainees in Jail:	12.3%	
State prison "High Use" county?	No	
Probation Failure Rate/ranking:	#26	(5.38%)
Pre-realignment Felony Probation Workload/ranking:	#14	(5,162)

Public Safety Realignment allocation for FY 2011-2012: \$4,222,902¹⁰



■ Probation	Probation:	\$1,163,378	(28%)
■ Sheriff	Sheriff:	\$0	(0%)
■ Add jail capacity	Add jail capacity:	\$0	(0%)
■ Health, treatment, services	Health, treatment, services:	\$2,385,502	(58%)
■ Other law enforcement	Other law enforcement:	\$417,545	(10%)

Jail expansion

AB 109: The Sheriff's Office has not requested any AB 109 funds for FY 2011-12; however, the county's draft plan indicates that for FY 2012-13, the Sheriff's Office is requesting \$3,195,979 to reopen the Medium Security Facility (MSF) in December 2012 at full capacity of 116 inmates.

AB 900: In 2009, San Mateo unsuccessfully applied for \$100,000,000 in Phase I AB 900 funding to increase jail capacity by 506 jail beds and was not invited to apply for Phase II funds in 2011. Nevertheless, the Board of Supervisors has approved construction of a new jail at a cost of \$145 to 160 million, to be completed in 2014.¹¹ The new jail is expected to have a bed capacity of 488 to 552, with an additional 88 transitional beds that may be converted to traditional jail beds, if necessary.

Alternatives to incarceration

Pretrial: No. The county has a pre-trial services unit for misdemeanor defendants that is jointly administered by the Sheriff's Office and the Probation Department. The county's draft plan contains no discussion of expanding this program to include low-level, low-risk felony defendants or to otherwise improve or expand the county's current pre-trial program.

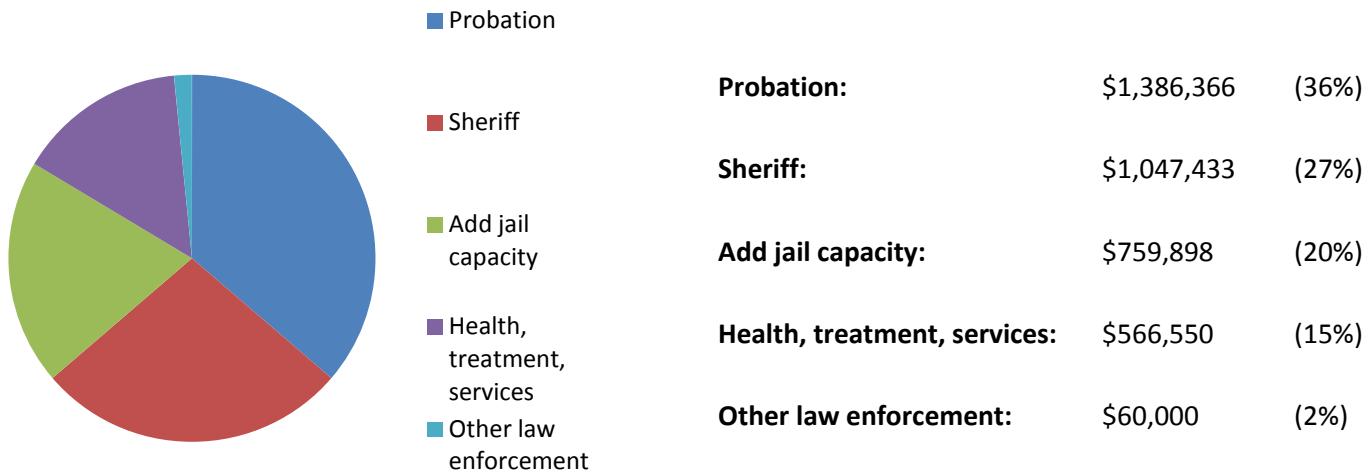
Sentenced: Unclear. According to the draft plan, the Sheriff's Office intends to assess sentenced individuals for their eligibility to be placed in alternative custodial programs, such as Work Release and electronic monitoring. However, no specific goal is articulated to expand custodial alternatives to non-violent, non-serious, non-sex offenders who will now be sentenced to time in county jail under AB 109. Moreover, the Sheriff's Office has not requested AB 109 funds to expand the currently underutilized electronic monitoring program.

Post release community supervision: Yes. The Probation Department has implemented for the Post Release Community Supervision population evidence-based practices that San Mateo has historically used for county probationers, including the CAIS risk-needs assessment tool; a cognitive behavioral program; an intensive, outpatient day treatment program focused on drug offenders; and motivational interviewing.

Santa Barbara

County Population:	#18	(271,450)
Crime Rate per 100,000/ranking:	#36	(1,532.8)
Non-Sentenced Jail Population/ranking:	#17	(79%)
Immigration Detainees in Jail:	15.0%	
State prison “High Use” county?	Yes	
Probation Failure Rate/ranking:	#35	(4.32)
Pre-realignment Felony Probation Workload/ranking:	#22	(3,210)

Public Safety Realignment allocation for FY 2011-2012: \$3,878,876



Jail expansion

AB 109: The county will re-open 43 beds at the Santa Maria Branch Jail. A total of twelve Sheriff's Department staff will be hired for this jail expansion.

AB 900: In November 2009, the county was awarded \$56.3 million in AB 900 Phase I funding for construction of a new 304-bed facility. The county applied to exchange its award for \$80,000,000 in Phase II funds, to construct a new 372-bed jail, and is ranked third among medium-sized counties to receive those funds. Construction is scheduled to begin in May 2015.

Alternatives to incarceration

Pretrial: No. The county's realignment plan calls for the development of a pre-trial and pre-sentence release program through the Sheriff's Department. However, no money is budgeted for such a program. Pre-trial inmates in the county's jails are not currently assessed for their flight risk or their risk to public safety using a validated risk tool.

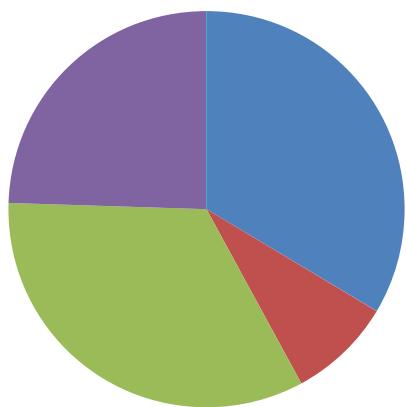
Sentenced: Yes. The county's plan notes that individuals who have been convicted of low-level offenses comprise the majority of felony offenders in Santa Barbara. The Sheriff's Department will expand the capacity of its electronic monitoring (EM) program and Day Reporting Center. The Probation and Sheriff's Departments will both use the evidence-based COMPAS tool to assess inmates for early release under the supervision of the Probation Department's home detention program or day reporting center (with EM). 100 additional GPS units will be purchased for use by both the Sheriff and the Probation Department. The District Attorney will hold staff trainings on alternative sentencing strategies and use of "recidivism reduction analysis" in sentencing recommendations. The Public Defender will hire an investigative social worker to identify and locate appropriate treatment programs that may be used to develop alternative sentencing plans for individual offenders. Four specialized county courts will continue to focus on alternative sentencing strategies.

Post release community supervision: Yes. The Probation Department will assess individuals on PRCS using an evidence-based risk-needs assessment tool. Other aspects of the program include graduated sanctions; creation of a traditional adult day reporting center; cognitive behavioral services; outpatient behavioral health treatment; sober/transitional housing; and restorative justice programs. The plan notes the importance of employment assistance and training in re-entry; however, no funding is allocated for these services.

Santa Clara

County Population/ranking:	#6	(1,155,153)
Crime Rate per 100,000/ranking:	#35	(1,538.6)
Non-Sentenced Jail Population/ranking:	#26	(71%)
Immigration Detainees in Jail	0%	
State prison "High Use" county?	Yes	
Probation Failure Rate/ranking:	#16	(7.03%)
Pre-realignment Felony Probation Workload/ranking:	#8	(9,888)

Public Safety Realignment allocation for FY 2011-2012:¹² \$12,566,312



■ Probation	Probation:	\$5,008,421	(40%)
■ Sheriff	Sheriff:	\$1,265,469	(10%)
■ Add jail capacity	Add jail capacity:	\$4,986,097	(40%)
■ Health, treatment, services	Health, treatment, services:	\$3,653,077	(29%)
■ Other law enforcement	Other law enforcement:	\$0	(0%)

Jail expansion

AB 109: The Implementation Plan does not mention jail expansion. However, the Spending Plan provides for \$4,986,097 for the costs of additional jail beds.

AB 900: Santa Clara did not apply for Phase 1 funding. Santa Clara was invited to apply for Phase 2 funding. On January 10, 2012, the Santa Clara Board of Supervisors decided not to apply for Phase 2 funding.

Alternatives to incarceration

Pretrial: Yes. Probation has been trained on the CAIS risk/needs assessment tool to be used with sentenced inmates prior to reentry and pre-sentenced inmates to guide and support recommendations to the Court for sentencing purposes (probably not for pretrial release). The plan mentions AB 109's authorization to use pre-trial release programs but makes no commitment to using them. The budget makes no allocations for pretrial services or programs.

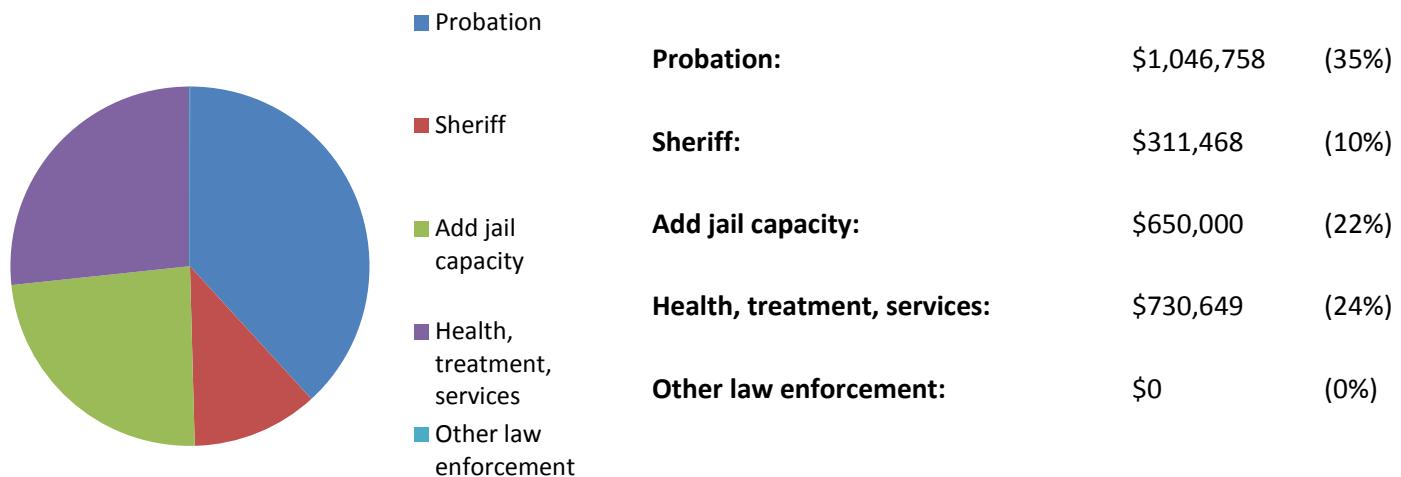
Sentenced: Yes. Supervised treatment and rehabilitation services will be available to judges at the time of sentencing offenders eligible for community supervision. The Court will redesign forms, calendars and processes to give defendants the maximum exposure to the advantages of treatment for substance abuse, treatment for the mentally ill and mentally challenged, and rehabilitation services. A re-entry team will be established to assist offenders in reintegrating into the community after serving commitments in county jail. There is a Weekend Work Program for low-risk sentenced offenders. Participants pay to participate in the program. The participants serve their sentences on weekends, allowing them to retain their regular employment.

Post release community supervision: Yes. The Probation Department entered into a contract with the National Council on Crime and Delinquency (NCCD) for the Correctional Assessment and Intervention System (CAIS) assessment tool, which combines case management classification system, risk and needs assessment, and a web-based data system that supports quality control. The Probation Department will train staff in Motivational Interviewing. They will use intensive supervision, a validated risk/needs assessment tool, evidence based programs provided by county agencies and community based organizations, home detention with electronic monitoring and/or GPS to support alternatives to custody and to enhance supervision options, community service , random substance abuse testing, cognitive behavioral interventions, substance abuse treatment, flash incarceration and re-entry courts. The re-entry model for the PRCS population will also include a re-entry team.

Shasta

County Population:	#30	(107,604)
Crime rate per 100,000/ranking:	#14	(2,176.2)
Non-Sentenced Jail Population/ranking:	#12	(82%)
Immigration Detainees in Jail:	Not available	
State prison “High Use” county?	Yes	
Probation Failure Rate/ranking:	#3	(13.42%)
Pre-realignment Felony Probation Workload/ranking:	#25	(2,230)

AB 109 allocation for FY 2011-2012: \$2,988,875



Jail expansion

AB 109: Shasta County plans to re-open up to 128 beds in a vacant floor of its jail. Six Correctional Officers and two Public Safety Service Officers will staff this jail expansion. According to the county’s plan, the Sheriff’s may also contract for jail beds in other counties and/or contract for fire camp beds while the new jail staff is being trained.

AB 900: Shasta applied for \$25 million in Phase I AB 900 funds in 2009, to add 229 jail beds; but the application was rejected. In January 2012, the county applied for \$33 million in Phase II funds; and has been ranked second among small counties to receive those funds.

Alternatives to incarceration

Pretrial: No. Despite the fact that approximately 80% of Shasta’s current jail population are defendants who are being held pending adjudication of their cases, the county’s plan does not discuss pre-trial assessment or release of those individuals who may be deemed a low threat to public safety. The plan sets aside \$240,000 in undesignated realignment funding that could be used to create a pre-trial services program, pursuant to AB 109’s encouragement to counties to use evidence-based alternatives to incarceration. Instead, Shasta County will continue to rely upon incarceration as the primary way of supervising low-risk individuals who are awaiting trial but cannot afford to post bail.

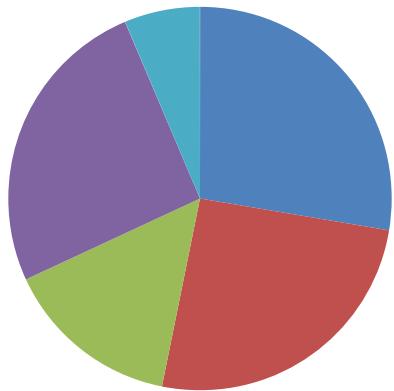
Sentenced: Yes. The Sheriff’s Work Release Program will be expanded to supervise an additional 200 sentenced individuals in alternative detention. The Probation Department’s Home Electronic Confinement Program will also be expanded to supervise up to 100 additional sentenced individuals.

Post release community supervision: Yes. The Probation Department is implementing the STRONG risk-needs assessment tool for individuals on PRCS. An Assessment Center will be opened and staffed by Probation, Mental Health, and other service providers. However, the location of the center has not yet been determined, and staffing and programming options are still being explored by the CCP; thus, operational details for the Assessment Center are still lacking. PRCS programs will include cognitive behavioral services and motivational interviewing.

Solano

County Population:	#19	(264,962)
Crime Rate per 100,000/ranking:	#9	(2,468.2)
Non-sentenced Jail Population/ranking:	#16	(80%)
Immigration Detainees in Jail:	Not available	
State Prison "High Use" County?	No	
Probation Failure Rate/ranking:	#12	(7.76%)
Pre-realignment Felony Probation Workload/ranking:	#18	(3,393)

Public Safety Realignment allocation for FY 2011-2012:¹³ \$3,807,662



■ Probation	Probation:	\$998,656	(26%)
■ Sheriff	Sheriff:	\$894,824	(24%)
■ Add jail capacity	Add jail capacity:¹⁴	\$541,183	(14%)
■ Health, treatment, services	Health, treatment, services:	\$905,150	(24%)
■ Other law enforcement	Other law enforcement:	\$212,478	(6%)

Jail expansion

AB 109: According to its plan, the County will reopen an 80-bed module the Claybank Sentenced Detention Facility. Five correctional officers will be hired for daily housing duties and two correctional officers will be hired for facility operations.

AB 900: The County applied for and received \$61,545,000 in AB 900 Phase I funds for the construction of a new 362-bed facility, called Claybank Facility II. The new jail is estimated to cost \$93 million total and expected to open in June 2014. Construction will begin in June 2012. The County did not apply for Phase II funds.

Alternatives to incarceration

Pretrial: Yes. The Sheriff has developed an Alternatives to Custody Program for pre-adjudicated low- to medium-risk offenders. After arraignment, Probation will interview the individual and make a recommendation to the court on the appropriateness of an alternative program, including Voice ID, alcohol monitoring, electronic monitoring, and GPS. Probation will use a validated risk and needs assessment tool in making its recommendation; however, the Sheriff will ultimately decide which alternative program will be used.

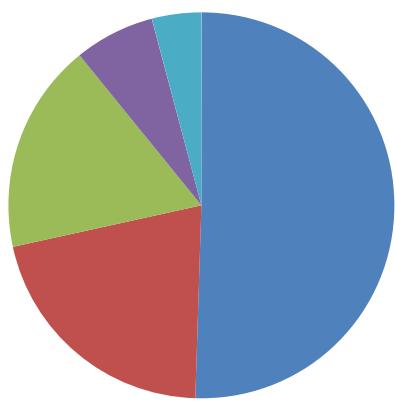
Sentenced: Yes. The Sheriff's Office currently operates Work Furlough and Work Release programs for sentenced offenders, and the plan states that sentenced inmates may be subject to home detention with electronic monitoring or GPS. Additional alternatives, such as residential treatment and restorative justice programs, are mentioned in the plan, but no commitment is made to using them for the sentenced population.

Post Release Community Supervision: Yes. Probation will employ a Day Reporting Center, motivational interviewing, cognitive behavioral therapy, and a system of intermediate sanctions for the PRCS population. Intermediate sanctions include mandatory community service, community based residential programs, home detention, random drug testing, and compliance checks completed by local police departments.

Sonoma

County Population:	#17	(310,043)
Crime Rate per 100,000/ranking:	#48	(1,316.6)
Non-Sentenced Jail Population/ranking:	#57	(52%)
Immigration Detainees in Jail:	Not available	
State prison “high use” county?	No	
Probation Failure Rate/ranking:	#19	(6.41%)
Pre-realignment Felony Probation Workload/ranking:	#26	(2,053)

Public Safety Realignment allocation for FY 2011-2012: \$3,240,562



■ Probation	Probation:	\$ 1,636,800	(51%)
■ Sheriff	Sheriff:	\$ 682,000	(18%)
■ Add jail capacity	Add jail capacity:	\$ 570,000	(21%)
■ Health, treatment, services	Health, treatment, services:	\$ 217,500	(7%)
■ Other law enforcement	Other law enforcement:	\$0	(0%)

Jail expansion

AB 109: The County’s plan allocates funding to open an additional unit of 40-60 beds in the North County Detention Facility beginning January 2012.¹⁵ The Sheriff’s Office will add six new custody staff for this purpose.

AB 900: Sonoma County applied for \$43,000,000 in Phase II funds. The county is ranked sixth by the Corrections Standards Authority among medium-sized counties, and thus is unlikely to receive Phase II funds.

Alternatives to incarceration

Pretrial: No. Development of a pre-trial release program was recommended by the county’s Criminal Justice Master Plan, which was released in 2006 in response to jail overcrowding. However, no funding is allocated for such a program during FY 2011-12. Instead, the plan notes “possible implementation” of a limited pilot pretrial release program in July 2012.

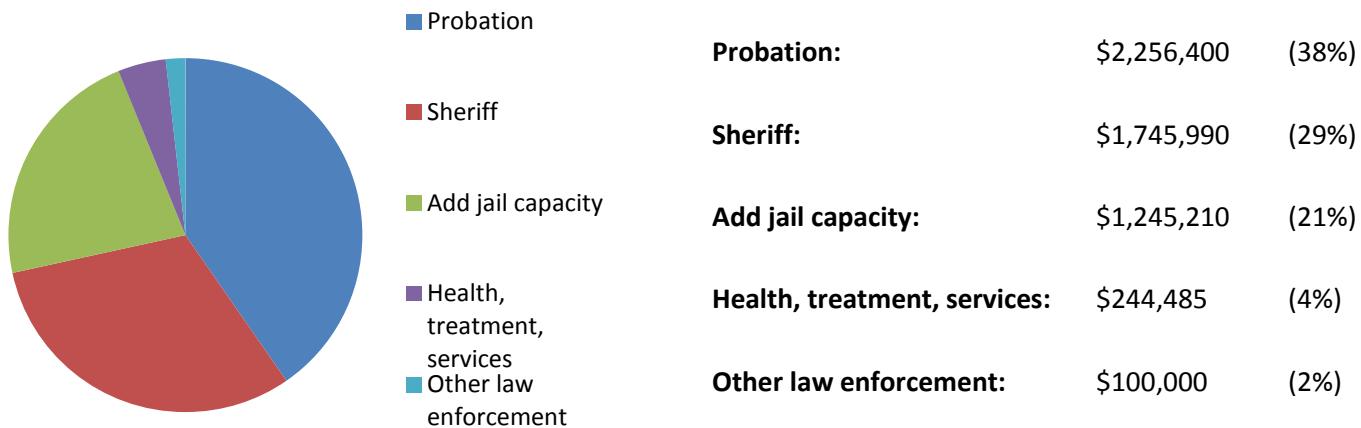
Sentenced: Yes. The County will rely upon detention alternatives that are already in place through the Sheriff’s Office, including work release, work furlough, and county parole. Home detention with electronic monitoring (EM) will also be reinstated through use of a contractor. Additionally, a new day reporting center will provide supervision as an alternative to jail custody. Inmates who successfully complete in-custody programming, such as cognitive behavioral skills training, may be considered for early release into detention alternatives. Individuals who have been sentenced to a split sentence under P.C. § 1170(h) for low-level offenses are likely candidates to be supervised under the EM program. Despite significant discussion in the plan regarding the urgent need for alternatives to incarceration in Sonoma County, the amount of specific funding allocated to detention alternatives is only 5% of the county’s AB 109 budget for FY 2011-12.

Post release community supervision: Yes. The Probation Department is implementing for individuals on PRCS continued use of a risk-needs assessment tool to create individualized case plans; a new Adult Day Reporting Center with the capacity to supervise 200 individuals per year; a cognitive behavioral program; a GED program; supervision through EM and alcohol testing devices; and graduated sanctions. Additionally, multiple county agencies are coming together to fund a 52-week domestic violence program for indigent offenders that has been shown to reduce recidivism in that population. The plan also allocates \$7,500 for a new methadone treatment program for up to 25 individuals. Finally, the Probation Department has taken steps to protect the due process rights of individuals under PRCS by creating a Flash Incarceration Authorization Form wherein the individual can request an administrative appeal of the decision to flash incarcerate.

Stanislaus

County Population:	#16	(312,464)
Crime Rate per 100,000/ranking:	#6	(2,822.9)
Non-Sentenced Jail Population/ranking:	#11	(82%)
Immigration Detainees in Jail:	17.4%	
State prison “high use” county?	No	
Probation Failure Rate/ranking:	#23	(6.12)
Pre-realignment Felony Probation Workload/ranking:	#15	(4,787)

Public Safety Realignment allocation for FY 2011-2012: \$6,010,700



Jail expansion

AB 109: The county will re-open 150 jail beds using AB 109 funds. Beginning in October 2011, two Deputy Sheriff custodial positions were added to the county jail along with one Sergeant custodial position.

AB 900: In 2009, Stanislaus applied for and was denied \$39.7 million in Phase I AB 900 funding for expansion of the county jail by 300 additional beds. In January 2012, the county applied for—and will likely receive—\$80 million in Phase II AB 900 funds; the Corrections Standards Authority has ranked Stanislaus first among medium-sized counties to receive an award.

Alternatives to incarceration

Pretrial: No. The County’s plan does not discuss any pre-trial or pre-sentence release program, despite the fact that—according to information in the county’s plan—up to 81% of the individuals confined in the county jail are pre-trial defendants. The plan only briefly mentions the Sheriff’s expanded discretion to use electronic monitoring to supervise pre-trial inmates under Penal Code § 1203.018.

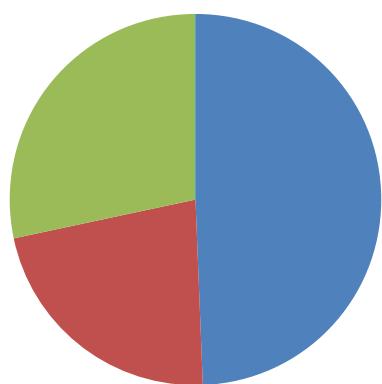
Sentenced: Yes. The Sheriff’s Department will use AB 109 funding to expand the Home Detention program to supervise an additional 200 offenders through electronic monitoring; supervised individuals will be allowed to maintain their employment or schooling. The Alternative Work Program (AWP) is also described in the county’s plan as a “jail alternative,” but it is unclear that AWP is an “alternative to incarceration” within the meaning of AB 109. Individuals on AWP perform daily tasks such as trash clean up and graffiti abatement, but the plan’s description of the program indicates that participants in the program return to jail at night.

Post release community supervision: Unclear. The Probation Department is expanding capacity of its adult day reporting center to include an additional 100 individuals on Post Release Community Supervision. Despite AB 109’s clear mandate that counties spend allocated funds on evidence-based practices, there is no discussion at all of evidence-based programs in the county’s plan.

Tulare

County Population:	#21	(256,276)
Crime Rate per 100,000/ranking:	#8	(2,549.5)
Non-Sentenced Jail Population/ranking:	#45	(59%)
Immigration Detainees in Jail:	Not available	
State prison “high use” county?	No	
Probation Failure Rate/ranking:	#31	(4.56%)
Pre-realignment Felony Probation Workload/ranking:	#13	(5,186)

Public Safety Realignment allocation for FY 2011-2012:¹⁶ \$5,657,817



■ Probation	Probation: ¹⁷	\$2,793,717	(49%)
■ Sheriff	Sheriff:	\$1,260,123	(22%)
■ Add jail capacity	Add jail capacity:	\$1,603,977	(28%)
■ Health, treatment, services	Health, treatment, services:	\$0	(0%)
■ Other law enforcement	Other law enforcement:	\$0	(0%)

Jail expansion

AB 109: The Sheriff will open three of five empty 50-bed pods in the Adult Pre-Trial Detention Facility to house realigned inmates and will hire 45 additional correctional officers to do so.¹⁸ The plan also discusses the option, after FY 2011-2012, of installing prefabricated structures adjacent to existing jail facilities, to house inmates until permanent housing can be constructed. The plan states that the Sheriff is projected to receive \$23.9 million to fully implement AB 109 through 2015. The \$23.9 million will be used to add new jail space, hire correctional staff, and support medical and mental health expenses for inmates.

AB 900: The County did not apply for AB 900 Phase I funds, but has applied for \$60,000,000 in Phase II funds.

Alternatives to incarceration

Pretrial: No. The plan does not discuss alternative programs, such as home detention, for the pretrial population. The plan mentions the need for more inmates to be released from the County’s Adult Pre-Trial Detention Facility, but does not discuss on what terms, only providing that 5 new correctional officers and a new 8-person van will be needed to transport released pretrial individuals from the facility’s rural location to Visalia.

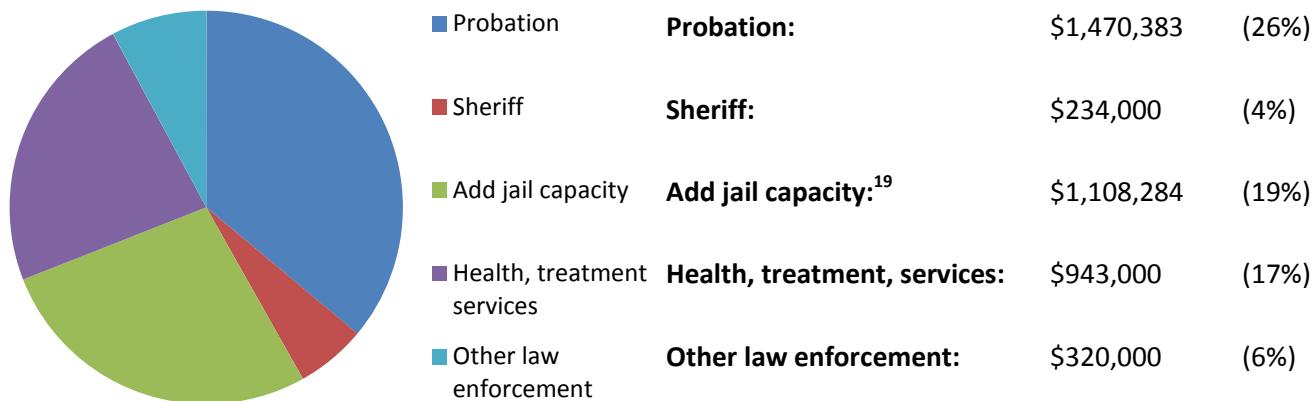
Sentenced: Yes. The Sheriff’s Department currently utilizes a Work Alternative Program, residential substance abuse treatment, manual labor programs, and a Day Reporting Center for sentenced inmates. However, inmates must pay to participate in the Work Alternative Program. The plan indicates that the Sheriff will consider contracting for reentry counseling, but there is no budget allocation for such services.

Post release community supervision: Yes. Probation currently employs motivational interviewing and cognitive behavioral therapy, and will expand home detention with electronic monitoring or GPS for PRCS violators, with 50 offenders on home detention at any given time. However, the plan does not mention a system of graduated sanctions and does not discuss any guidelines to be used in determining when to place a PRCS violator on home detention. Probation will contract for up to 10 individuals to be placed in community-based transitional housing for up to 60 days, but the plan does not specify any allocations for this purpose. Similarly, the plan discusses a risk and needs assessment tool, but makes no commitment to using one for post release supervisees.

Ventura

County Population:	#12	(515,094)
Crime Rate per 100,000/ranking:	#54	(1,155.4)
Non-Sentenced Jail Population/ranking:	#24	(73%)
Immigration Detainees in Jail:	Not available	
State prison “high use” county?	No	
Probation Failure Rate/ranking:	#36	(4.28%)
Pre-realignment Felony Probation Workload/ranking:	#16	(4,430)

Public Safety Realignment allocation for FY 2011-2012: \$5,696,790



Jail expansion

AB 109: Ventura will add jail beds by placing bunks in the common areas of existing housing sections of the county jails. The Sheriff's Office expects to add 270 additional beds by August 2012.

AB 900: Ventura has not been awarded, nor applied for, any AB 900 funding for new jail construction.

Alternatives to incarceration

Pretrial: No. The County's plan does address the pre-trial inmate population in Ventura County at all, despite the fact that approximately 73% of people confined to the county jail are unsentenced.

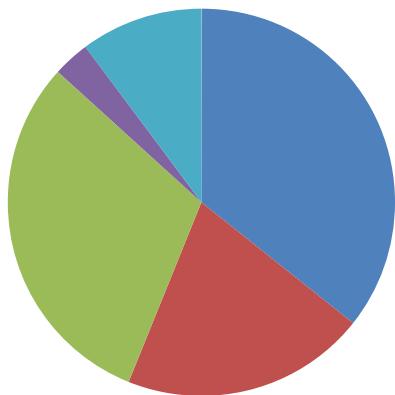
Sentenced: Yes, but very little. The Sheriff's Office will implement an electronic monitoring program for 25 inmates out of an estimated 440 additional offenders who will be brought under county supervision through AB 109. The plan notes that alternatives to incarceration such as expanded electronic monitoring and accelerated release are under consideration, but will not be implemented at this time. Thus, despite AB 109's encouragement to counties to use evidence-based alternatives to incarceration and the "general consensus among members of the CCP that realignment will be more successful if the emphasis shifts from incarceration to alternatives to incarceration," Ventura County will continue to rely upon incarceration in the county's already-crowded jails as the primary way of supervising individuals who have been sentenced for non-violent, non-serious, non-sexual crimes.

Post release community supervision: Yes. The Probation Department will supervise individuals on PRCS at a ratio of 40:1 per probation officer and in a specialized probation unit. Risk-needs assessments will be performed, although the plan mentions a validated instrument only for assessing risk to public safety. The Probation Department is also implementing graduated sanctions. Although the plan notes that probation officers will be trained in evidence-based practices, there is no mention of cognitive behavioral interventions, motivational interviewing, a day reporting center, or other means of supervision beyond traditional probation practices. The county's plan funds contracts with service providers to increase access for PRCS individuals to housing, vocational training, and education.

Yolo

County Population:	#28	(135,447)
Crime rate per 100,000/ranking:	#30	(1,748.3)
Non-Sentenced Jail Population/ranking:	#13	(81)
Immigration Detainees in Jail:	Not available	
State prison “high use” county?	No	
Probation Failure Rate/ranking:	#30	(4.68%)
Pre-realignment Felony Probation Workload/ranking:	#17	(3,800)

Public Safety Realignment allocation for FY 2011-2012: \$2,974,703



■ Probation	Probation:	\$1,032,218	(35%)
■ Sheriff	Sheriff:	\$602,815	(20%)
■ Add jail capacity	Add jail capacity:	\$869,670	(30%)
■ Health, treatment, services	Health, treatment, services:	\$88,000	(3%)
■ Other law enforcement	Other law enforcement:	\$300,000	(10%)

Jail expansion

AB 109: The County will increase jail capacity by hiring staff to support 30 unused beds in the Leinberger facility. Another option contemplated in the plan is supplementing a federal contract for the use of 25 additional beds.

AB 900: The County applied for and was denied \$30,000,000 in AB 900 Phase I funds. The County more recently applied for \$42,225,000 in Phase II funds.

Alternatives to incarceration

Pretrial: No. Management of the pretrial population is not specifically discussed in the plan. It is unclear whether the alternatives to incarceration currently employed by the Sheriff and Probation, such as home detention and GPS monitoring, will be used for individuals awaiting trial.

Sentenced: Yes. The Sheriff will expand the use of home detention with electronic monitoring for sentenced inmates. The Sheriff currently screens sentenced inmates for mandatory victim restitution, community service and work incentive programs.

Post release community supervision: Yes. Probation currently conducts needs assessment of individual supervisees in developing a case management plan. The department also utilizes cognitive behavioral therapy, residential substance abuse treatment, drug testing and alcohol monitoring, a system of graduated sanctions for PRCS violators, and electronic and GPS monitoring, and assists in operating the County's Drug Court. Other evidence-based practices such as telephone reporting and restorative justice programs are contemplated in the plan, but not supported in the budget.

¹ The “Add jail capacity” figure was calculated by combining the “custody” line item totals from the Contra Costa County Community Corrections Partnership 2011/12 Criminal Justice Realignment Plan budget document, available at http://64.166.146.155/docs/2011/BOS/20111004_164/9113_CCP%20Budget%20and%20Staffing%20Plan%2010-4-11_final%209-30-11.pdf.

² Fresno County Community Corrections Partnership, *Attachment B, 2011-12 AB 109 Public Safety Realignment Budget*, available at http://www2.co.fresno.ca.us/0110a/Questys_Agenda/PublishedMeetings.htm (submitted to the Board of Supervisors at the September 13, 2011 meeting, Agenda Item 8, p. 27-29).

³ Eiji Yamashita, *Jail population expected to double in 4 years* (Jan. 10, 2012), Hanford Sentinel, available at http://www.hanfordsentinel.com/news/local/jail-population-expected-to-double-in-years/article_475738fc-3bbd-11e1-80aa-001871e3ce6c.html#ixzz1o0oJVHju

⁴ KSEE News, *Kings County Sheriff Proposes Jail Expansion to Solve Overcrowding* (Jan. 3, 2012), available at <http://www.ksee24.com/news/local/Kings-County-Jail---AAS-136628123.html>.

⁵ The figures below are for the first quarter of FY 2011-2012 only, the budget for which was \$37,519,424. At the time this report went to print in March, 2012, the county’s realignment budget for the entire fiscal year was not available.

⁶ See FY 11-12 Budget Summary accompanying the approved plan, available at <http://publicagendas.co.monterey.ca.us/MG101415/AS101434/AS101435/AI105971/Documents.htm>

⁷ It appears that \$25,860 was added to the budget from the one-time start up allocation. Therefore, the sum of the numbers below is greater than the programs allocation that appears here.

⁸ There is a short narrative describing increased costs, but no budget in the County plan, so all funding amounts below were gathered from San Bernardino Community Corrections Partnership, *Attachment B, FY 2011-12 Cost Estimates*, available at <http://cob-sire.sbccounty.gov/sirepub/agdocs.aspx?doctype=summary&itemid=194959>.

⁹ The amounts allocated to Probation and the Sheriff add up to more than the AB 109 allocation for programs because San Francisco divides the sum of the programs grant (\$5,049,838) and the training and retention grant (\$356,325) between the Sheriff and Probation. The County plan doesn’t explain this, but the Board of Supervisors Appropriations do, see San Francisco Board of Supervisors, *Appropriating State Assembly Bill 109 Realignment Fund to Support Expenditures at the Adult Probation and Other Departments for FY2011-2012*, available at http://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/bosagendas/materials/bag092011_110907.pdf.

¹⁰ Because the county plan had not been finalized at the time of printing this report, approximate allocations among agencies were calculated according to proposed budget allocations for FY 2011-12 distributed at the Community Corrections Partnership (CCP) meeting on January 26, 2012. San Mateo County Community Corrections Partnership, *Appendix 2A, Summary of AB 109 LIP Budget FY 11-12/FY 12-13* (Jan. 20, 2012) (distributed at San Mateo County CCP meeting on January 26, 2012).

¹¹ See Niko Kyriakou, *San Mateo County brews a fresh idea for new jail* (Oct. 9, 2011), San Francisco Examiner, available at <http://www.sfexaminer.com/local/peninsula/2011/10/san-mateo-county-brews-fresh-idea-new-jail>.

¹² The plan budget exceeds the county’s AB 109 programs allocation; SB 678 grants will also be utilized.

¹³ All budget data, except for “add jail capacity” is gathered from Solano County Community Corrections Partnership, *Attachment E Appropriation Summary*, available at <http://solano.legistar.com/LegislationDetail.aspx?ID=991831&GUID=882D64EF-BD69-41B7-98DE-BAFB5F36892B>.

¹⁴ The “Add jail capacity” figure calculated using Solano County Community Corrections Partnership, *Attachment B Stakeholder Funding Request*, available at <http://solano.legistar.com/LegislationDetail.aspx?ID=991831&GUID=882D64EF-BD69-41B7-98DE-BAFB5F36892B>.

The Sheriff will reopen one module at the Claybank Detention Facility for a net gain of 80 beds, where \$112,881 was proposed for “additional costs for 80 inmates” in the reopened module for 8 months, including food and clothing. An additional \$428,302 was proposed to hire 7 correctional officers for daily housing duties and facility operations in the reopened module.

¹⁵ Brett Wilkison, *Sonoma County says shift of state prisoners starts smoothly* (Nov. 1, 2011), The Press Democrat, available at <http://www.petaluma360.com/article/20111101/community/111109996?p=all&tc=pgall> stating that the new unit will have 40 to 60 jail beds).

¹⁶ There is no budget contained in the county plan. The funding allocations below were drawn from a supplemental document submitted by Probation to the Board of Supervisors along on the day the plan was approved, available at http://bosagendas.co.tulare.ca.us/MG317466/AS317491/AI317712/DO317713/DO_317713.pdf.

¹⁷ A portion of this allocation includes health, treatment, and other services. The funds allocated to Probation will create an Adult Supervision Unit with 16 new full-time employees (FTE), but will also fund 2 FTE within the

Mental Health Department for a Multidisciplinary Assessment Team, 3 FTE within the District Attorney's Office for a Victim-Offender Reconciliation Team, and 5 FTE within the Public Defender's Office to address the realigned populations.

¹⁸ Staffing costs for these 45 positions were not specified in either the county plan or its approved budget. Therefore, the estimated cost for these positions was based on a nine-month budget for the average salaries of a Correctional Deputy, Detention Services Officer, and Corrections Sergeant, obtained here:

<http://agency.governmentjobs.com/tulare/default.cfm>.

¹⁹ The budget within the county plan did not specify the cost of adding jail capacity. As a result, this figure is an estimate based on salary costs, averaged from a salary range provided in the plan, of hiring additional Sheriff's Office staff for the Electronic Monitoring program and inmate services. The cost of new staff for the Electronic Monitoring program and inmate services are *not* included in this figure. However, due to a lack of detail in the budget, this figure may include a portion of funds used for health and vocational services for inmates.

APPENDIX B

Best of the Best: Model Evidence-based Programs from County Implementation Plans

Best of the Best: Model Evidence-based Programs from County Implementation Plans

Risk and Needs Assessments

Butte County: Sheriff will use an evidence-based risk assessment protocol to determine the eligibility of sentenced individuals for release into alternatives to incarceration and for pre-trial release of “reasonable risk” defendants.

Del Norte County: Sheriff and Probation will partner to ensure that the STRONG risk-needs assessment is administered to every qualified sentenced individual in jail, in order to facilitate a smoother transition into probation supervision and to assist with re-entry.

Sacramento County: Sheriff is adapting the Virginia Pretrial Risk Assessment Instrument in order to determine the eligibility of defendants for the county’s new pretrial release OR program.

San Mateo County: Probation will continue to use the validated, evidence-based Correctional Assessment and Intervention System (CAIS) instrument to assess probationers and individuals on PRCS.

See also page 32 of this Report for a discussion of the use of risk-needs assessment in San Diego County and Madera County.

Programming to Reduce Recidivism

In Butte County, the Department of Employment and Social Services (DESS) will hire two new staffers to provide comprehensive re-entry employment preparation services, including preparation of an individualized employment plan for offenders re-entering the community.

El Dorado County will hire a full-time Health Education Coordinator to manage contracts with community based organizations to provide comprehensive substance abuse treatment for detainees in jail, as well as residential treatment, outpatient treatment and transitional living for those released from jail custody who are in need of such services.

Humboldt County’s realignment plan recognizes that “the need for vocational and job readiness supports is paramount” for people re-entering the community after receiving a felony conviction. The County will implement an employment assistance program that includes “work-readiness assessment, scheduled, routine classroom instruction, as well as staff assisted self-paced daily activities, one-on-one vocational coaching, assistance in all aspects of a job search, and vocational training workshops.”

Madera County’s plan provides funding for evidence-based programming for individuals detained in the county jail, including cognitive behavioral therapy, GED preparation, employment readiness skills, business etiquette, and problem solving. The Forensic Assertive Community Treatment (FACT) approach to treatment services will be used; this approach lasts a minimum of 12 months, and is proven effective in the county to reduce recidivism among mentally ill adults with substance abuse problems.

Mendocino County is focusing heavily on evidence-based supervision practices for individuals convicted of low-level felony offenses and who are on PRCS. The Probation Department will use the STRONG risk-needs assessment instrument in order to develop individualized supervision case plans that may include graduated sanctions, cognitive behavioral therapy, random drug and alcohol testing, home visits, and referrals to services as needed. Deputy Probation Officers will track and report outcomes for each case.

Napa County will expand its current Jail Education and Employment Program (JEEP). Through JEEP, county jail inmates are given the opportunity to participate in evidence based programming which includes cognitive behavioral therapy, GED preparation, employment readiness skills, business etiquette, and problem solving. Lake County will also implement JEEP, for the first time, through the county's realignment planning.

San Bernardino County will spend \$1.8 million of its AB 109 funds to provide transitional housing for individuals released from jail.

San Joaquin County will use AB 109 funds to create a Re-Entry Court for individuals on PRCS. The new specialty court is intended to reduce recidivism, minimize revocations, and maximize effective use of evidence-based substance abuse and rehabilitation services.

Based upon objectives identified in its preliminary draft realignment implementation plan, San Mateo County is investing heavily in evidence-based practices to supervise low-level felony offenders sentenced to county jail and individuals on PRCS. The County will also take an active role in identifying local employment partners for housing and employment programs geared toward formerly incarcerated individuals. The Sheriff's Office plans to develop individual reentry plans for inmates convicted of low-level felony offenses in order to provide services to inmates prior to their release from jail.

Santa Cruz County will continue to reduce recidivism through the Recidivism Reduction through Research-Based Reentry and Rehabilitation (R5) project, which targets high-risk young adult offenders with a history of violence and above-average rates of recidivism. The project is a collaboration between nine partner organizations to provide a combination of intensive supervision, substance abuse treatment, reentry mentoring, employment readiness and paid job experience, gang desistance mentoring, educational advocacy, and case management.

Sonoma County's plan provides for a broad variety of evidence-based programming for individuals on PRCS. The Probation Department will continue to use a risk-needs assessment tool to create individualized case plans, and services to be provided include: a new Adult Day Reporting Center with the capacity to serve 200 individuals per year; a cognitive behavioral program; a GED program; supervision through electronic monitoring and alcohol testing devices; and an enhanced system of graduated sanctions and incentives. Additionally, the Probation Department, Superior Court, Public Defender, and District Attorney combined to fund a 52-week domestic violence program for indigent offenders that has been shown to reduce recidivism in that population.

Trinity County's realignment plan includes specific provision of transitional housing for individuals on PRCS, noting that "one of the largest and most challenging" obstacles for successful re-entry after prison is the need for suitable housing. Transitional housing is also essential for participation in the county's EM program. \$10,000, or 7% of the county's realignment budget, will fund this initiative.

See also page 34 for a discussion of Alameda County's Santa Rita jail transition center and the Butte County partnership among county departments to reduce recidivism through evidence-based programming.

Pretrial Diversion

Napa County's plan states that pre-filing diversion programs will be reviewed and implemented as needed. Siskiyou County has allocated part of its realignment funding to create an evidence-based pre-filing diversion program that will be developed and implemented by the District Attorney's Office. Candidates will be assessed for participation prior to the filing of charges.

Sonoma County provides pretrial diversion and outpatient treatment services through a program called Project Intercept (PI), which is designed for most misdemeanor offenders. Criminal charges are dismissed upon successful completion of the program.

Pretrial Services

In Butte County, the Sheriff's Office will implement a pretrial release program for defendants who are determined to be a "reasonable risk" to be released into supervision through phone call-in or electronic monitoring. The District Attorney will work with the Sheriff and Courts to develop release criteria. The program is expected to free 75 to 100 beds in the county jail.

Fresno County is implementing a pre-trial program to provide alternatives to incarceration for defendants. Arrestees will be evaluated for the program based upon a validated risk assessment tool. The Probation Department will add four positions to implement this pre-trial program at an estimated cost of \$349,418. Defendants in the program may be supervised through home detention, electronic monitoring, drug testing, and an automated court hearing notification system.

The Kern County Probation and Sheriff Departments will expand the county's current electronic monitoring (EM) program options to include pre-trial defendants. The cost the county is \$5.25 per day to supervise an individual through EM, versus \$77.17 per day for incarceration in the county jail.

Humboldt County will implement a pilot jail pretrial release and supervised Own Recognizance (OR) program, to be administered collaboratively between the Sheriff's Office, Probation Department, and Superior Court. All people booked into the county jail will be assessed for the program, and staffers will prepare a report and recommendation for the Court. At full implementation, it is expected that Humboldt County will have an average daily population of 20-40 defendants on supervised OR release.

Madera County's plan will create a full-service pretrial program that will incorporate a validated risk assessment of arrestees, based on the Virginia Pretrial Risk Assessment Instrument, to assist judges regarding the release, monitoring, and supervision of defendants. The Pretrial Services Unit will prepare a written report based upon the risk assessment and verified community ties of the defendant. Judges will "use this information to determine suitability for Own Recognizance (OR) and Supervised Own Recognizance (SOR) releases, as well as to establish bail, and determine probable cause to detain."

The San Diego County Sheriff will use the discretion newly granted under PC § 1203.018—in collaboration with the District Attorney and with authorization from the county Board of Supervisors—to use home detention, electronic monitoring, alcohol monitoring, GPS, or work furlough in lieu of jail for pre-trial offenders. Conditions of release for a defendant may also include participation in mental health or substance abuse treatment.

San Francisco County continues to operate a robust pre-trial release program. 541 defendants participate in the Pretrial Diversion Program, 340 in the Own Recognizance Project, and 116 in the Supervised Pretrial Release Program.

San Luis Obispo County is developing a pre-trial services program to be operated jointly between the Probation Department, Superior Court, and District Attorney. Two Probation Officers will gather and present information about newly arrested defendants and available release options to assist the Court in determining a defendant's pretrial custody or release status, and to supervise released defendants. It is expected that 50-60 defendants per month will participate in the program.

The Sacramento County Sheriff's Department is actively implementing a pre-trial release and supervised Own Recognizance (OR) program. The county has adapted the research-based Virginia Pretrial Risk Assessment Instrument to assist in release determinations. Screening for pre-trial release through interviews and information verification will be conducted around the clock to process an average of 135 arrestees per day. Eleven new staff positions have been created for this program.

The Solano County Sheriff has developed the Alternatives to Custody Program for low- to medium-risk defendants. The Probation Department will interview the individual and, using a validated risk-assessment tool, make a recommendation to the Court regarding the appropriateness of release on OR or into alternative supervision such as Voice ID, alcohol monitoring, electronic monitoring or GPS.

The Trinity County Sheriff will use the discretion granted by AB 109 to release defendants held in lieu of bail into an electronic monitoring program, subject to rules and regulations prescribed by the Sheriff, Probation Department, and District Attorney.

In Yuba County, the Sheriff will use the discretion granted by Penal Code § 1203.018 to release pre-trial prisoners into home detention and electronic monitoring programs. The Sheriff's Department and District

Attorney may work together to develop specific eligibility criteria for the program, which will be approved by the Board of Supervisors.

See also page 25 for a discussion of Santa Cruz County's Pretrial Services Program.

Day Reporting Centers

In Colusa County, the Probation Department will develop and implement a Day Reporting Program (DRP), which will include cognitive-behavior services for supervised individuals.

Kern County will expand its current DRP to an additional 100 high risk offenders. The DRP uses the STRONG risk-needs assessment tool to create individualized case plans that may include cognitive behavioral therapy, job readiness, substance abuse testing, daily reporting, and a graduated rewards and sanctions.

In Lake County, the LCCP unanimously supported the creation of a DRP. The DRP will offer risk-needs assessments; cognitive behavioral services; discharge planning and aftercare; employment and education services; substance abuse treatment; and supervision through electronic monitoring and in-person reporting.

Madera County will create a DRP based on a “nationally recognized evidenced-based supervision model” that emphasizes evidence-based practices including the use of a validated assessment tool, graduated sanctions, and cognitive behavioral therapy interventions. The program will expand capacity to an additional 25 individuals under supervision in the criminal justice system.

Merced County will utilize AB 109 funds to expand its current DRP, which was first implemented in the county in 2008. The DRP is shown effective in reducing recidivism; 85% of participants who successfully completed the DRP were not rearrested within the 18 months following program exit. Individuals on PRCS will be screened using a risk/needs assessment tool. Services offered by the DRP will include employment readiness, cognitive behavioral therapy, and substance abuse treatment.

The Sacramento County Probation Department is opening a new Adult Day Reporting Center (ADRC) for individuals on PRCS. It is expected that, annually, up to 600 offenders will utilize the services of the ADRC. Probation staff will use a validated, individualized, assessment tool to determine the appropriate level of supervision (among three levels) for each offender, and an individualized case plan will be developed on that basis.

San Luis Obispo County is implementing a new DRP, which will operate as a “one-stop” center for adult offenders to receive an integrated “menu” of supervision, case management, drug and alcohol treatment, cognitive behavioral treatment, job search guidance, and other supports for reintegration into the community.

The Yuba County Probation Department will open a new DRP to be funded jointly by Probation and the Sheriff's Department, and which may operate as an alternative to incarceration. The STRONG assessment tool will be utilized for individuals on PRCS. DRP supervision will be conducted through home visits; home detention with electronic monitoring; day reporting; outpatient behavioral health treatment; urinalysis testing; cognitive behavioral interventions; community service; referral to educational and employment services and housing resources; and imposition of flash incarceration.

See also page 25 for a discussion of Napa County's Day Reporting Center; and page 35 for a discussion of Day Reporting Centers in Butte County and Tuolumne County.

Graduated Sanctions

In Butte County, the Probation Department will utilize graduated sanctions prior to long-term incarceration when a supervised individual violates his or her conditions of probation or PRCS. Intermediate sanctions will include community service, mandatory residential or outpatient substance abuse treatment, electronic monitoring, and flash incarceration. Other county plans that specifically discuss graduated sanctions include: Kern, Madera, Mendocino, Santa Clara, and Yuba.

Joint Planning, Implementation and Accountability

In Butte County, the District Attorney will develop expertise in alternative sentencing and work with other county agencies, including the Public Defender, to "develop creative and effective sentencing options which will preserve jail bed space to enforce meaningful sanctions on those who resist modification of their criminal behavior." An important component of this effort will be the use of alternative court programs such as specialized drug courts, domestic violence courts, community courts, family treatment courts, DUI courts, mental health courts, peer/youth courts, and homeless courts. A new part-time attorney in the Public Defender's Office will design alternative sentences, identify clients who are eligible for these programs, and train other attorneys on alternative sentencing strategies under AB109.

The Del Norte County plan demonstrates a high degree of collaboration between the Sheriff's Department and Probation Department to implement several alternatives to incarceration. The Plan notes that "[i]t is universally agreed upon that incarceration is largely an ineffective approach to rehabilitate offenders, and is one the most costly sanction options." Accordingly, both county departments will advance a joint effort to expand alternative custody programs including county parole, home detention with electronic monitoring (GPS and alcohol monitoring), and work furlough.

El Dorado County's Behavioral Health Court (BHC) is a collaborative effort between the Superior Court, Sheriff's Office, Health Services, Mental Health, Probation Department, and the Offices of the District Attorney and Public Defender. Representatives from these county agencies will work together to create

alternative sentencing strategies for people with mental disabilities who have been convicted of low-level offenses.

The Humboldt County Department of Health and Human Services (DHHS) will assemble “Multi-Disciplinary Teams” (MDTs) of representatives from DHHS, the Probation Department, and the Sheriff’s Office to provide employment assistance, cognitive behavioral treatment, mental health services, and substance abuse treatment to low-level felony offenders and individuals on PRCS. These cross-agency teams will operate within the county’s Day Reporting Center program. “Individualized Treatment Plans” will be developed by the MDT upon completion of a standardized assessment.

San Mateo County’s draft plan provides for a high degree of collaboration among county agencies through creation of “multi-disciplinary teams” that will work together to provide re-entry services for sentenced individuals who are set to be released from the county jail.

Santa Barbara County plans a high degree of cooperation among county agencies to support alternatives to incarceration. The Probation Department will utilize an evidence-based tool to assess inmates for early release under the supervision of the Probation Department or Sheriff Department’s home detention program or day reporting center. The District Attorney will organize staff trainings on alternative sentencing strategies and use of “recidivism reduction analysis” when deciding sentencing recommendations. The Public Defender will hire an investigative social worker to identify and locate appropriate treatment programs that may be used to develop an alternative sentencing plan.

Santa Clara County is developing a Re-Entry Team comprising staff from the Probation and Sheriff’s Departments, and Health and Behavioral Health, to assess and supervise low-level felony offenders (including people on PRCS) both before and after release from incarceration. The plan notes that a “case supervision management protocol with procedures designed to incorporate the principles of evidence based practices will be utilized.” The protocol will include the use of cognitive behavioral strategies and graduated sanctions.

See also page 38 for a discussion of the joint risk assessment pilot program in Santa Cruz County; the District Attorney’s alternative sentencing approaches in San Francisco County; the innovative post-release initiative “Ambassador Team” program in Alameda County; and the Public Defender’s Clean Slate Program and pre-sentence needs-assessments program in Contra Costa County.

Standardized Reporting and Evaluation

In Colusa County, the Probation Department will research and implement a new Case Management System by June 2012 in order to measure the effectiveness of probation programs (including several cognitive-behavioral interventions). A Legal Secretary will be hired to process data and maintain reporting.

Madera County will evaluate the effectiveness of county realignment planning through data gathering beginning in October 2011. Data analysis will follow a specific timeline and will be compiled in a report and

submitted to the CCP. The compiled data will be used “as much as possible to establish programming for fiscal year 2012-13.” The county will contract with the National Council on Crime and Delinquency “develop and implement the outcome measures tracking system and prepare an annual report due October 1 of the subsequent fiscal year.”

Plumas County has assigned specific responsibility to the Probation Department and to the District Attorney’s Office for researching data design, collecting data from different county agencies, and reporting on outcomes. “The CCP Chair will present this data along with implementation and planning updates to the CCP committee on a quarterly basis. The same type of data and status reporting will be presented to the Board of Supervisors on a semi-annual basis.”

Santa Clara County has developed an Evaluation Design and Policy Research and Data Analysis Work Group that will “promote the implementation and long term sustainability of data collection and analysis, track outcomes, and determine the effectiveness of our policies, programs and practices in effecting offender behavior change, reducing recidivism and enhancing public safety.”

In Sutter County, a new full time Deputy Probation Officer will be responsible for research, planning, implementation, database support, data analysis, and reporting of the outcomes of realignment programs and the impact of realignment upon county agencies. The DPO will develop research designs and collect data and be proficient in statistical analysis software. Statistical software will also be purchased in order to update the “archaic JLAN case management system.”

See also page 39 for a discussion of data evaluation planning in Placer County and the Community Advisory Board in Contra Costa County.

A Wide Range of Alternatives to Incarceration

San Francisco County offers a significant number of programs that serve as sentencing alternatives, including: electronic monitoring, home detention, residential treatment beds, restorative justice classes, substance abuse services, parenting classes, the 5 Keys Charter High School, employment counseling and services, and transitional housing, which may be used in combination with one another. The county’s plan also notes that the District Attorney will hire staff to develop potential alternatives to incarceration for both pre-trial and sentenced individuals, collecting input from probation, the defense bar, and advocates for victim rights.

APPENDIX C

Education and Job Training Programs are Key to a Successful Realignment Initiative

Prepared by the National Employment Law Project
and Rubicon Programs



National Employment Law Project



Education and Job Training Programs are Key to a Successful Realignment Initiative

A key component of a successful community supervision plan for those with criminal records—that will lower the incarcerated population or save state funds in the long-term—must include education and workforce training, and access to resources to find and maintain employment. *Community-based Correctional Education*, U.S. Dept. of Educ. (2011) at 3, available at <http://www2.ed.gov/about/offices/list/ovae/pi/AdultEd/cbce-report-2011.pdf>

The Report of the U.S. Reentry Policy Council, “Charting the Safe and Successful Return of Prisoners to the Community,” includes policy statements and recommendations (1) to teach inmates functional, educational, and vocational competencies based on employment market demand and public safety requirements and (2) to provide inmates with opportunities to participate in work assignments and skill building programs that build toward successful careers in the community. Council of State Governments, *Report of the Re-Entry Policy Council: Charting the Safe and Successful Return of Prisoners to the Community* (Jan. 2005) at 211-226, available at <http://reentrypolicy.org/publications/1694;file>.

- 1) Research has demonstrated that employment is a key factor in reducing recidivism and ensuring positive public safety outcomes.**
 - a) In one study of former prisoners in Ohio, Texas, and Illinois, researchers found that inmates who held a job while in prison and those who participated in job-training programs while incarcerated had better employment outcomes after release. In addition, inmates who were employed and earning higher wages after release were less likely to return to prison the first year out. Christy Visher, Sara Debus & Jennifer Yahner, *Employment after Prison: A Longitudinal Study of Releasees in Three States*, Justice Policy Center Research Brief (Oct. 2008), available at http://www.urban.org/UploadedPDF/411778_employment_after_prison.pdf
 - b) The Justice Policy Institute (JPI) compared state-level employment rates with crime rates and found that, on average, those states with the highest levels of unemployment had higher violent crime rates than states with lower unemployment levels. Conversely, increased employment and increased wages are associated with lower crime rates. Aliya Maseelall, Amanda Petteruti, Nastassia Walsh & Jason Ziedenberg, *Employment, Wages and Public Safety*, Justice Policy Institute (Nov. 2007) at 2-4, available at http://www.justicepolicy.org/images/upload/07_10 REP_EmploymentAndPublicSafety_AC.pdf.
 - c) In a review of evidence-based adult corrections program (including only rigorous evaluation studies), researchers found that in 16 evaluations of community-based employment training, job search, and job assistance programs for adult offenders, there was a statistically significant reduction in recidivism. Steve Aos, Marna Miller & Elizabeth Drake, *Evidence-based Adult Corrections*

Programs: What Works and What Does Not Work, Washington State Institute for Public Policy (2006) at 6, available at <http://www.wsipp.wa.gov/rptfiles/06-01-1201.pdf>

- d) According to a study in Illinois that followed 1,600 individuals recently released from state prison, only 8% of those who were employed for a year committed another crime, compared to the state's 54% average recidivism rate. American Correctional Association, 135th Congress of Correction, *Presentation by Dr. Art Lurigio (Loyola University) Safer Foundation Recidivism Study* (Aug. 8, 2005).
- e) In a rigorous evaluation using a random assignment design, the Center for Employment Opportunities model developed in New York State, which pairs transitional jobs with job coaching and assistance from job developers, demonstrated reductions in recidivism over a two year period. In 2011, CEO began programs in Oakland and San Diego to replicate the CEO model in California. Cindy Redcross, Dan Bloom, Gilda Azurdia, Janine Zweig and Nancy Pindus, *Transitional Jobs for Ex-Prisoners Implementation, Two-year impacts, and Costs of the Center for Employment Opportunities (CEO) Prisoner Reentry Program* (August 2009), available at <http://www.mdrc.org/publications/529/overview.html>

2) Research has also shown that providing educational opportunities for inmates has a positive social, economic, and public safety benefit.

- a) In a review of evidence-based adult corrections program (including only rigorous evaluation studies), researchers found that seven rigorous evaluations of programs that teach remedial educational skills to adult offenders when they are in prison, on average, reduce the recidivism rates of program participants. Steve Aos, Marna Miller & Elizabeth Drake, *Evidence-based Adult Corrections Programs: What Works and What Does Not Work*, Washington State Institute for Public Policy (2006) at 6, available at <http://www.wsipp.wa.gov/rptfiles/06-01-1201.pdf>
- b) In a study designed to compare correctional education participants and non-participants in three states (Maryland, Minnesota, and Ohio) and assess the impact of correctional education on recidivism and post-release employment, the researchers found that the correctional education participants had statistically significant lower rates of re-arrest, re-conviction, and reincarceration. In fact, reincarceration was 29 percent lower among education program participants than among nonparticipants. Steurer, Stephen J. and Linda G. Smith, *Education Reduces Crime: Three State Recidivism Study*, Correctional Education Association (2003) at 12, available at www.criminologycenter.fsu.edu/p/nationalDataClearinghouse/Publications%20Reports/3%20states%20executive%20summary.pdf. Wages were higher for correctional education participants compared to nonparticipants for every year of post-release follow-up, which generally indicate that individuals are better able to support themselves and their families. *Id.* at 14, 17.

3) Jail-based programs that include pre-release transition planning and links to community programs reduce recidivism and contribute to successful reentry and reintegration.

- a) Jail-based programs that include transition planning and comprehensive services that address housing, substance abuse, education and employment needs upon release are crucial for successful reentry. For examples of innovative programs in place all over the United States see *Life After*

Lockup: Improving Reentry from Jail to the Community (May 2008) at 61, available at
http://www.jjay.cuny.edu/Final_Life_After_Lockup.pdf

- b) Though few jail reentry programs have been rigorously evaluated, when reducing crime is the goal research suggests that the reductions in recidivism that result from jail-based programming more than offset the cost. John Roman and Aaron Chalfin, *Does it Pay to Invest in Reentry Programs for Jail Inmate?*, The Urban Institute Justice Policy Center (2006) at 2, available at
http://www.urban.org/projects/reentry-roundtable/upload/roman_chalfin.pdf
- c) As part of Second Chance Grant administration, the Bureau of Justice Assistance detailed the “Fundamental Principles of Evidence-Based Correctional Practice.” The principles emphasize the importance of objective risk and needs assessment, cognitive behavioral therapy and providing supervision and services that match the identified risk and needs. BJA FY 11 Second Chance Act Adult Offender Reentry Program for Planning and Demonstration Projects Competitive Grant Announcement, *Second Chance Grantees: What You Need to Know to Ensure Your Program is Built on Principles of Effective Practice*, Appendix at 26-28. available at
<http://www.grants.gov/search/search.do?mode=VIEW&oppId=94833>

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APPENDIX D

Drug Courts: Alternatives and Practices

Prepared by the Drug Policy Alliance

In March 2011, the Drug Policy Alliance released *Drug Courts are Not the Answer: Toward a Health-Centered Approach to Drug Use*,ⁱ which found that drug courts have not reliably demonstrated cost savings, reduced incarceration, or improved public safety. Reports by the Justice Policy Instituteⁱⁱ (2011) and the National Association of Criminal Defense Lawyersⁱⁱⁱ (2009) each, based on extensive independent research, raised very similar concerns about drug courts. And, in another recent report, the Government Accountability Office finds that only about half of drug courts it reviewed could demonstrate statistically significant lowered re-arrest rates.^{iv}

Moreover, we found that the real problem is the fact that drug courts exist within a drug war framework. Drug courts attempt to treat drug use as a health issue, but they cannot because they are required to enforce laws criminalizing drug use – and therefore punishment ultimately trumps treatment. As a result, drug courts have actually made the criminal justice system more punitive toward addiction – not less. For example, although relapse is a common and predictable occurrence during treatment, drug courts often punish people who suffer a relapse by pulling them out of treatment and putting them in jail for several days or weeks. By contrast, in a medical setting, relapse calls for intensified treatment.

Therefore, it is critical when counties establish drug courts (1) to also develop many other interventions besides drug courts and (2) to adopt drug court practices and policies that will reduce the role of punishment in responding to drug use.

Encouraging pre-arrest/pre-conviction interventions

To keep costs down and produce the best offender outcomes, it is in counties' best interests to develop and expand alternatives to incarceration other than drug courts. Drug courts are expensive, small programs that suck up more resources than other alternatives and that can handle only a tiny fraction of potentially eligible people. Drug courts may also drive incarceration, since they depend (often quite heavily) on jail sanctions and ultimately send "failed" participants to serve time behind bars.

Recommendations for more appropriate, cost-effective alternatives:

- Reduce drug arrests by, for example, allowing law enforcement officers to issue a warning and/or treatment referral to an individual in possession of a small amount of an illicit substance who does not pose a substantial risk to public safety, or by assigning case workers and services to some of the individuals most often arrested for these same petty offenses [See Seattle's Law Enforcement Assisted Diversion (LEAD)^v and San Diego's Serial Inebriate Program (SIP)^{vi}];
- Implement and expand pre-plea and pre-conviction diversion programs for people arrested for a low-level drug offense in order to prevent the collateral consequences that hinder those with a past conviction, including barriers to employment^{vii}, public housing, welfare and student loans^{viii};
- Create a continuum of interventions – from pre-arrest, pre-plea and pre-conviction diversion and advancing to post-conviction diversion (Prop 36) – in order to reduce criminal justice involvement and stretch limited resources the furthest^{ix};
- Leverage all available resources to expand access to treatment, for example, by:
 - allocating a sizeable percentage of realignment funds to support services, including drug treatment;

- including alcohol and drug treatment services in your county's healthcare reform plans^x;
 - directing federal Byrne Justice Assistance Grants and/or
 - diverting civil asset forfeiture funds to drug treatment^{xi};
- Expand access to alcohol and drug treatment outside of the criminal justice system and for pre-arrest, pre-plea and pre-conviction diversion, in order to reduce costs to the criminal justice system and allow health systems to more effectively manage these health issues^{xii};
- Expand and protect access to demonstrated alcohol and drug treatments, including medication-assisted treatments (such as methadone and buprenorphine), where medically indicated^{xiii}; and
- Reserve drug treatment for those who need it and tailor treatment approaches based on individual needs^{xiv}; make a variety of other interventions and non-incarceration sanctions available for people arrested for a low-level drug offense or who have a positive drug test but do not need treatment.

Improving drug court practices

It's critical that counties implement policies that protect the rights and improve the outcomes of individuals in the criminal justice system. For counties, this translates into more effective and cost-effective policies.

Recommended policy improvements to drug and other "problem-solving" courts:

- Reserve drug courts for the people who commit more serious non-drug offenses that appear to be motivated by addictive-behavior^{xv} – not the people who commit simple felony drug possession offenses – and for those who pose a higher risk to public safety or who have lengthier criminal histories^{xvi} [to cut incarceration costs significantly and to keep more serious offenders under close supervision, rather than those with a history of only petty offenses like drug possession];
- Adopt objective admission criteria and reduce the prosecutor's role as gate-keeper^{xvii} [to prevent cherry picking and promote equal access];
- Use a pre-plea rather than a post-plea model^{xviii} [to prevent the barriers that accompany a criminal record];
- Limit the use of incarceration, including "flash incarceration," as a response to low-level drug offenses and positive drug tests, and provide services or other sanctions instead, in order to reduce costs and improve outcomes for people convicted of drug offenses^{xix};
- Ensure due process protections and enhance the role of defense counsel^{xx};
- Evaluate individuals' success based on several measures (including stability, employment, and family participation); do not use drug tests as the singular measure of "success" or "failure"^{xxi};
- Improve data collection, research rigor, and implementation of demonstrated best practices^{xxii};
- Improve overall treatment quality and employ opioid maintenance treatments and other evidence-based therapies;
- Use drug tests as a treatment tool, not as punishment;
- Empower treatment professionals in decision-making;
- Reduce turnover of trained and experienced court, probation and treatment staff to improve program continuity and consistency;
- Ensure that punishment for "failing" the program is not worse than the original penalty for the offense; and
- Work to establish other local alternatives outside the drug court for those who want and need access to treatment but do not warrant intensive court resources (e.g., probation-supervised treatment).

In conclusion, counties should develop alternatives to the expensive and boutique drug courts and to reserve drug courts for more serious offenders while improving those courts' practices.

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- ⁱ Drug Policy Alliance. *Drug Courts are Not the Answer: Toward a Health-Centered Approach to Drug Use*. March 2011. <http://www.drugpolicy.org/drugcourts>
- ⁱⁱ Justice Policy Institute. *Addicted to Courts: How a Growing Dependence on Drug Courts Impacts People and Communities*. March 2011. <http://www.justicepolicy.org/drugcourts>
- ⁱⁱⁱ National Association of Criminal Defense Lawyers (NACDL). *America's Problem-Solving Courts: The Criminal Costs of Treatment and the Case for Reform*. September 2009. <http://www.nacdl.org/reports/>
- ^{iv} Government Accountability Office. *Studies Show Courts Reduce Recidivism, but DOJ Could Enhance Future Performance Measure Revision Efforts*. December 2011. <http://www.gao.gov/products/GAO-12-53>
- ^v The Defender Association-Racial Disparity Project. "Law Enforcement Assisted Diversion (LEAD): A Pre-Booking Diversion Model for Low-Level Drug Offenses." Seattle, WA: 2010
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- ^{vii} Natividad Rodriguez, Michelle and Maurice Emsellem, *65 Million "Need Not Apply": The Case for Reforming Criminal Background Checks for Employment*, National Employment Law Project, March 2011.
- ^{viii} The Sentencing Project. *Invisible Punishment: The Collateral Consequences of Mass Imprisonment*, eds. Marc Mauer and Meda Chesney-Lind. January 2002. http://www.sentencingproject.org/detail/publication.cfm?publication_id=1
- ^{ix} Justice Policy Institute. *Addicted to Courts: How a Growing Dependence on Drug Courts Impacts People and Communities*. March 2011; and National Association of Criminal Defense Lawyers, *America's Problem-Solving Courts: The Criminal Costs of Treatment and the Case for Reform*, Washington D.C.: NACDL, 2009.
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- ^{xvi} Stevens, Alex, Tim McSweeney, Marianne van Ooyen and Ambros Uchtenhagen, "On Coercion," *International Journal of Drug Policy* 16 (2005): 207-209.
- ^{xvii} NACDL. *America's Problem-Solving Courts*. September 2009.
- ^{xviii} Ibid.
- ^{xix} See Goldkamp, J., "The Drug Court Response: Issues and Implications for Justice Change," *Albany Law Review* 63 (2000): 923-961; Gottfredson et al., "The Effectiveness of Drug Treatment Courts," Harrell, Adele, "Judging Drug Courts: Balancing the Evidence," *Criminology and Public Policy* 2, no. 2 (2003): 207-212.
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