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# Voices from the Field:

## *How California Stakeholders View Public Safety Realignment*

Joan Petersilia, PhD

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### INTRODUCTION

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In mid-2011, California embarked on a prison downsizing experiment of historical significance. Facing a U.S. Supreme Court decision ordering the state to reduce its prison population by roughly 25% within two years, Governor Jerry Brown signed the Public Safety Realignment Act (AB 109). Commonly known as “Realignment,” the law shifted responsibility from the state to the counties for certain lower-level offenders and parolees. Felons convicted of “serious,” “violent” and the most aggravated sex offenses continue to serve their time in state prison, but sentences for hundreds of other felonies now must be served through county jail time or probation. Lower-level felony offenders whose current and prior convictions are non-violent, non-sex-related, and non-serious (colloquially referred to as triple-non’s or N3s) now serve their sentence under county jurisdiction rather than in state prison.

Realignment also prohibits virtually all parolees who commit technical violations from

being returned to state prison, regardless of their conviction crime or prior record. The county workload pressures created by Realignment cannot be overstated: By mid-2013, more than 100,000 offenders had been diverted from state prison to county control. Moreover, counties now must handle virtually all drug and property crime sentences, which represented 54% of all felony arrestees convicted in California in 2010.<sup>1</sup> The Legislature is giving California’s 58 counties more than \$1 billion annually to support Realignment, and encouraging them to invest in locally run, evidence-based rehabilitation programs. Some of those funds are designated for use in program planning, staff training, and court infrastructure. But in the first year, \$360 million was set aside for the Community Corrections Partnerships, countywide coordinating committees with discretionary authority to invest in local offender programming. Given California’s recent inability to control recidivism despite its enormous investment in imprisonment, policymakers are banking on counties to do a better job.

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For a nation seeking new correctional approaches after the costly and arguably unproductive era of mass incarceration, California represents a high-stakes test kitchen. Realignment is anchored in the theory that by managing lower-level offenders in locally run, community-based programs using evidence-based practices, the state will achieve improved public safety outcomes by helping more former felons lead crime-free lives. Will Realignment help the state reduce its 67% recidivism rate, nearly twice the national average? It's too early to answer that critical question. With this report, Stanford University researchers sought to assess the impact of Realignment on county stakeholders during the initiative's first 22 months (October 1, 2011-August 1, 2013). Our wide-ranging, often surprising, findings are based on interviews with 125 staff in municipal police departments, county sheriffs' departments, courts, prosecutors' offices, public defender agencies, mental health and victim services agencies, and probation departments. We also spoke with offenders.

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## FINDINGS

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Broadly speaking, Realignment gets mixed reviews so far. Our interviews elicited a portrait of counties struggling, often heroically, to carry out an initiative that was poorly planned and imposed upon them almost overnight, giving them little time to prepare. The first year was like “drinking from a fire hose,” as counties scrambled to cope with an influx of offenders far larger than expected, and with more serious criminal histories and needs. That said, everyone agreed Realignment is here to stay and that the old system was yielding disappointing results – and siphoning too

many taxpayer dollars from other vital public programs. Those interviewed also agreed that Realignment has the potential—mostly as yet unrealized—to improve the handling of lower-level property and drug felons. But as our conversations revealed, AB 109 has wrought tremendous change in every phase and at every level of the criminal justice system, requiring many painful adjustments. Realignment asks stakeholders to put aside personal agendas and work collaboratively toward a shared goal of reducing recidivism. Although everyone embraces that goal, getting there is proving a monumental, often frustrating challenge, and many unintended consequences of this well-intentioned law are surfacing along the way.

Despite the obstacles, our interviews suggest that even in the early going, counties are experiencing some success. Officials reported collaborating with one another in surprising and unprecedented ways, embarking on jointly funded initiatives, eliminating duplication, and approaching justice from a system wide, rather than a narrower agency perspective. Realignment also has encouraged counties to take a more holistic view of offender needs, treating them within their family and community contexts.

Overall, many stakeholders expressed a realistic attitude toward Realignment, noting that when it comes to crime and punishment, pendulum shifts take time and achieving results requires stamina and patience. Realignment represents a titanic policy shift and tremendous opportunity for reform, but it will only deliver lasting benefits if counties can make it work. As such, we must listen to these expert “voices from the field” and continue tweaking AB 109 to ensure those in the trenches get the support

they need to make this ambitious law produce results on the ground.

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## PROBATION

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Of all the agency staff interviewed, representatives of probation—the workhorse of the criminal justice system, especially under AB 109—spoke with the most unified voice. They unequivocally felt that Realignment gave them an opportunity to fully test whether well-tailored rehabilitation services can keep lower-level felony offenders from committing new crimes and returning to prison. If Realignment is to amount to more than an experimental, emergency response to a court directive over prison crowding, it will depend heavily on how well probation agencies deliver effective programs and services. Probation is, in essence, the epicenter of Realignment, burdened with the massive responsibility—unfair as it may seem—of determining how best to change offender behavior.

With more than \$90 million—or 25% of the total first year AB 109 allocation set aside for programming—flowing into probation in the first year alone, there is little doubt that the long-underfunded agencies are producing positive results. Our interviews showed that across the state, probation agencies have launched pilot projects that, if successful, will significantly strengthen community corrections in California and nationally. One of the most promising options is the Day Reporting Center (DRC), often described as “one-stop” centers where offenders can access educational programs, cognitive behavioral therapy, and employment services, and meet with probation officers. Offenders are assessed for needs and

then matched to services that best address those needs. There are now nearly 25 DRCs across California, virtually all of them receiving some AB 109 funding.

In addition, nearly all probation agencies reported adopting risk/needs classification instruments to measure an offender’s predicted risk of recidivism and to help target treatment to those most likely to benefit. The adoption of such actuarial tools has professionalized probation, and allowed officials to better triage services and the level of monitoring provided by officers.

While new funding has made new things possible, our interviews confirmed the hard realities probation agencies are facing. Above all, probation chiefs expressed frustration with the poor policy and planning that preceded Realignment, lamenting that it all happened far too fast, and that at times, they simply feel overwhelmed. The unanticipated volume of offenders was one problem. State prison officials provided counties with a projection, but the numbers were often inaccurate, sometimes wildly so. In Orange County, for instance, officials said they received twice as many inmates as the California Department of Corrections and Rehabilitation (CDCR) had forecast.

The seriousness of the realigned population’s criminal backgrounds was also unexpected and remains a key challenge. Almost overnight probation caseloads were hardened by the addition of many former prisoners with lengthy histories of crime, mental illness, sex offenses, and substance abuse. The changing character of such caseloads has prompted some probation agencies to arm its officers, a move that has

stirred controversy given the quasi-rehabilitative role such officers are expected to play.

Compounding these problems, offenders were shifted to county responsibility well before probation departments and service providers had sufficient staff and programs in place to handle them. Hiring new probation staff was one challenge, given cumbersome county government requirements involving a lengthy process of advertising, interviewing applicants, checking references, and giving preference based on seniority. Similar delays slowed the signing of contracts for services, particularly with agencies that were not already part of the county governance structure or community providers that did not have existing contracts with probation, such as electronic monitoring companies. The accelerated timeframe also deprived counties of time to assess programs described as anchored in evidence-based practices or, once funded, to monitor the quality of services being delivered. Almost two years into Realignment, probation chiefs said such pressures were easing, and many felt confident in the quality of programs taking root in their counties.

Even the best programs, however, cannot produce results if offenders are not participating in them, and across the state, the lack of split sentencing remains a problem. One of the core principles of “evidence-based practices” is the combination of custody *and* aftercare. Without split sentencing, probation officials have no ability to work with offenders or monitor their compliance. With 75% of all offenders not receiving a split sentence—and hence experiencing no oversight or treatment through probation—“evidence-based programming” really isn’t happening much at

all. If that pattern persists, recidivism rates will remain high. Aware of that likelihood, probation officials support legislative changes that would mandate split sentencing, particularly for the more serious realigned felons most in need of supervision and services.

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## **PUBLIC DEFENDERS AND PROSECUTORS**

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Both district attorneys and public defenders believed Realignment had given defense attorneys more leverage in their negotiations with prosecutors, but beyond that issue, they did not agree on much in our interviews. Public defenders, who provide legal representation for indigent defendants, supported Realignment as a long-overdue course correction for a system that relied far too heavily on punitive approaches, especially incarceration. By taking prison off the table for lower level offenders, Realignment gives public defenders the ability to secure acquittals or obtain appropriate community sanctions for more of their clients. They believe the state’s high recidivism rate was caused by its high incarceration rate and that Realignment will result in better outcomes, particularly for low-level drug crimes.

Despite being pleased with the increased use of Day Reporting Centers, specialized courts and other community alternatives flourishing under Realignment, public defenders did confess some concerns. The first involved the infrequent use of split sentences, a reflection of many defendants’ desire to do flat jail time. Aware that the jails are crowded, offenders know they will be released after

doing a fraction of their sentence, and thus avoid further monitoring and the probation conditions that go along with it. Several public defenders were worried about the long-term implications for recidivism reduction if offenders continue to eschew probation in favor of straight time. They want their clients in programs that help them confront their criminogenic problems and reduce the chance they will reoffend, but defendants view things from a more short-term perspective.

Public defenders also identified a chasm between the ideal of Realignment and its reality in many counties, noting that treatment was either unavailable or not intensive enough for the most serious offenders. All of those interviewed agreed the most critical needs were services for sex offenders and the mentally ill, as well as housing and crisis beds.

Finally, public defenders said they lacked sufficient resources to handle their increased workload post-AB 109. Already stretched thin by oversized caseloads, public defenders have been overwhelmed by new responsibilities, mostly undertaken without sufficient new funding under Realignment.

As for prosecutors, they seemed less supportive of Realignment than any other group of stakeholders. While they expressed a willingness to work within the new framework, and acknowledged occasional feelings of cautious optimism, they also shared a strong sense of frustration throughout our interviews. Among their misgivings was the perception that taking prison “off the table” for some very serious, repeat offenders had resulted in less deterrence, less incapacitation, and ultimately less public safety. The police arrest, the detectives investigate, the district attorney files

and makes the case, the judge passes sentence, and then, under Realignment, the final outcome of this tremendous resource expenditure is that the offender may get a very short stint in county jail, the prosecutors lamented. Moreover, crowding is forcing early releases from jail. This sense of a poor criminal justice “payoff” was expressed not only by district attorneys but also by police and judges.

Steve Cooley, three-term former Los Angeles County District Attorney, was perhaps the most vocal in his criticism, calling Realignment a “public safety nightmare.” Like Cooley, most prosecutors believe that Realignment undermines their ability to keep dangerous offenders off the streets—both newly convicted felons and former parolees. By taking the “big hammer” of prison out of prosecutors’ hands Realignment has made negotiations more difficult, leaving district attorneys with weaker cases and forcing them to agree to plea bargains carrying shorter sentences.

Prosecutors also were troubled by AB 109’s definition of “low-level offenders,” with many suggesting it vastly understated the seriousness of some crimes included in the original bill. In response to that concern, the California District Attorneys Association pushed clean-up legislation (AB 118) that added about 60 felonies to the prison-eligible category. But prosecutors say many other serious crimes remain punishable only by a jail term, such as commercial burglary, vehicular manslaughter, possession of weapons, identity theft, elder abuse, hate crimes, and human trafficking.

Another key deficiency of AB 109 cited by

prosecutors is the handling of offenders who commit “technical” violations. Under Realignment, virtually no “technical” violator can be returned to prison, a major change from the days when the state parole board sent about 35,000 such violators each year to prison for up to a year.<sup>2</sup> Now, courts must handle the hearings for suspected violators, and the most serious penalty is a 90-day jail term, even for those whose backgrounds include serious crimes. As a result, prosecutors said repeat offenders were cycling through the system much more often, and that they must charge serious transgressions as new crimes in order to ensure a dangerous offender receives prison time.

More generally, prosecutors said that rather than adopting as far-reaching a plan as Realignment, lawmakers instead could have provided state corrections the authority to release lower-risk inmates and place them in community alternatives. Prosecutors also favored another proposal considered by the Legislature before adoption of AB 109, one that would have realigned only those offenders sentenced to 36 months or less in state prison. That proposal used *sentence length*, rather than the *conviction crime*, as the determining factor in realignment, and would have avoided the very long terms now being served in county jails.

While all prosecutors noted shortcomings of AB 109, some also believe it can spawn needed change and innovative strategies. In San Francisco, for example, District Attorney George Gascón says Realignment has freed him up to accomplish things not possible under the old state-dominated correctional system. Realignment, he said, challenged those in the criminal justice system to think differently and

find new policy solutions to hold offenders accountable and help reduce recidivism. Gascón created a new position, an Alternative Sentencing Planner, to help prosecutors determine which punishment best fits offenders. He also created California’s first-ever county Sentencing Commission, which analyzes sentencing patterns and outcomes and will suggest sentencing changes to enhance public safety and offender reentry.

In Los Angeles, the newly elected District Attorney, Jackie Lacey, also expressed a moderate view of Realignment. While acknowledging the serious challenges in the sprawling county, Lacey said, “We’ve run out of room at the state prisons. We have run out of room at the county jail... Let’s peel the lower-risk people off and save room for people who are very dangerous.”

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## POLICE

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Police officers walking the beats in cities across California had few positive comments about Realignment. They considered it an unfunded state mandate, imposed on them at a time when they were already facing budget cuts that had led to officer layoffs and expanded obligations. Most believed that more criminals are on the streets and that crime has been rising as a result. In July 2013, the California Attorney General’s Office released its *Crime in California* report, which confirmed these suspicions. Violent and property crime increased about 3% to 5% between 2011 and 2012.

While scholars say it’s too early to link

Realignment to an increase in crime, the numbers are creating real problems for some cities—particularly those that had police layoffs before Realignment. Oakland is one of them. In 2010, Oakland laid off 80 officers because of budget cuts, and this year is grappling with a 21% spike in murders and other major offenses. San Jose also experienced an increase in the homicide rate, which reached a 20-year high in 2012.

In addition to coping with rising crime, police said they now had fewer options to control offenders' behavior. When an arrest is made in some counties, offenders are quickly released due to jail crowding. From the police point of view, this means officers have invested valuable resources and completed abundant paperwork with little perceived benefit. Police expressed frustration not only with newly convicted felons being sentenced to jail and promptly set free—"they beat me home," one officer said—but also with the handling of parole violators, who now face few consequences for breaking supervision rules. Police said offenders appeared to be getting bolder as the penalties grew weaker. The revolving door of state prison has become the revolving door of county jail—and it swings faster.

Municipal police agencies provide service to more than three out of four Californians, and their officers make almost two-thirds of all felony and misdemeanor arrests in the state. Despite the importance and reach of these local crime fighters, the potential impacts of Realignment on policing were not well examined by planners, and police departments have not been fully compensated for the extra work AB 109 requires of them. Struggling to cope, many police officers expressed anger and said their concerns had

been overlooked.

Specifically, they said Realignment threatened recent progress made through community policing and other problem-solving techniques designed to proactively address crime—strategies they believed had led to California's crime decline over the past few decades. Stretched thin, police departments reported that they can no longer engage in such efforts and, in some cases, no longer respond to calls reporting lower-level crimes.

By far the largest concern expressed by police was the need for a statewide, centralized database of probationers. In the past, an officer who stopped a suspect could check the state parole database quickly to determine his status—and conduct a legal search if the suspect was a parolee. That extra authority often meant the difference between a routine traffic ticket and a drug bust. Now, officers lack that tool, which they said had seriously eroded their effectiveness in controlling crime and apprehending criminals.

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## COUNTY SHERIFFS

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California's sheriffs are responsible for running the county jails, but their role under Realignment extends far beyond custody and basic crime control. As jails have become more crowded with AB 109 offenders, and as both funding and the need for community alternatives have increased, sheriffs have become central figures in offender treatment. In some counties, they are making decisions about who should remain in custody, who should be released pre- and post-conviction, and what community services and sanctions an



offender receives, both initially and in response to a technical violation of probation or parole. Many sheriffs are even running their own work release and electronic monitoring programs, very similar to the programs run by probation. Ironically, if the state had given the same discretionary release authority and “relief valve” to prison officials to control inmate populations, California might have avoided the *Plata/Coleman* litigation that ultimately led to AB 109.

Sheriffs were divided over the impacts of Realignment. Despite their concerns about glitches and unanticipated consequences, many sheriffs acknowledged that the old system wasn’t working well, that the revolving door between jail and prison was not protecting the public, and that a new approach was needed. As such, sheriffs said they were working more closely than ever with probation departments to develop alternatives to custody so they can keep jails at a constitutionally acceptable capacity. They also are joining forces to create a fuller menu of appropriate treatment, following the principles of evidence-based practices. Sheriffs said they understand the potential benefits of community-based sanctions and services, noting in interviews that, “they are coming home anyway...they are our citizens...we have seen them before...let’s see if we can’t do something different this time.” Collaborating with probation, some sheriffs have created a full continuum of sanctions, ranging from fines through county jail and onto electronic monitoring and discharge. Some questioned this expanded role for law enforcement, but others seemed enthusiastic about the countywide approach.

One key challenge faced by sheriffs is the

deterioration of jail conditions as populations swell to accommodate diversions from state prisons. In interviews with public defenders, the one consistent concern was that some clients were suffering in deplorable jailhouse conditions. In particular, some offenders needing mental or medical care have waited weeks before receiving any treatment. Indeed, in talking with jail inmates about such conditions, we found a surprising twist: Many offenders, particularly those facing long terms, would prefer to do their time in prison. One reason: In jails plagued with overcrowding, sheriffs often feel the only option to assure inmate safety and prevent violence is to keep more inmates in lock down. As a result, few offenders have access to rehabilitation programs, and extreme idleness is a problem.

Some of these conditions seem startlingly familiar, closely mirroring the problems that produced the successful claim in *Plata/Coleman* that state prison conditions violated the Eighth Amendment. Have we simply moved these constitutional violations from the state prisons to the county jails? Currently, 37 of California’s 58 county jails are operating under either a self-imposed or court-ordered population cap. Given the success of the *Plata/Coleman* litigation, a surge of county-level Eighth Amendment suits is likely to emerge. The Prison Law Office has already filed class action lawsuits seeking to remedy Eighth Amendment violations in the Fresno County and Riverside County jails. Sheriffs are trying to intervene early and address jail conditions before the courts become involved. New funding provided by the Public Safety and Offender Rehabilitation Act (AB 900) will help, providing 21 of

California's 58 counties with dollars for jail construction—enough to add about 10,811 beds.<sup>3</sup> But construction takes time, and no new jails have yet been completed.

Meanwhile, many Sheriffs have become highly creative in managing their release authority under Realignment, using risk assessments, and operating their own work furlough programs, electronic monitoring systems, and day reporting centers. Sheriffs also said they are using good time credits and flash incarceration for probation violators. By necessity, their expanded duties under Realignment have turned these elected law enforcement leaders into treatment providers, probation managers, and reentry coordinators. For Sheriffs in counties rich in resources and with jail beds to spare, Realignment has been an opportunity to expand and create innovative programming, apply evidence-based practices to reduce recidivism, and absorb a population that they firmly believe is best managed at the local level. One such county is San Francisco, where jail and post-release systems are considered a model. Before Realignment San Francisco County sent relatively few felons to state prison, so impacts under AB 109 were comparatively minimal. The county jail had excess capacity and its population remains at a historic low. Santa Clara County also has excess jail capacity.

Sheriffs in these and other counties blessed with recovering economies, excess bed space and relatively abundant program resources pre-AB 109 are adopting truly innovative approaches that may serve as best practices models going forward. Rigorous evaluations should be conducted to determine if these counties' programs prove effective at reducing recidivism. But for those with overloaded jails,

Realignment amounts to a stressful scramble to divert, sanction and rehabilitate the inmate population before overcrowded conditions prompt early releases and litigation.

Although population management is a key concern, many sheriffs interviewed said they are even more anxious about the *type* of inmate now housed in local jails, and the length of sentences imposed on those inmates. Jails were never intended nor designed to serve as state prisons, and they are generally not equipped with medical facilities or vocational and rehabilitation opportunities needed for long-term inmates. The California State Sheriffs' Association reported that by February 2013, there were 1,109 jail inmates sentenced to 5 to 10 years in jail, and 44 who were sentenced to more than 10 years. The most common crimes committed by those serving 10 years or more are drug trafficking, although Riverside County sentenced one offender to a 12-year jail term for multiple counts of child abuse.<sup>4</sup> Complicating matters for Sheriffs, jails lack space to segregate vulnerable inmates, a standard practice in state prisons. Consequently, Sheriffs anticipated an increase in jail violence and inmate-on-inmate victimization.

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## JUDGES

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Judges' opinions regarding Realignment varied widely. All of those interviewed voiced frustration that AB 109 was poorly drafted, was undergoing continual revisions, and, given its 800-page length and multiple amendments, required extensive judicial training. Most judges agreed that it would have made more sense to test Realignment on a smaller scale

before rolling it out statewide, especially given the lack of time for preparation and planning. Summing it up compellingly, Los Angeles County Judge David Wesley said adjusting to Realignment was “like trying to change the tires on the bus while the bus is moving.” All judges also expressed concerns about the added workload under AB 109, particularly given their new responsibility for nearly all parole, probation, and Post-Release Community Supervision (PRCS) revocation hearings.<sup>5</sup>

Some judges were strongly opposed to Realignment’s new mandates, saying that instead of individualizing sentencing, as intended, AB 109 had done just the opposite. Other judges, particularly those accustomed to collaborative courts, shared probation’s more positive view of Realignment. These judges have experience working with probation and community treatment specialists to provide services to offenders with mental health, substance abuse, and domestic violence issues. They have seen evidence that investing in a holistic and intensive community approach, one that is more patient with relapses and not as quick to incarcerate, holds promise. Santa Clara County Judge Steve Manley, a highly respected jurist who presides over drug, mental health, and veteran courts, said Realignment opens the door for judges to not only impose sentences but to actively manage offenders’ treatment and compliance post-sentencing. Manley said the coercive power of the court can play a significant role in offender recovery, exerting not just a punitive force but also a therapeutic one.

But collaborative courts are expensive, and not all judges favor them. Some said their counties could not afford to spend so much

money on such a small part of their caseloads, noting that criminal work accounted for less than 20% of the total cases that came before them. In addition, some judges said their counties simply don’t yet have the community-based resources to make such courts work, rendering Realignment appealing in principle but difficult to execute in reality.

One concern many judges shared was the lack of post-custody time and supervision that they could impose on an offender. They worried that they lacked sufficient discretion to ensure that criminals are both properly incapacitated and properly monitored when released. Some judges said the limitations of PRCS do not allow enough time to change criminal behavior and reduce recidivism. For many counties, this situation has become a catch-22: judges do not have faith in probation to deliver effective programs, so they sentence more and more inmates to straight time. As more flat time offenders recidivate, probation may be blamed for ineffective programming. But research shows that probation is most effective when it combines custody and aftercare (i.e., split sentencing), and probation officials are not afforded that opportunity when offenders are sentenced to straight time.

Finally and importantly, judges pointed out that while AB 109 was designed to give judges *more* discretion and more flexibility to individualize sentencing, taking into account risk factors and community alternatives, it has not done that. Rather, AB 109 has undermined their discretion and shifted it outside of the courtroom and into the jails. In most counties, judicial discretion has been reduced while the sheriff’s discretionary authority has increased. Some judges said this increased authority of

sheriffs threatened the concept of independent and impartial judges and raised questions about due process and the separation of powers.

One additional concern expressed by every judge interviewed was how victims were faring under AB 109. California used to have some of the strongest victim rights of any state but judges worried that Realignment was diluting some of these legal rights. Victims face a range of potential problems under Realignment, including difficulty obtaining restitution and receiving the notice due them under Marsy's Law. Notice is required, for example, when the offender is being considered for release, and when the offender is moved or escapes. Counties were unsure if victims were entitled to notice when their offender was realigned back to the community or released early due to overcrowding, for example on house arrest or electronic monitoring. Marsy's Law does not address any of these "custodial" options directly, and counties are struggling to reconcile these new statuses with a law that in no way foresaw their development.

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## **RECOMMENDATIONS: WHERE DO WE GO FROM HERE?**

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Despite the dramatically distinctive experiences unfolding under Realignment in California's 58 counties, several common concerns and suggested revisions emerged from our interviews. The most frequently mentioned suggestions were:

(1) **Create a statewide tracking database for offenders under probation supervision in the counties.** The change from state-based to

county-based supervision of offenders leaving prisons has created an information void for law enforcement officials. There is no statewide or cross-county database of offenders on PRCS, mandatory supervision or probation. Without this tool, officers lack adequate information indicating whether those they encounter on the street are a) entitled to the full range of Fourth Amendment search and seizure protections because they are not under criminal justice supervision or b) a potentially dangerous offender who is under supervision.

(2) **Allow an offender's criminal history to be considered when determining whether the county or state will supervise a parolee.** Complete adult and juvenile criminal conviction records should be considered when determining if the state or county will supervise an offender leaving prison. Those offenders with extensive prior serious or violent convictions in California or elsewhere should be ineligible for county supervision and required to report to parole. Under Realignment, only the current conviction offense is considered when determining whether inmates leaving prison will be placed on PRCS or parole. As a result, offenders with serious and violent prior convictions—including moderate-risk sex offenders—are reporting to county probation officers. Already shouldering expanded caseloads, these officers are ill equipped to manage such sophisticated offenders. Some counties are so concerned that they are arming their probation officers. While this reaction is logical, it raises potential conflicts with the rehabilitative role probation plays in the criminal justice system.

(3) **Cap county jail sentences at three years.** County jails were built to house inmates for a maximum stay of one year, but under Realignment sentences are extending well beyond that. Serving a five, seven, or ten-year sentence in a county jail will likely deprive an inmate of adequate mental and medical healthcare, addiction treatment, sufficient recreational time and space, regular visitation, and other benefits, services and rights that are maintained in state prisons. To meet these needs, county jails would need to overhaul, at a minimum, the medical and mental health provision protocols and facilities they offer. This would require funding that no doubt exceeds what sheriffs' have received under Realignment. Instead, lawmakers should amend AB 109 to cap jail time at three years and send those with longer terms to prison.

(4) **Impose a prison sentence for certain serious repeated technical violations.** Pre-Realignment, technical violations of a parolee's terms of supervision could result in a return to prison for up to one year. Now violators are sent to county jail, and for a maximum of six months (90 days maximum with good time credits). In counties where the jails are crowded and sheriffs are releasing some inmates early, technical violators may be one of the first groups freed to create room for more serious offenders. This cycle of supervision, violation, brief punishment, and release gives an offender little incentive to comply with supervision rules. Some sex offenders, for example, have begun to cut off their electronic monitors and abscond from supervision knowing that the only consequence will be a brief stint in jail. To encourage compliance with supervision conditions, certain

repeated very serious violations should bring prison time.

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## CONCLUSION

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On August 12, 2013, Attorney General Eric Holder delivered the keynote address at the American Bar Association meeting in San Francisco. Holder announced that the federal government was committed to reducing the nation's bloated prison population and directed all federal prosecutors to exercise more discretion toward the harsh sentencing of low-level drug crimes. At the time of his speech, nearly half of all inmates in the Federal Bureau of Prisons were held on drug offenses. "We need to ensure that incarceration is used to punish, deter and rehabilitate," Holder said, "not merely convict, warehouse and forget." He continued by urging new approaches for managing lower-level drug offenders, noting that they were "best handled at the local level." Finally, he directed federal officials to develop guidelines and programs to divert offenders to community sanctions instead of prison.

Given that the Attorney General spoke in San Francisco, it is perhaps surprising that he failed to mention the unprecedented prison downsizing experiment unfolding in California. Just 9% of California's prisoners are now held on drug crimes, down from 20% in 2005.<sup>6</sup> California has cut the number of prisoners in state facilities for drug convictions in half during the last two years. In short, Realignment has completely transformed California's criminal justice system in a very short time, and while opinions about its effectiveness and potential vary dramatically,

everyone agrees it is here to stay.

As with any piece of comprehensive legislation, it was impossible to anticipate how Realignment would play out on the ground, and as our interviews demonstrate, AB 109 has caused the gears and levers of the criminal justice system to interact in unpredictable ways, creating some unforeseen results. As highlighted above, the challenges are significant. Without consistent, honest evaluation of the progress and problems by those guiding the ship, Realignment will crash against the rocks, just another failed

correctional initiative run aground.

We can avoid that fate, but we must acknowledge—not ignore—the hard realities our counties face in developing effective programs, transforming offender behavior, incapacitating those whose crimes merit it, and, ultimately, reducing recidivism. Only then will California’s Realignment experiment fulfill its potential and serve as a springboard to change the country’s overreliance on prisons. It is an experiment the whole nation is watching.

## Endnotes

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<sup>1</sup> “Crime in California, 2012, Table 40, Adult Felony Arrestees Convicted, 2007-2012.” Office of the Attorney General California Department of Justice.

<sup>2</sup> The only exception is that individuals released from prison after serving an indeterminate life sentence may still be returned to prison for a technical parole violation.

<sup>3</sup> “AB 900 Jail Construction Financing Program Board of State and Community Corrections Project Status Update—Phases I and II.” Board of State and Community Corrections (2013).

<sup>4</sup> “Letter for Survey of Sheriffs re Long Term Offenders in Jail.” California State Sheriff’s Association (February 26, 2013).

<sup>5</sup> After July 1, 2013, the state Board of Parole (BPH) will only be responsible for parole considerations for lifers, medical parole hearings, mentally disordered offender cases, and sexually violent predator cases.

<sup>6</sup> Reese, Phillip. “California drug criminals now half as likely to serve time in state prison.” Sacramento Bee (April 19, 2013). <http://www.sacbee.com/2013/04/19/5356761/california-state-prison-incarceration.html>.

**The Stanford Criminal Justice Center (SCJC)**, led by faculty co-directors Joan Petersilia and Robert Weisberg and executive director Debbie Mukamal, serves as a research and policy institute on matters related to the criminal justice system. The SCJC is presently undertaking a number of research projects aimed at better understanding the implementation and effect of California’s Public Safety Realignment legislation. For more information about our current and past projects, please visit our website: <http://law.stanford.edu/criminal-justice-center>.