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Assessing Judicial Sentencing Preferences After Public Safety Realignment: A Survey of California Judges

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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>.

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Abstract

Public Safety Realignment (“AB 109”) made drastic changes to California’s criminal justice system by transferring authority for the supervision of most non-violent, non-serious, and non-sexual offenders from the state to the 58 counties. This study aims to better examine the perceived effect of AB 109 on Superior Court (trial) judges in California who sentence offenders. Through the use of a modified factorial survey, we queried judges on their sentencing choices between felony probation and new California Penal Code §1170(h) county jail sentences. We received responses from 112 judges throughout California, representing 35 counties or 96% of the state population, including the 10 most populous counties in California. The responses revealed judicial preferences that emphasize a desire to deploy sentencing to *manage* offenders. The preferences generally aim at a combination of a “taste of jail” and rigorous community supervision, whether that is a traditional felony probation sentence or an 1170(h) split sentence. Our study found that more than half of judges surveyed preferred to give an 1170(h) sentence over a felony probation sentence, except when the judge was aware of an offender’s substance abuse problem or mental illness, or when the judge was trying to lengthen the period of incarceration or mandatory supervision. In addition, when judges chose an 1170(h) sentence, they selected a split sentence over a straight jail sentence almost half the time. However, among judges who chose split sentences, there was a tremendous variation in the chosen fraction as between jail time and supervision. Drawing from our findings, we strongly recommend that the California Legislature and/or the California judiciary clarify the relationship between traditional felony probation and an 1170(h) split sentence, and develop guidance and consensus on when and how to use split sentences. In addition, counties should enhance and increase the availability of effective community-based treatment resources, because improved treatment programs will likely increase judges’ confidence in embracing these sentencing options.

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Executive Summary

On April 4, 2011, Governor Jerry Brown signed Assembly Bill 109, the 2011 Public Safety Realignment Act (“Realignment” or “AB 109”), into law. Realignment shifts the responsibility of supervising, tracking and imprisoning specified non-serious, non-violent, non-sexual (“N3” or “non-non-nons”) offenders previously bound for state prison to county jails and probation.

AB 109 was one response to the 2011 U.S. Supreme Court decision in *Brown v. Plata* ordering California to significantly reduce its prison population to 110,000 people, or 137.5% of design capacity, by year-end 2013. The Court had agreed with the 2009 Three-Judge Court’s conclusion that “prison overcrowding was the primary cause of state’s unconstitutional failure to provide adequate medical and mental health care to California prisoners.”¹ In addition to meeting the Three-Judge Court Order via prison population reduction, one of Realignment’s goals is to reduce recidivism by diverting lower-level offenders to county agencies where offenders are expected to have better access to community and treatment services. By diverting offenders to the local level, AB 109 also intends to have criminal justice populations managed more cost-effectively, as counties now absorb the majority of the practical and financial consequences of their sentencing decisions.

The implementation of Realignment in California is the largest correctional experiment of its kind in California, and arguably in the United States, in many decades. Through AB 109 and its affiliated bills, the Legislature has allocated over \$2 billion in the first two years of implementation to assist California’s 58 counties in carrying out the legislation’s provisions. Counties and local criminal justice agencies are significantly impacted by the legislation: through mid-2013 more than 100,000 offenders have had their sentences altered and are now held at the local level.²

Background

The diversion of N3 offenders to counties affects every decision along the stages of the criminal justice system. With respect to judges, this diversion affects how they choose sentence lengths among triad options, whether they rely on certain factors as a basis of imposing enhancements, and whether they offer probation or a full sentence. Under AB

¹ Three-Judge Court Order (2009) at 99. *Brown v. Plata*, 131 S. Ct. 1910 (2011), <http://www.supremecourt.gov/opinions/10pdf/09-1233.pdf>.

² For more information on AB 109 and Realignment’s effect on state and local agencies, see Petersilia, Joan. “Voices from the Field: How California Stakeholders View Public Safety Realignment.” *Stanford Criminal Justice Center*. (2014).

109, judges have new sentencing options (falling under the name “1170(h) sentences”) in addition to long-standing options (with regards to misdemeanors and offenders convicted of serious, violent, and other offenses that do not fall under the N3 categories). The new judicial sentencing options under AB 109 are as follows:

- (1) Judges can impose an 1170(h) sentence of a term of years specified in the statute—often choosing between a mitigated, middle, or aggravated term within a triad, along with the possibility of enhancements. The sentence, however long, will be served in the county jail; when that “straight sentence” is completed, the offender is released without any supervision.
- (2) Judges can impose a sentence of a term of years but then declare that a certain fraction of that sentence will be served in jail and the remaining fraction be served under mandatory supervision (a “split sentence”), with the supervision conducted by the probation department.³ When judges impose a split sentence, they can also determine whether or not to mandate treatment. Any violation of the conditions of that supervision will result in a return to jail for a period up to the end of the original maximum sentence.
- (3) Judges can place the offender on traditional felony probation according to the same rules that applied before AB 109.

It is important to note that AB 109 does not provide any rules or criteria to guide the judiciary in determining whether to split a sentence or deciding how much of the split sentence should be on supervision, or what the proper conditions of that supervision should be. Judges currently have full discretion as to what fraction of the split sentence should be served in jail and under mandatory supervision. Possibly judges are drawing to some extent on the pre-AB 109 statutory criteria guiding when and on what terms a judge should grant probation, and the Legislature may well have intended such an approach. But AB 109 does not say so, and indeed makes clear that the term “probation” is improper for supervision under a split sentence.⁴

This study focuses on how California’s Superior Court judges involved in criminal sentencing perceive the effect of this revised sentencing structure on their practices. As the officials most immediately authorized to interpret legislative mandates, judges have a

³ Another major change under AB 109 that became effective in July 2013: large numbers of offenders released from state prison terms who normally would have been supervised on parole are now supervised by county probation on Post-Release Community Supervision (PRCS); such released offenders who violate the conditions of PCRS now have their violations adjudicated in Superior Court, and the penalty for revocation is a fixed term in the county jail, rather than a return to state prison. This report does not consider the potential effects of this particular provision of AB 109.

⁴ Couzens, J. Richard, and Tricia A. Bigelow. “Felony Sentencing After Realignment.” (2013): 33. www.courts.ca.gov/partners/documents/felony_sentencing.pdf. The original language of Subdivision (h) (5) created an ambiguity because it specified the defendant was to serve “a period of mandatory probation.” The reference to “probation” has been eliminated.

distinct form of professional obligation to adhere to statewide enactments such as Realignment. However, judges operate solely within their county, and they interact only with prosecutors, litigants, and probation officers (and, with a few exceptions, law enforcement personnel) within that county. So while judges have always known that a large fraction of people they sentence will be incarcerated by that county, that fraction has greatly increased, as the number of adjudications of revocation that now send the offender to county jail. Thus, judges may be very sensitive to the effects of Realignment on county institutions and finances.

Following on insights gathered in Joan Petersilia's *Voices from the Field: How California Stakeholders View Public Safety Realignment*,⁵ this study examines the decision making process judges follow when imposing a sentence for N3 felonies. Thus, this study aims to examine how Superior Court judges' sentencing choices have changed under Realignment, in light of the overall jurisprudential principles they infer from AB 109 and the shift of burdens and responsibilities to the county that now affects the choice of appropriate sentence. Our specific research questions ask:

- (1) How often do judges choose an 1170(h) county jail sentence, as opposed to a traditional felony probation sentence? To what extent, and for what types of offenses and offenders, do judges still choose a tradition felony probation outcome?
- (2) When judges do choose an 1170(h) sentence, how often do they "split" the sentence and under what circumstances? When judges choose a split sentence, what is the total length of the sentence and what fractions of jail and supervision time do they choose for various types of offenses and offenders?
- (3) For each of the prior questions, how uniform or how varied are the judges' choices across and within California's 58 counties?

A key purpose of this study was to assess judicial attitudes towards this split sentencing option, because aside from the change in place of incarceration, the splitting option is arguably the most significant sentencing innovation under the Realignment program. The split sentencing was AB 109's key feature in encouraging—but not requiring—judges to determine the optimal balance of incarceration and supervision as a county-level solution to problem of recidivism. Thus, our survey hypotheticals place great emphasis on the split sentence menu of choices. Nevertheless, a crucial but largely unexamined aspect of AB 109 is that the traditional way of achieving this balance—felony probation—remains available after AB 109. That decision is in fact a complicated and potentially consequential because, as note in detailed below, probation and split sentences vary significantly in terms of length of the supervision period, the effect of time served under

⁵ Ibid. at 2.

supervision, and, in the view of some judges, the quality of supervision. Yet the new statute tells judges nothing about how to decide between the old and new options. Thus, as we designed our survey and interpreted its results, we paid great attention to patterns of judicial choice between the options, and our findings inform our ultimate recommendation about the need for clarification in this area.

Let us add one general note about the goal of this study. One of the sources of encouragement for this survey was conversations with judges themselves who told us that they would benefit from better awareness of each other's sentencing preferences and philosophies. Thus, wholly independent of any specific recommendations of law and policy that might arise from the survey results, we took as a premise that judges themselves would read our results and interpret them as they wished. Thus, our own conclusions and recommendations aside, the judiciary would be better positioned in implementing AB 109 by having better information about the array of responses to Realignment around the state and directly or indirectly move towards whatever non-binding norms of AB 109 sentencing they deem faithful to the new legal regime.

Finally, while this report focuses on a very distinct new sentencing regime in California, it has at least two notable sets of implications for other jurisdictions considering sentencing reform.

- (1) Discretion and uniformity: California moved from indeterminate to determinate sentencing 40 years ago, and Realignment was not announced as a change in the modern determinate scheme. Nevertheless, Realignment introduced new elements of discretionary sentencing (in the menu of choices available under 1170(h) sentences) and indeterminacy (in that the actual time to be served has become somewhat less certain upon the initial sentence. In addition, this new regime was inserted next to an unchanged felony probation system. Jurisdictions contemplating sentencing reforms should be wary that introducing similar new options next to older options, without formal guiding criteria, may be inviting wide variation in judicial practice (and the attendant possible unjustified disparity).
- (2) Our survey shows that in deciding whether and how to hand down sentences involving community supervision, judges are often influenced by their perceptions of the quality and rigor of supervision under the various options. Jurisdictions that rely heavily on judicial discretion to impose supervision should strive to ensure sufficient funding and quality of training and other resources for probation and other supervising officials to ensure that sentencing decisions are not distorted by the fact or perception of unreliable supervision.

Methods

Given the nature of the study and our research questions, and through consultations with several research design experts, the modified factorial survey design best fit this study. The factorial survey design is used to study the social and individual determinants of human judgments, such as the decision making process of the judiciary. Recently, criminologists have increasingly recognized the full potential of this approach in the study of crime and deviance and normative attitudes of field workers in the criminal justice system. The survey design is structured so as to allow researchers to evaluate the effect of several identified factors simultaneously. In this study, we considered these factors to be (1) the offense; (2) the presence or absence of a substance abuse history; and (3) the presence or absence of a mental health history. Judges have traditionally considered aggravating or mitigating factors regarding the offender or offense when imposing a sentence. Aggravating factors include the offender's criminal history and the presence of enhancing factors about the offense; mitigating factors especially include substance abuse or mental health issues. Post-Realignment, when judges issue an 1170(h) sentence, they will continue to consider these factors in choosing a mitigated, middle, or aggravated sentence under a triad. Relying on these same factors, judges may also add years to the county jail sentence because of a statutory enhancement. More importantly, when judges use the new sentencing option of split sentences under AB 109, mitigating factors such as substance abuse or mental health conditions will often argue for allocating a large portion of the sentence to supervision.

Superior Court judges were given seven true-to-life fact patterns or hypotheticals about a defendant charged with one of four common N3 felonies (drug sale, drug possession, second-degree burglary, and auto theft). Information about the nature of the defendant's crime and any criminal history was also provided. In addition, some hypotheticals informed the judge of the defendant's substance abuse problem or mental illness. Moreover, two of the hypotheticals were varied so that some judges were randomly given these mitigating factors regarding substance abuse or mental illness in the hypothetical at the beginning while others were given this information in the form of a follow-up question that asked if the information impacted the initial sentence imposed. After the scenario was laid out, judges were asked to impose a sentence based on the new judicial sentencing options under AB 109—reduce to misdemeanor (where applicable), traditional felony probation, or an 1170(h) sentence. If the judge chose an 1170(h) sentence, the judge was also asked whether the sentence would be straight jail term or a split sentence. If the judge chose a split sentence, the judge was asked to determine what fraction of the sentence would be served in jail and what fraction under mandatory supervision. Respondents were given the opportunity to comment on their answers following each hypothetical.

It is important to note here that a traditional factorial survey with three distinct factors that include four types of offenses, and an alternative as to whether or not the defendant has a substance abuse problem or mental illness, would require 16 hypotheticals for full rigorous statistical analysis. In turn, the increase in the number of hypotheticals requires an increase in the number of respondents. Yet for this survey, consultation with survey design experts, members of the California judiciary, and the California Judges Association (CJA) led us to anticipate that we could only realistically expect approximately 100 judges to respond to our survey. Thus, we modified the factorial survey to include seven hypotheticals. In the end, although we significantly modified traditional survey methods in our design, our instrument still retained some of its key features, thus allowing for substantive analysis.

Given the large number of judges in California (there are approximately 1,600 Superior Court judges in California) and being cognizant of their time, we determined that surveying judges through an online software tool, Qualtrics, would best fit our research. The link to this survey was distributed to California judges with the assistance of CJA. We received a total of 112 respondents, representing 35 counties (96% of the state population), including the 10 most populous counties in California.

Findings

Because the survey involved hypotheticals that reflect post-Realignment sentencing options, we needed a baseline from which to compare their answers. The Office of the Attorney General (OAG) 2005-2010 sentencing data from their *Crime in California* reports served as this baseline for pre-Realignment sentences. The key figures from this data are summarized as follows:

- For property offenses ending in felony convictions, 22% were sentenced to state prison; 9.8% were given probation without jail; 65.3% were given probation with jail; and 2.6% were sentenced to county jail. Thus, a subtotal of 75.3% received some form of probation.
- For drug offenses ending in felony convictions, 18.9% were sentenced to state prison; 33.1% were given probation without jail; 43.6% were given probation with jail; and 4.3% were sentenced to county jail. Thus, a subtotal of 76.7% received some form of probation.

In order to address our research questions, as we analyzed the results of the survey, we specifically compiled the following data:

- (1) The percentage of responses choosing felony probation with a jail term as a condition of probation;

- (2) The percentage of responses choosing an 1170(h) county jail sentence;
- (3) The average length, in months, of the preferred sentence among the responses choosing an 1170(h) sentence;
- (4) Among respondents choosing 1170(h) sentences, the percentage who would frame the sentence as a split sentence; and
- (5) The sum of respondents choosing felony probation and a split sentence, compared to the felony probation percentage from the 2005-2010 baseline drawn from the OAG figures.

Below we relate our findings to the research questions posed earlier.

(1) How often do judges choose an 1170(h) county jail sentence, as opposed to a traditional felony probation sentence? To what extent, and for what types of offenses and offenders, do judges still choose a tradition felony probation outcome?

Our study finds that 57% of judges preferred to give an 1170(h) sentence over a felony probation sentence, except when the hypothetical contains information about the offender's substance abuse or mental illness. In addition, after AB 109, judges trying to lengthen the period of incarceration or of mandatory supervision for N3 felonies often found traditional felony probation a better alternative than an 1170(h) sentence. We also find that while a significant percentage of respondents chose traditional felony probation for certain hypotheticals indicated above, these percentages were generally lower than the OAG figures for the relevant category of crimes. But because the OAG data include less aggravated versions of these crimes, and, most notably, large numbers of first-time offenders or those with far fewer priors or violations than the offenders in the hypotheticals, even the percentage for felony probation in the survey is likely to be fairly similar to the felony probation figures for pre-AB 109 years. Thus, the tendency of judges to use felony probation as an alternative to state prison now continues as a tendency to use felony probation to avoid placing certain offenders in county jail on a long jail sentence.

(2) When judges do choose an 1170(h) sentence, how often do they "split" the sentence and under what circumstances? When judges choose a split sentence, what is the total length of the sentence and what fractions of jail and supervision time do they choose for various types of offenses and offenders?

When judges chose an 1170(h) sentence, approximately 47% of the time, they chose a split sentence as opposed to a straight jail sentence. Notably, this percentage is significantly higher than the statewide average of 30% for split sentences.⁶ When we add

⁶ The *Voices from the Field* Report makes the general observation that judges have been loath to deploy the split sentencing option. *Ibid.* at 139-155. That observation is not inconsistent with the findings in the

the felony probation answers to the split sentence answers for each hypothetical, that sum comes very close to, and often exceeds, the traditional felony probation outcomes in the OAG data. In addition, among judges who chose split sentences, there is tremendous variation in the chosen fraction as between jail time and supervision. The variation in judges' chosen fraction for split sentences within and across hypotheticals has resulted in an average length in split sentence of approximately 27 months, or just over two years.

(3) For each of the prior questions, how uniform or how varied are the judges' choices across and within California's 58 counties?

Comparative analysis by county can yield very few patterns in this survey, in part because in many counties, the number of respondents was so small. On the whole, in counties with a reasonable number of responses, the distribution of answers from most of the hypotheticals roughly resembled the statewide distribution reported above. In a few instances, respondents from a particular county did diverge significantly from the state average for certain hypotheticals.

In general, the dominant pattern of the responses is that for very common AB 109 felonies, judges chose to impose sentences with the goal of managing offenders, generally aiming at a combination of a "taste of jail" and rigorous supervision, in the hopes of redirecting the offender away from crime. Judges want "jail plus a tail."

For all the hypotheticals, a majority of the respondents chose a sentence that includes some combination of jail time and supervision. The majority is the smallest for Hypothetical One (sale of methamphetamine), presumably reflecting a condemnation of trafficking methamphetamine and an especially egregious crime. The majority is the largest for property crime offenders who exhibit mental illness or substance abuse problems.

Recommendations

Given our findings and analyses, we strongly recommend the following:

current survey. For one thing, the *Voices* report notes that in fact the use of split sentences has varied widely, *ibid.* at 142-145 by county, and county variance is also a feature of this judicial survey, see p. 55, *infra.* For another, this judicial survey measures state preferences, not actual practice, and so it may reflect aspirations toward future sentencing rather than self-reports of actual sentencing in the first phase of implementation of AB 109. Further, the judicial survey was conducted later than the interviews and data collection in the *Voices* report; the latter started in early Winter of 2013, and the former was conducted from March through July of 2013. For some counties the use of split sentencing during this time period has fluctuated.

- (1) **The Legislature should amend AB 109 to resolve statutory ambiguities as much as possible to clarify and harmonize the relationship between felony probation and split sentences.** Although the Legislation explains the procedural distinction between these two types of sentences, it does not instruct judges about the substantive goal of AB 109 in terms of how to choose between these options. The Legislature should provide guidance to judges as when to split sentences and how to apportion the split.
- (2) **To ensure a more coherent and uniform application of AB 109, the California Judiciary should establish consistent approaches to the choices between traditional felony probation and 1170(h) sentences and determine how sentences should be split—under what circumstances and crimes, and what fractions offenders should serve in jail and under mandatory supervision—while still retaining necessary discretion.** Such efforts could include training and other forms of consensus-seeking.
- (3) **To improve the use of the new sentencing tools under AB 109, including split sentences, counties should enhance and increase the availability of effective community-based treatment resources. More ample and effective treatment programs will likely increase judges’ confidence in embracing these sentencing options.** For example, judges who believe that mandatory drug treatment is the ideal choice for certain offenders often worry that drug diversion courts are not available where the current offense is not a drug crime; or conversely, that even where a drug diversion court is possible it does not make treatment sufficiently mandatory and rigorous.

Conclusions

The implementation of Public Safety Realignment in California is the largest correctional experiment of its kind in many decades in California and arguably among the states overall. AB 109 has affected not only tens of thousands of offenders, but also the many county agencies and individuals who now have the responsibility to charge, sentence, manage, supervise, and treat them. As a result, Realignment has greatly altered the day-to-day operations and decisions of state and especially local criminal justice actors. This research examining judicial sentencing and discretion in light of AB 109’s sentencing provisions for N3 offenders provides initial impressions on judicial preferences. More research is necessary to monitor the law’s full impact on the judiciary and the criminal justice system going forward.

Introduction

Public Safety Realignment

On April 4, 2011, Governor Jerry Brown signed Assembly Bill 109, the 2011 Public Safety Realignment Act (“Realignment” or “AB 109”), into law.⁷ AB 109 was one response to the 2009 Three-Judge Court Order for California to significantly reduce its prison population to 110,000 people, or 137.5% of design capacity, by year-end 2013. Affirmed by the U.S. Supreme Court in 2011 in *Brown v. Plata*, the Three-Judge Court Order determined prison overcrowding to be “the primary cause of the state’s unconstitutional failure to provide adequate medical and mental health care to California prisoners,” concluding that population reduction was the most narrowly drawn, least intrusive remedy.⁸

Realignment shifts the responsibility of supervising, tracking, and imprisoning specified non-serious, non-violent, non-sexual (“N3” or “non-non-nons”) offenders previously bound for state prison to county jails and probation (see *Overview*, p. 19). The law states that “the purpose of justice reinvestment is 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.”⁹

The implementation of Realignment in California is the largest correctional experiment of its kind.¹⁰ Through AB 109, the Legislature has allocated over \$2 billion in the first two years of implementation to assist California’s 58 counties in carrying out the legislation’s provisions.¹¹ In addition, more than 100,000 offenders have had their sentences altered through mid-2013.¹²

⁷ For more information on AB 109 and Realignment’s impact on state and local agencies, see Petersilia, Joan. “Voices from the Field: How California Stakeholders View Public Safety Realignment.” *Stanford Criminal Justice Center* (2014).

⁸ Three-Judge Court Order (2009) at 99. *Brown v. Plata*, 131 S. Ct. 1910 (2011), <http://www.supremecourt.gov/opinions/10pdf/09-1233.pdf>.

⁹ California Penal Code §17.5(a)(7).

¹⁰ Michigan, South Carolina, and Virginia are a few of the first states to implement some form of “realignment” similar to AB 109 provisions, with increased use of local jails and community supervision beginning in 2000, but the sheer size of California sets it apart from other states. See Subramanian, Ram and Rebecca Tublitz. “Realigning Justice Resources: A Review of Population and Spending Shifts in Prison and Community Corrections.” *Vera Institute of Justice* (September 2012). http://www.vera.org/sites/default/files/resources/downloads/Realigning_Justice_full_report.pdf.

¹¹ Brown, Brian. “The 2012–13 Budget: The 2011 Realignment of Adult Offenders—An Update.” Legislative Analyst’s Office. (2012). http://www.lao.ca.gov/analysis/2012/crim_justice/2011-realignment-of-adult-offenders-022212.aspx.

¹² Chief Probation Officers of California. “Realignment Dashboard.” (October 2013). http://www.cpoc.org/assets/Realignment/dashboard_county.swf

Realignment and Judicial Discretion

As discussed in Joan Petersilia's recent publication, *Voices from the Field: How California Stakeholders View Public Safety Realignment*, the enactment of Public Safety Realignment affected the practices of all the officials and agents in California's criminal justice system.¹³ This report examines the perceived effect of AB 109 on one very significant set of officials—the Superior Court judges who sentence offenders.

Realignment has altered conscious discretion among judges; although the key significance of conscious discretion is its ultimate effect, the influence legal change has on the way judges conceive their responsibilities and choice-making, especially in response to the discretion of others, is a crucial element in evaluating any major legal change. In addition, data on conscious discretion is of great value in its feedback utility for the discretion-wielding actors themselves, which they can use in concert with available outcome data in considering modifications of their methods of decision-making.

The distinct place in which judges operate in the system warrants them as important subjects of research. Trial judges can choose sentence length among triad options, invoke certain factors as a basis of imposing enhancements, and decide to offer probation or a split sentence in lieu of a full jail sentence. Thus, judges operate within a more circumscribed and predictable discretionary context of choice than other officials, and so they can be feasibly studied right after the enactment of the legal change with a relatively narrow set of survey questions. In addition, judges differ from other key actors in terms of their relation to the state and county divide.

On the one hand, judges operate solely within the county, and they interact only with prosecutors, litigants, and probation officers (and, with few exceptions, law enforcement personnel) within that county. Further, while judges have always known that a large fraction of people they sentence will be incarcerated by that county, that fraction has greatly increased, as the number of adjudications of revocation that now send the offender to county jail. Thus, judges, like non-judicial actors, may be very sensitive to the effects of Realignment on county institutions and finances.

On the other hand, judges are technically state officials whose salary is determined at the state level. Moreover, as the officials most immediately authorized to interpret legislative mandates, they have a distinct form of professional obligation to adhere to statewide enactments. Finally, while judges are subject to election and reelection, their terms are longer and the relevant electoral mechanisms are more indirect than is true of

¹³ Petersilia, Joan. "Voices from the Field: How California Stakeholders View California Public Safety Realignment." *Stanford Criminal Justice Center* (2014).

prosecutors and sheriffs. As a result, judges represent feasible subjects for a distinct questionnaire survey. This study aims to examine how judges' sentencing choices have changed under Realignment, in light of the overall jurisprudential principles they infer from AB 109 and the shift of burdens and responsibilities to the county that now affects the choice of appropriate sentence.

Overview of Public Safety Realignment

Enacted on October 1, 2011, the Public Safety Realignment Act transfers the management of many low-level offenders from the state to the county level. Thus, specified offenders overseen by the California Department of Corrections and Rehabilitation (CDCR) are “realigned” to local agencies.

Realignment shifts three criminal justice populations from state to county responsibility:

- (1) Post-Release Community Supervision (PRCS): Inmates in state prison whose *current* commitment offense is non-serious, non-violent, and non-sexual (“N3”) are released to county probation, not state parole. PRCS individuals are eligible for discharge in 180 days.
- (2) 1170(h) Offenders: Defendants newly convicted of N3 offenses now serve their sentence locally in jail.¹⁴ Three sentencing options exist for this population:
 - a) Full sentence in county jail (can be served in alternative custody programs);
 - b) A “split sentence”: Combination of a term in county jail and mandatory supervision (MS), which cannot exceed the total term chosen by the sentencing judge. Upon release to MS, a defendant is supervised by probation under the same terms, conditions, and procedures of traditional probation; and
 - c) Traditional probation, which can include up to one year maximum in county jail. A defendant who violates the terms and conditions of probation could be given a full term of imprisonment or a split sentence.
- (3) Parolees: State parole agents will only supervise individuals released from prison whose *current* offense is serious or violent and certain others (i.e. those assessed to be mentally disordered or high risk sex offenders).

Other key elements of AB 109 include:

- Redefining Felonies: Felonies are redefined to include certain crimes punishable in jail for 16 months, 2 years, or 3 years. Almost 500 criminal statutes were amended to require that any adult convicted of CA Penal Code §1170(h) felony crimes cannot be sentenced to prison unless they have a past serious or violent felony conviction.
- Parole and Probation Revocations Heard and Served Locally: PRCS and parole revocations are served in local jails for a maximum revocation sentence of 180 days. As of July 1, 2013, local trial courts hear PRCS and parole revocation hearings.
- Changes to Custody Credits: Jail inmates earn four days of credit for every two days served. Time spent on home detention (i.e., electronic monitoring) is credited as time spent in jail custody.
- Alternative Custody: Electronic monitoring can be used for inmates held in county jail in lieu of bail. Eligible inmates must first be held in custody for 60 days post-arraignment, or 30 days for those charged with misdemeanor offenses.
- Community-Based Punishment: Counties are authorized to use a range of community-based punishment and intermediate sanctions other than jail incarceration alone or traditional probation supervision.

¹⁴ Offenders can be sentenced to prison even if they are currently convicted of an 1170(h) non-prison eligible crime if any of the following apply: (1) conviction of a current or prior serious or violent felony conviction listed in California Penal Code § 667.5(c) or 1192.7c; (2) when the defendant is required to register as a sex offender under California Penal Code § 290; or (3) when the defendant is convicted and sentenced for aggravated theft under the provisions of section 186.1. The Legislature also left over 70 specific crimes where the sentence must be served in state prison. See Couzens, J. Richard, and Tricia A. Bigelow. "Felony Sentencing After Realignment." (July 2013).

Background

Purpose of Research

Whether and how AB 109 might influence judicial sentencing depends on the range of options (and their mutual interactions) that pre-date and remain after the passage of AB 109 and those that are newly created by AB 109.¹⁵ While the statutory complexities that underlie these options are too detailed to fully elaborate on in this report, the basic set of options is fairly clear.

Post-Realignment Judicial Sentencing Options

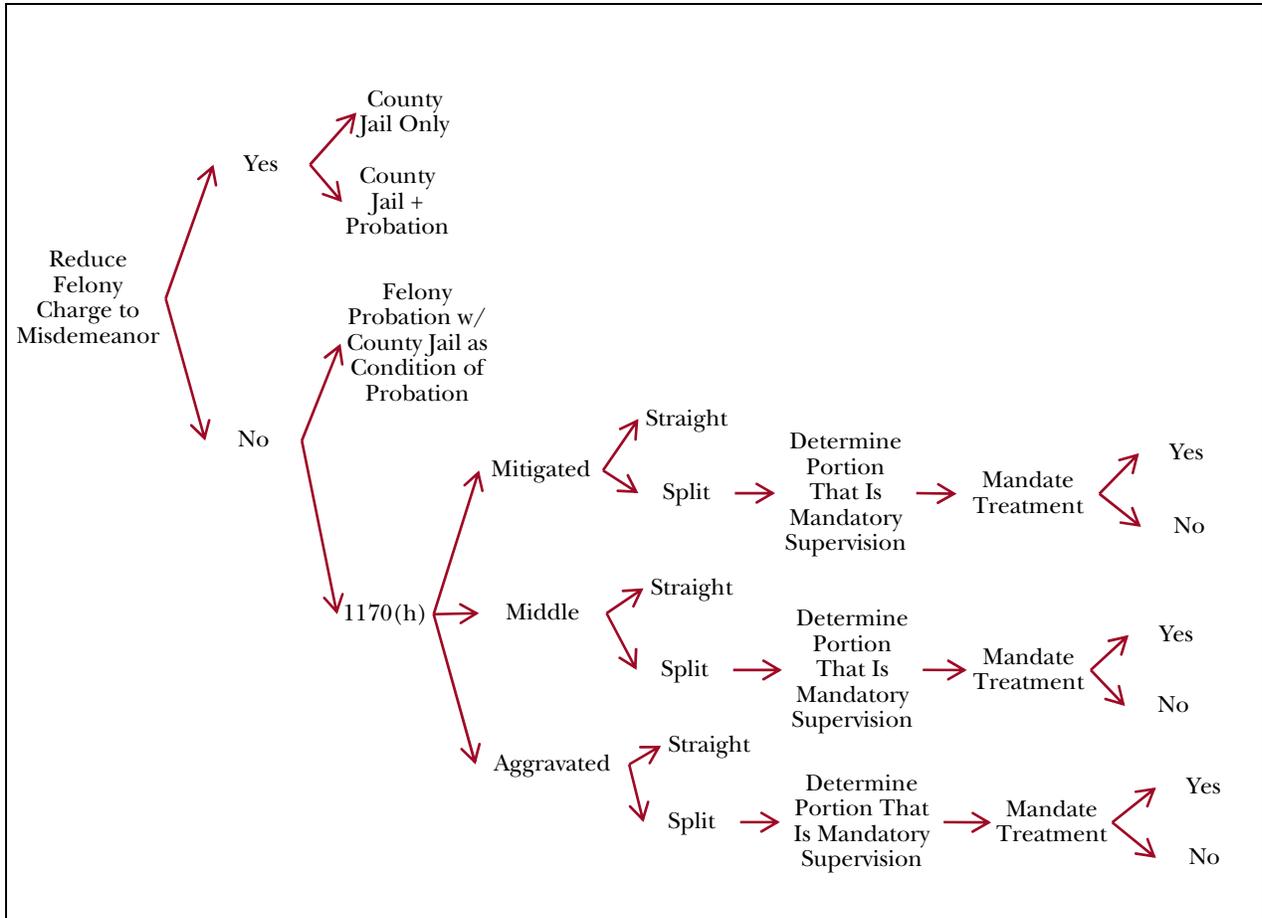
Under the California Penal Code, certain long-standing options available to Superior Court judges when sentencing convicted offenders remain in place:

- (1) If the offender is convicted of a misdemeanor, the judge can sentence him to a term in county jail not exceeding one year, or can grant him misdemeanor probation.
- (2) If the defendant is convicted of a felony that is *not* designated as N3 under AB109, the judge can follow the Determinate Sentencing Law (DSL) and send him to state prison for a term of years. For many crimes, under the DSL the judge can choose among a mitigated, middle, or aggravated term in one of the statutory triads, plus extra time if certain enhancements are proved.
- (3) The judge can also grant the offender felony probation, assuming that the offender or offense entails probation eligibility, which, depending on complex

¹⁵ For ease of reading we do not provide statutory citations for all of these options, but the legal structures on which these hypotheses are based are explained by several key commentaries: Couzens, J. Richard and Tricia A. Bigelow. "Felony Sentencing After Realignment" (July 2013). http://www.courts.ca.gov/partners/documents/felony_sentencing.pdf; Shouse, Neil. "How Felony Probation Works in California." Shouse Law Group. (2013). <http://www.shouselaw.com/felony-probation.html#1>; Rodriguez, Lisa R. "Criminal Justice Realignment: A Prosecutor's Perspective." *Federal Sentencing Reporter* 25 (2013): 220.; Storton, Kathryn B. and Lisa R. Rodriguez. "Prosecutors' Analysis of the 2011 Criminal Justice Realignment." *California District Attorneys Association* (2011). <http://www.cpoc.org/assets/Realignment/cdaarealignguide.pdf>; Rappoport, Aaron J. "Realigning California Corrections." *Federal Sentencing Reporter* 25 (2013): 207; Couzens, J. Richard. "Realignment and Evidence-Based Practice: A New Era in Sentencing California Felonies." *Federal Sentencing Reporter* 25 (2013): 217; Byers, Garrick. "Realignment." (2011). <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CDEQFjAB&url=http%3A%2F%2Fceb.com%2Fflawalerts%2FRealignment4.doc&ei=SB1tUsijDKeCiwKamIDwBg&usg=AFQjCNHflkXPFHo6tkKLnY8qdfyDT6-SjQ&bvm=bv.55123115,d.cGE>; Petersilia, Joan. "Voices from the Field: How California Stakeholders View Public Safety Realignment." *Stanford Criminal Justice Center* (2014).

statutory rules, is far less likely if the offense is on the level that is not classified as an N3 felony under AB 109.¹⁶

Figure 1: The Sentencing Decision Process Post-Realignment



The focus of this judicial survey is on the Post-Realignment sentencing options available to Superior Court judges where the offender is convicted of an N3 felony (also called an “1170(h)” sentence), as shown in Figure 1. Except in “wobbler”¹⁷ cases where the judge has, and exercises, discretion to reduce the felony to a misdemeanor, the judge can:

¹⁶ See discussion below.

¹⁷ “Wobblers” are crimes that can be treated as either felonies or misdemeanors. Under California Penal Code §17(b), certain crimes that are presumptively felonies (because, pre-AB 109, they could lead to a state prison sentence of more than a year) may be reduced to a misdemeanor with the discretion of the sentencing judge or at the request of the charging prosecutor. The judge or prosecutor will reduce the crime to a misdemeanor if factors in the defendant’s background or in the commission of the crime call for mitigation. Currently, hundreds of non-violent crimes in California can qualify as wobblers. The legal rules governing wobblers are unchanged by AB 109. For a full discussion, see Berwick, Megan, Rachel Lindenberg and Julia Van Roo. “Wobblers & Criminal Justice in California: A Study into Prosecutorial Discretion.” *Public Policy Practicum, Stanford University* (March 2010): xi. <http://ips.stanford.edu/sites/default/files/shared/DA%20Discretion%20Final%20Report.pdf>.

- (1) Impose an 1170(h) sentence of a term of years specified in the statute—often choosing between a mitigated, middle, or aggravated term within a triad, along with the possibility of enhancements; the sentence, however long, will be served in the county jail; when that “straight sentence” is completed, the offender is released without any supervision.
- (2) Impose a sentence of a term of years but then declare that a certain fraction of that sentence will be served in jail and the remaining fraction be served under mandatory supervision (a “split sentence”) with the supervision conducted by the probation department.¹⁸ When judges impose a split sentence, they can also determine whether or not to mandate treatment. Any violation of the conditions of that supervision will result in a return to jail for a period up to the end of the original maximum sentence (see below).
- (3) Place the offender on traditional felony probation according to the same rules that applied before AB109.

Recently released data from the Chief Probation Officers of California (CPOC) indicate that most 1170(h) offenders sentenced to some jail time are given straight jail sentences, rather than split sentences. However, the percentage of split sentences imposed has steadily increased since Realignment’s enactment in October 2011. Figure 2 shows that the use of split sentences was low when AB 109 first went into effect—only 17% of all sentences imposed in October 2011 were split sentences. By October 2012, the percentage of 1170(h) offenders given split sentences increased to 30%. This percentage has remained steady through March 2013.

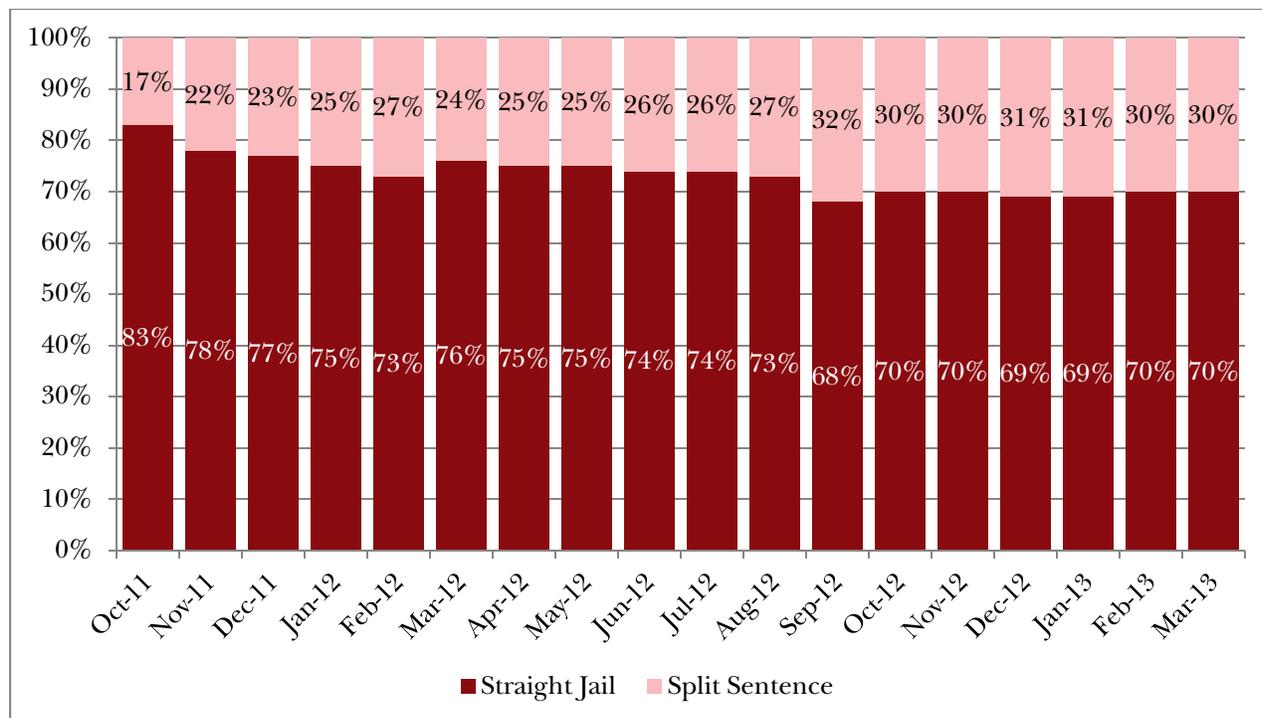
Thus, under AB 109, offenders convicted (mostly through guilty pleas) of non-serious, non-violent, non-sexual felonies now serve their sentences in county jail, rather than in state prison, even if the sentence well exceeds the traditional one-year limit on jail sentences. With N3 felonies, the judge decides whether to sentence the offender to felony probation with county jail as a condition of probation, or alternatively to give an 1170(h) sentence. The first of these changes does not alter the length of the sentence, only the location. The second affects the nature of the sentence.

On the other hand, the traditional pre-AB 109 power of judges to offer a convicted felon conditional release on felony probation continues unchanged (in theory) after AB 109. Under felony probation, the judge can make it a condition that the offender spends a

¹⁸ Another major change under AB 109 that became effective in July 2013: large numbers of offenders released from state prison terms who normally would have been supervised on parole are now supervised by county probation on Post-Release Community Supervision (PRCS); such released offenders who violate the conditions of PCRS now have their violations adjudicated in Superior Court, and the penalty for revocation is a fixed term in the county jail, rather than a return to state prison. This report does not consider the potential effects of this particular provision of AB 109.

certain portion of time in jail—often up to a year—and then be subject to probation supervision with the total period of control of up to five years.

Figure 2: Percent of 1170(h) Population Given Jail Only and Split Sentences by Month, October 2011-March 2013¹⁹



It is important to note that AB 109 does not provide any rules or criteria to guide the judiciary in determining whether to split a sentence or deciding how much of the split sentence should be on supervision, or what the proper conditions of that supervision should be. Judges currently have full discretion as to what fraction of the split sentence should be served in jail and under mandatory supervision. Possibly judges are drawing to some extent on the pre-AB 109 statutory criteria guiding when and under what terms a judge should grant probation, and the Legislature may well have intended such an approach. But AB 109 does not say so, and indeed makes clear that the term “probation” is improper for supervision under a split sentence.²⁰

There are some clear differences between felony probation and split sentences. Judges do not impose any 1170(h) sentences, including a split sentence, until they have ruled out probation. In addition, an 1170(h) sentence can count as a “prior” and thus an

¹⁹ Source: Chief Probation Officers of California. “Realignment Dashboard.” (October 2013). <http://www.cpoc.org/assets/Realignment/splitsentencedashboard.swf>.

²⁰ For a thorough discussion of these legislative ambiguities that judges face, see Couzens, J. Richard and Tricia A. Bigelow. “Felony Sentencing After Realignment” (2013): 12-14, 33-35. www.courts.ca.gov/partners/documents/felony_sentencing.pdf.

enhancement for future crimes, where a probation outcome does not. Moreover, an offender has the right to reject the felony probation option (although in doing so, the offender would thereby be accepting a felony sentence to county jail).²¹ But given the absence of express guidance about when and how to split sentences, and whether the criteria should be the same as for probation, uncertainties about the relationship between felony probation and split sentences continue to pose a challenge for judges. Perhaps most important, as explained below, there are subtle but significant differences in terms of the length and nature of incarceration and control that result from a choice between probation and a split sentence, and judges are left with a great deal of discretion—and no new guidance—as to how to weigh those consequences.

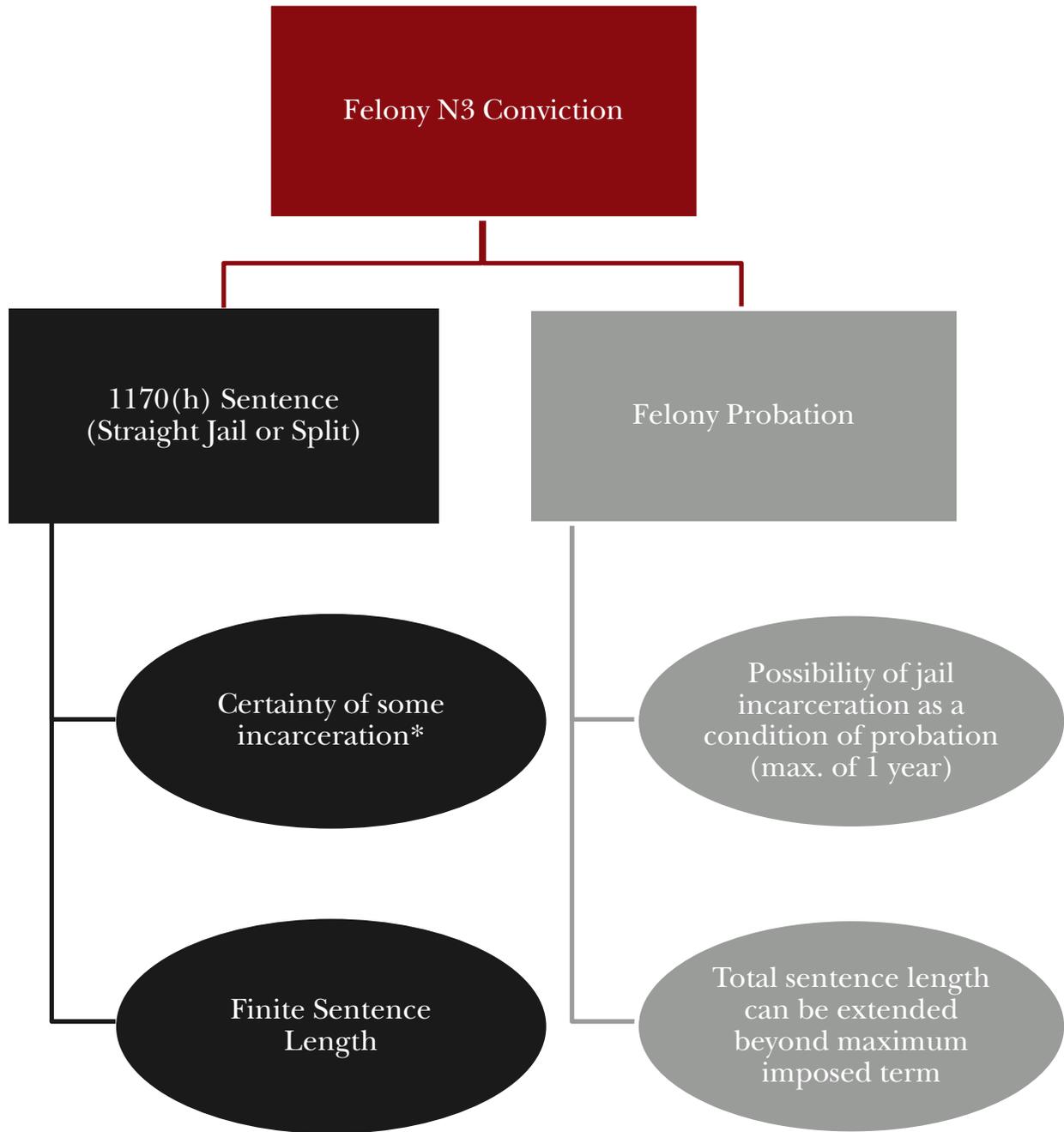
Figures 3 and 4 illustrate these differing consequences between felony probation and 1170(h) sentences. With a felony N3 conviction, the decision to impose a felony probation or 1170(h) sentence results in significantly different circumstances for the offender. Under felony probation, a judge can impose up to one year maximum of jail incarceration as a condition of probation. If the offender violates the conditions of probation, the total sentence length can be extended beyond the maximum term originally imposed by the judge. Figure 4 provides an example of an offender receiving a two-year sentence for an N3 burglary conviction. If the offender is given felony probation and violates his probation sentence, the judge could have the offender restart his sentence, resulting in time served beyond the original two-year sentence.

In contrast, if the offender is given an 1170(h) sentence for the same N3 burglary conviction, the offender will only serve a maximum of two years. If the 1170(h) sentence is a split sentence and the offender violates his/her probation portion of the sentence, the offender will be ordered to serve the *remaining* time of the two-year sentence in jail custody. In addition, an 1170(h) sentence includes half-time credits for good behavior.

A full exploration of the interactions of these statutes is beyond the scope of this report, and some of these interactions will require judicial resolution of the legislative intent of AB 109.

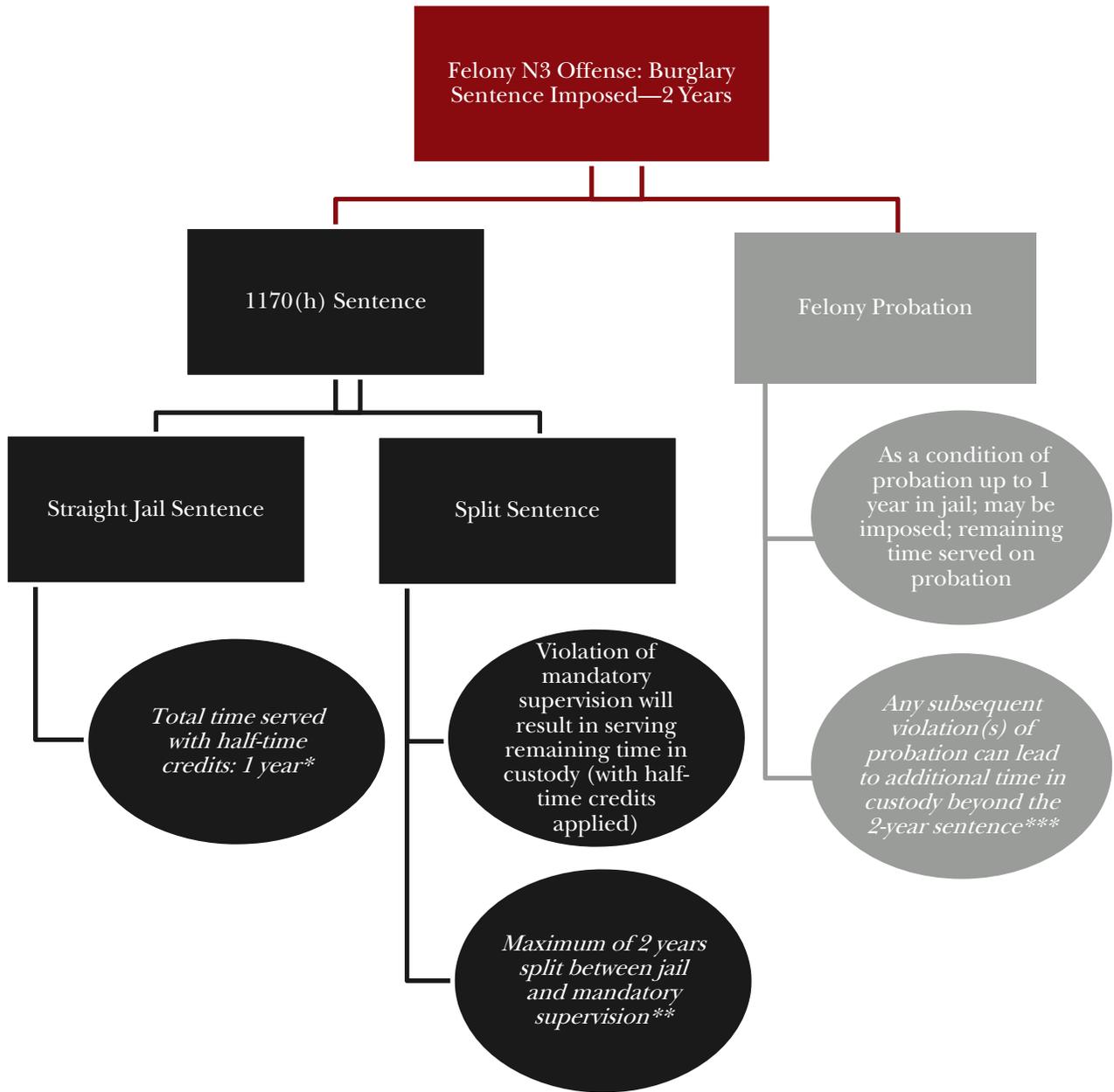
²¹ Originally AB 109 was unclear as to whether the statutory rules that render some offenders categorically ineligible for probation also apply to split sentences; only recently did the Legislature clarify that the ineligibility rules are parallel. In terms of the procedural distinctions between felony probation and 1170(h) sentences, the Legislation is clear under California Penal Code § 1170(h)(4): "Nothing in this subdivision shall be construed to prevent other dispositions authorized by law, including pretrial diversion, deferred entry of judgment, or an order granting probation pursuant to Section 1203.1." For a discussion on this penal code section, please see Section VIII of Kathryn B Storton and Lisa R. Rodriguez's guide, "Prosecutors' Analysis of the 2011 Criminal Justice Realignment" on traditional probation, *supra*, at 12.

Figure 3: Differences between 1170(h) and Traditional Felony Probation Sentences



** Length of incarceration may vary due to county jail capacity constraints.*

Figure 4: An Example of Differences between 1170(h) and Traditional Felony Probation Sentences



** Length of incarceration may vary due to county jail capacity constraints.*

*** Time served between jail and probation is determined at the discretion of the sentencing judge.*

**** Probation violations result in restarting the sentence imposed.*

Research Questions

Our general question is how does AB 109, with its changes in the rules for sentencing and the new venue for many felony sentences, alter the way judges frame their sentencing decisions? More specifically, the research questions are the following:

- (1) How often do judges choose an 1170(h) county jail sentence, as opposed to a traditional felony probation sentence? To what extent, and for what types of offenses and offenders, do judges still choose a tradition felony probation outcome?
- (2) When judges do choose an 1170(h) sentence, how often do they “split” the sentence and under what circumstances? When judges choose a split sentence, what is the total length of the sentence and what fractions of jail and supervision time do they choose for various types of offenses and offenders?
- (3) For each of the prior questions, how uniform or how varied are the judges' choices across and within California's 58 counties?

Hypotheses

In conceiving this survey we hypothesized several possible effects of AB 109 on judicial sentencing, including the following:

- (1) Because AB 109 does not change the official length of N3 felonies, and judges will be indifferent as to place of incarceration, AB 109 will have no effect on N3 sentences.
- (2) Even if AB 109 has no effect on the official sentence length, judges will be influenced by change in location of custody:
 - a) if judges think that the severity and stigma of prison are greater than for jail, they will prefer *longer* jail sentences to roughly account for the difference (or, in theory, the opposite); or
 - b) if judges are sensitive to county finance problems they will prefer to give *shorter* sentences to spare counties any burden not covered by state transfer of funds;
 - c) if judges focus on the likelihood that AB 109 sentences *in effect* are likely to be shorter than pre-AB 109 prison sentences because of more generous statutory conduct credits under AB 109, they will prefer to give longer sentences to ensure the same actual sentence. In addition, because there is no longer a parole tail on an N3 felony sentence, judges will prefer longer sentences as if to roughly account for that lack (perhaps via split sentences).
 - d) if judges worry that AB 109 will increase crowding in jails or judges fear that an AB 109 sentence will result in early release, or release without any supervision

- tail, they will impose the longest possible AB 109 sentence.²² Under these circumstances a judge may hope that in some rough way the longer sentence will mitigate the risk or effects of early release; or
- e) if judges want to test offenders with supervision and are willing to sacrifice some length of the official sentence, they can issue a split sentence; they will thus set the official sentence at the high end of a triad plus enhancement to optimize the total length of jail and supervision. This could be a way of simulating a pre-AB 109 prison sentence plus parole tail.

However, if judges fear any of the above-enumerated possible effects of AB 109 sentences, they will rely instead on traditional felony probation. They will do so because they believe:

- (1) Felony probation allows a de facto split sentence with as much as five years of supervision—a significant period of time in jail as a condition of probation, and as much as five years of total control, regardless of the length of the 1170(h) sentence that could have been imposed.
- (2) The length of both jail time and supervision can be extended if, as is legal and common, the judge requires a waiver of conduct credits as a condition of receiving probation.
- (3) Whereas a violation of the terms of supervision under an 1170(h) sentence only leads to return to jail for up to the length of suspended 1170(h) sentence (usually the result of a plea bargain), a violation of the conditions of felony probation can lead to extended jail time that can be measured by the maximum sentence that the offender might have received on the facts of the case.

Although the prosecutor’s charge may set the maximum possible penalty for an offender, Superior Court judges (the trial judges in California) retain significant discretion in choosing the length and form of sentence up to that maximum. AB 109 changes the “menu” of sentences judges has before them, so studying their perceptions of how the new law may affect their sentencing practices provides important data about Realignment.

²² This concern will be even greater where the county jail is already under a judicial population cap.

Methods

Research Design

After consultations with a number of experts on the social science of survey design, including Miguel de Figueiredo, a survey design expert, Visiting Assistant Professor at Northwestern Law School, and Professor Jeffrey Rachlinski of Cornell Law School, who has significant background in empirical research, we determined that a modified factorial survey approach best met our research needs. Because institutional boundaries place strong limits on the opportunities for judges to communicate with other officials on criminal justice policies, such a survey focusing on their own understanding of their own roles is a useful part of the body of research being undertaken to analyze the effects and implications of Realignment.

Experimental Research Survey

Introduced by American sociologist Peter Rossi about 30 years ago, the factorial survey design is used to study the social and individual determinants of human judgments. It may be used to study a range of different judgments, including positive beliefs (beliefs about how something is), normative judgments (judgments about how something ought to be) and individuals' intentions to act. It may be used to study judgments and attitudes in the general population, or in a selected group, such as a profession. The factorial survey design has been widely used to study decision making and judgment formation on a variety of issues, including professional judgment, crime seriousness, ideal substance abuse use treatment recommendations, justice of punishment, etc.²³ This approach has

²³ Frederick, Bruce and Don Stemen. "The Anatomy of Discretion: An Analysis of Prosecutorial Decision Making." *Vera Institute of Justice* (2012). <http://www.vera.org/pubs/anatomy-discretion-analysis-prosecutorial-decision-making>; Jasso, Guillermina. "Factorial Survey Methods for Studying Beliefs and Judgments." *Sociological Methods and Research* 34 (2006): 334-423.; Rossi, Peter H. and Andy B. Anderson, "The Factorial Survey Approach. An Introduction," in *Measuring Social Judgments: The Factorial Survey Approach*, ed. Peter H. Rossi and Steven L. Nock (Beverly Hills: SAGE, 1982). at 15-67; Sauer, Carsten et al. "The Application of Factorial Surveys in General Population Samples: The Effects of Respondent Age and Education on Response Times and Response Consistency." *Survey Research Methods* 5 (2011): 89-102.; Taylor, Brian J. "Factorial Surveys: Using Vignettes to Study Professional Judgement." *British Journal of Social Work* 36, no. 7 (October 2006): 1887-1207. First published online October 31, 2005; Wallander, Lisa. "Measuring social workers' judgements: Why and how to use the factorial survey approach in the study of professional judgements." *Journal of Social Work* 12, no. 4 (2012): 364-384.; Wallander, Lisa. "25 years of factorial surveys in sociology: A review." *Social Science Research* 38, no. 3 (2012): 505-520.; Wallander, Lisa and Jan Blomqvist. "Modeling ideal treatment recommendations: A factorial survey of Swedish social workers' ideal recommendations of inpatient or outpatient treatment for problem substance uses." *Journal of Social Service Research* 35, no. 1 (2009): 47-64.

been used more frequently in the social sciences due to the variety of possible applications and the appealing possibilities to test social and economic theories. Recently, criminologists have increasingly recognized the full potential of this approach in the study of crime and deviance and normative attitudes of field workers in the criminal justice system.

In this research design, respondents are asked to make judgments about true-to-life, hypothetical cases, or “vignettes.” All vignettes have the same basic structure, or base scenario, but in each vignette, certain factors are systematically varied in order to measure their effect as potential determinants on the outcome, or judgment of interest. The factorial survey can be developed in three steps: (1) identifying and using the factors or variables; (2) writing a coherent vignette; and (3) randomly generating the vignettes. Researchers first identify factors hypothesized to influence the respondents’ judgments and decide on specific values of measurement that will be used to represent each factor. Each factor is an independent variable. For example, researchers can choose to identify three factors that might affect the respondents’ judgment, and have two values of measurement for each factor (i.e. whether or not the factor is mentioned in the vignette). Thus, this example is considered a $2 \times 2 \times 2$ or 2^3 factorial design, and a total of eight unique vignettes could be constructed ($2 \times 2 \times 2 = 8$), which represent all possible combinations of factors that will be studied. Then, this vignette population can be randomly or systematically presented to respondents. The manner in which the presentation of vignettes can be (a) sampled from the total vignette population to create a unique set of vignettes for each respondent, or (b) a smaller, fixed number of vignettes selected so multiple responses can be obtained for each case.

The randomized factors within the vignettes, combined with the randomization of the selection of vignettes for each respondent, give the factorial survey a unique capability to investigate the effect of multiple factors in complex decisions, allowing researchers to simulate real-world conditions. In addition, by requiring that researchers specify exactly (a) the factor(s) being measured; (b) the outcome of interest; and (c) the control group (i.e. what would happen in the absence of such factors or treatment), this method allows researchers to precisely measure the effects of the variations in a rigorous manner, effects that might be difficult to discern through real-world observations.

This factorial survey method is traditionally designed to produce the best coverage of dimensions of interests when the number of potential survey respondents is relatively large. Thus, the number of hypothetical cases and factors measured will primarily be determined by the number of respondents expected to participate in the survey. In addition, the size of each treatment group is largely a function of (a) the size of the effect researchers want to be able to detect between the treatment and control group, and (b) the standard deviation of the sample.

Developing the Survey: Treatments and Outcomes

To understand how the relevant factors and values of measurement were selected for this research, we recall the hierarchical sentencing decision process post-Realignment (see Figure 1, *supra*). Even before Realignment, judges traditionally considered aggravating or mitigating factors regarding the offender or offense when imposing a sentence. Aggravating factors include the offender's prior criminal history and the presence of enhancing factors; mitigating factors take into account substance abuse or mental health issues. Post-Realignment, when judges issue an 1170(h) sentence, they will continue to consider these factors in choosing a mitigated, middle, or aggravated sentence under a triad. Based on these same factors, judges may also add years to the county jail sentence because of a statutory enhancement. More importantly, when judges use the new sentencing option of split sentences under AB 109, mitigating factors such as substance abuse or mental health issues will often argue for allocating a large portion of the sentence to supervision.

Thus, given our research questions and the judicial sentencing decision process, we determined three key factors would likely influence judges' sentencing decisions post-Realignment: the effect of (1) the type of charged crime, (2) the defendant's substance abuse history, and (3) the defendant's mental illness history. We also identified four values of measurements for the types of crimes that would allow judges to give an 1170(h) sentence, specifically burglary, drug possession, drug sale, and auto theft. Substance abuse and mental health history will each have two values of measurement, which is whether or not this information is provided to the judge. We hypothesized that these three factors will affect whether or not the defendant receives felony probation with county jail or an 1170(h) sentence, the length and type of 1170(h) sentence, and in cases where a history of substance abuse and/or mental health is mentioned, whether mandatory treatment will be required.

Because this is a 2^4 factorial design (three factors; two with two values and one with four), we initially created 16 vignettes, or hypothetical fact patterns. Several experts, including former Santa Clara County Assistant Public Defender Nancy Brewer and The Honorable J. Richard Couzens (retired) of Placer County, worked with us to develop these vignettes. These hypothetical cases present four different sets of charges and each case may or may not include information about the defendant's substance abuse history and/or mental health history (see Table 1). The hypothetical cases that do not mention a history of substance abuse or mental illness are considered the control groups; such a control permits us to measure differences in responses between treatment and control groups precisely, while allowing us to make some comparisons across charges (see Treatments 1, 5, 9, and 13 in Table 1).

Table 1: Vignette Population

Vignette	Charge	Substance Abuse History	Mental Health History
1	Burglary	N	N
2	Burglary	Y	N
3	Burglary	N	Y
4	Burglary	Y	Y
5	Drug Sale	N	N
6	Drug Sale	Y	N
7	Drug Sale	N	Y
8	Drug Sale	Y	Y
9	Drug Possession	N	N
10	Drug Possession	Y	N
11	Drug Possession	N	Y
12	Drug Possession	Y	Y
13	Auto Theft	N	N
14	Auto Theft	Y	N
15	Auto Theft	N	Y
16	Auto Theft	Y	Y

As we developed the 16 unique vignettes, our survey design experts informed us that we would need a sample size anywhere between 80 to 120 respondents per treatment in order to conduct rigorous statistical analysis. We then consulted with Judge Pennypacker, Judge Couzens, and Stanley Bissey, Executive Director and CEO of the California Judges Association (CJA), the major professional association for judges in California that regularly holds judicial meetings, offers training for new legislative mandates, and distributes surveys on various topics. These consultations led us to the view that we could realistically expect a relatively small sample of judges to participate in the statewide survey. Of the approximately 1,600 Superior Court judges in California, 1,254 judges are members of the CJA; thus, a partnership with the CJA, given their expertise and reach, was an important step in understanding the judicial population. Mr. Bissey, in particular, informed us that approximately 100 judges in California routinely participate in CJA-administered surveys. With the factorial survey design, we were constrained in the number of variations we could do by the total number of potential respondents. Thus, we reduced the total number of treatments to seven hypothetical cases for each participant, with variations on two vignettes (see Table 2).

In each vignette, the respondent was presented with a base scenario, which included information about the defendant’s crime, the charge brought against him, and his criminal history. Because our research survey measures judicial sentencing decisions based on the charge and whether the defendant had a history of substance abuse, mental health, both or neither, we did not manipulate the race, ethnicity, socioeconomic background, age or gender of the defendant. Any variations in these characteristics were

inherent in each vignette. Three of the seven vignettes in the revised vignette population were controlled cases. Of the four remaining vignettes, two were slightly modified regarding when information about substance abuse or mental health history was presented (either early on as part of the vignette itself, or later on in the form of a question about the vignette). Each vignette was followed by an opportunity for participants to comment on its contents and/or raise questions.

Table 2: Revised Vignette Population

Treatment	Charge (Defendant)	Substance Abuse History	Mental Health History
1	Drug Sale (Brown)	N	N
2a	Burglary (Adams)	Y	N
2b	Burglary (Adams)	Y (Delayed Information)	N
3	Drug Possession (Denis)	N	N
4	Auto Theft (Cowan)	N	N
5a	Auto Theft (Edwards)	N	Y
5b	Auto Theft (Edwards)	N	Y (Delayed Information)

While the number of hypothetical cases was reduced, the two modifications allow more nuanced analysis because we could now measure whether our participants’ judgments change with the presentation of more or less information, in addition to measuring how they responded the existence of that information. Moreover, these modifications could provide insight on whether respondents might have imposed a different sentence pre-Realignment. We had determined that there was no feasible way of asking judges directly what sentence they would have imposed pre-Realignment that would avoid undue prompting, which would have influenced the direction of their answers.

Because each survey respondent could be randomly presented with any five of the seven hypothetical cases, we created four different sets of vignettes, with each set presenting the hypothetical cases in a specific order, so that each set would have many responses but would not require hundreds of respondents for substantive analysis (see Table 3). Each of the four sets was randomly presented to respondents, and each set had about the same number of respondents, depending on the total number of respondents (for more information on this process, please see “Qualtrics Software” in the next section).

In addition to the vignettes that tested pre- and post-Realignment decision making, we also posed several demographic questions, which provided the foundation in which to compare how these responses varied by county and other factors. Respondents were required to answer questions concerning the county in which they sit and their experience with criminal cases. However, questions regarding age, race, gender, years on the bench, and degree of familiarity with the Realignment legislation were voluntary.²⁴ These questions were also all designed to observe any salient correlations between survey results and institutional and cultural insights gleaned from analysis done in conjunction with our other projects (i.e. “Voices from the Field: How California Stakeholders View Public Safety Realignment” and “The New Normal? Prosecutorial Charge in California After Public Safety Realignment”).

Table 3: Randomly Presented Vignette Sets

Vignette A		Vignette B		Vignette C		Vignette D	
1	Drug Sale (Brown)	1	Auto Theft (Edwards/late)	1	Burglary (Adams/early)	1	Auto Theft (Cowan)
2	Burglary (Adams/early)	2	Drug Possession (Denis)	2	Drug Possession (Denis)	2	Burglary (Adams/late)
3	Auto Theft (Cowan)	3	Auto Theft (Cowan)	3	Drug Sale (Brown)	3	Drug Possession (Denis)
4	Drug Possession (Denis)	4	Burglary (Adams/late)	4	Auto Theft (Edwards/late)	4	Drug Sale (Brown)
5	Auto Theft (Edwards/early)	5	Drug Sale (Brown)	5	Auto Theft (Cowan)	5	Auto Theft (Edwards/early)

Although we significantly adapted traditional survey methods in our design, our instrument still retained some of its key features, allowing for substantive analysis.

Distribution of Survey Instrument

In order to maximize the number of judges participating in our survey, we utilized online survey design software that is easily accessible via an internet link. In addition, we formally announced our research and distributed our survey through personalized letters to judges in California’s 58 counties and via follow-up calls, with assistance from CJA.

²⁴ Demographic questions are traditional in such studies. At the end, we report some results from the answers to these questions but we do so in a descriptive way because the limits of this study do not support larger conclusions.

Qualtrics Software

Qualtrics is an online survey design tool that allows researchers to easily create, distribute, and manage surveys all in one user-friendly platform. Some benefits of using Qualtrics for this research include: providing researchers with a sophisticated design, allowing for extensive customization of survey questions to meet research needs, and offering multiple options for survey distribution, such as generating a survey link in circumstances where distribution via e-mail is not available (as in this case). An important feature of Qualtrics that is essential to the factorial survey design is its ability to randomly and systematically assign participants to the four sets of vignettes (Table 3), while ensuring that there will be a roughly even number of participants for each set (i.e. if the total number of respondents is 100, the software will randomly assign each respondent so that each vignette set will have 25 respondents).

Distribution

Our contacts within the California judiciary, including Judges Pennypacker and Couzens, also assisted us in evaluating the most effective methods of survey distribution. Judge Allan Hardcastle, the now-former President of CJA, offered to formally announce our research and encourage judicial officers to participate in our survey via the CJA's electronic newsletter, *The VOICE of the Judiciary*. The survey was officially launched on March 12, 2013, and the electronic newsletter was e-mailed out the same day.

The initial response to the survey was poor. Subsequently, Judge Hardcastle connected us to Mr. Bissey, CJA's Executive Director and CEO, to discuss alternative methods of survey distribution. Mr. Bissey offered to share mailing labels, which we then used to send personalized letters via mail to 1,254 Superior Court judges across California, a majority of all the Superior Court judges in the state. By early April, we saw a significant increase in responses to our survey. In mid-April, we conducted phone calls to large and moderate-sized counties as follow-up to the mailed letters. Our goal was to have a representative sample of survey respondents based on county population. By early May, responses had increased to 76, but had stagnated. Judge Pennypacker, who also chairs the Criminal Law Curriculum Committee for the Center on Judicial Education and Research, offered to contact judges he personally knew to encourage their participation in our survey. We sent out a second batch of letters (about 60) to these judges, signed by Judge Pennypacker, and followed-up with a second round of calls to these particular judges. By mid-June, responses had increased to 96, but the number of respondents was still not large or diverse enough for substantive analysis. In early July, we adopted a new, targeted approach in contacting judges: Follow-up calls were then made to judges and

other individuals with connections to judicial officers in 11 counties with the largest numbers of felony admissions as determined by 2009 pre-Realignment data. We used the felony admissions data as a proxy for counties with the largest Realignment caseloads, determining that having judges from those counties participate in our survey would be representative for our research.

By the end of July, we received a total of 112 responses, representing 35 counties (96% of the state population), including the 10 most populous counties in California. We determined at this point that we were unlikely to increase the response rate any further so we began analysis of the data. We also concluded that the response rate was consistent with response rates the California Judges Association receives when conducting its own analysis; represented a broad cross-section of counties; and represented a reasonable sampling of state judges.

Findings

Baseline Data

To surmise how patterns of preferences expressed in the survey hypotheticals reflect a change correlated with AB 109, we needed a baseline. No available baseline study of similar hypotheticals pre-AB 109 exists, but, regardless, the best baseline is the pattern of actual sentences. We relied on data collected by the California Office of the Attorney General (OAG) for the annual *Crime in California* report as our source. These data are somewhat comparable with the sentence preferences gleaned from our hypotheticals, but only imperfectly, for the following reasons.

First, the OAG data classifies crimes into three broad categories: violent, property, and drug. All of the hypotheticals in this survey fall into categories of either property (burglary, auto theft) or drug crimes. Thus, for the reach of the hypotheticals, these patterns of pre-AB 109 sentencing for the relevant category can supply a rough baseline. But the OAG data still represent broader classifications than we aim for in the survey.

Second, the OAG data only records types of sentences, whereas our survey tests choices that differ in both type and length. Moreover, the OAG categories are averages among a heterogeneous set of crimes within each category, not for specific penal codes crimes within each category. Third, the OAG data also pre-date the N3 and non-N3 distinction so they are not sorted in ways that map onto AB 109. However, the OAG's subcategories of property and drug felonies roughly approximate N3 crimes, so they are reasonable proxies for our analysis. Fourth, the AG data do not account for the more nuanced variables in the hypotheticals, such as various enhancements based on the nature of the crime or the prior record; prior record or the factors justifying an upper term within a triad; or mental health or substance abuse factors that might call for mitigation (or even diversion). Then again, to avoid excess length and complexity in our survey, we did not include one sub-categorization of sentence type: Whereas the OAG report breaks probation sentences down into those with a mandatory jail term and those without, we only posited felony probation with a mandatory jail term.

The OAG's sentencing data from 2005-2010 (our baseline for pre-Realignment) appears in Table 4. The key figures are summarized as follows:

- (1) For property offenses ending in felony convictions, 22% were sentenced to state prison; 9.8% were given probation without jail; 65.3% were given probation with

jail; and 2.6% were sentenced to county jail. Thus, a subtotal of 75.3% received some form of probation.

(2) For drug offenses ending in felony convictions, 18.9% were sentenced to state prison; 33.1% were given probation without jail; 43.6% were given probation with jail; and 4.3% were sentenced to county jail. Thus, a subtotal of 76.7% received some form of probation.

Table 4: Percentage of Adult Arrestees by Convicted Offense Category and Type of Sentence, 2005-2010²⁵

	Sentence	2005	2006	2007	2008	2009	2010	Average, 2005-10
Violent Offenses	State Institutions ²⁶	18.9	18.4	19.2	22	23.9	24.7	21.2
	Probation	10.4	10.5	11.5	10.9	9.5	8.1	10.2
	Probation with Jail	66.8	67.6	65.1	63.1	62.7	63.0	64.7
	Jail	3.9	3.5	4.2	4.0	3.9	4.2	4.0
Property Offenses	State Institutions	22.5	22.2	21.5	21.6	22.6	23.1	22.3
	Probation	9.3	10.1	10.7	11.4	9.6	7.9	9.8
	Probation with Jail	65.7	65	64.8	64.3	65.3	66.5	65.3
	Jail	2.5	2.7	2.9	2.7	2.5	2.5	2.6
Drug Offenses	State Institutions	19.6	18.8	19.4	18.4	19.2	18.1	18.9
	Probation	32.3	34.2	32.6	34.8	31.7	33.3	33.2
	Probation with Jail	43.9	42.8	43.4	42.6	44.9	44.4	43.7
	Jail	4.2	4.3	4.6	4.1	4.2	4.2	4.3

*Figures shown are percentages of total convicted offense category.

²⁵ California Office of the Attorney General. "Table 40: Adult Felony Arrestees Convicted, 2005-2010, By Convicted Offense Category and Type of Sentence." *Crime in California*. (2005-2010). <http://oag.ca.gov/sites/all/files/agweb/pdfs/cjsc/publications/candd/cd10/preface.pdf>. A first reading of these numbers might suggest that California sentences an anomalously high percentage of convicted offenders to prison or jail, as compared to the reported national numbers that suggest that the great majority of sentences are for probation, and that at any point in time there are far more offenders under supervision than in jails or prisons. See Petersilia, Joan, "Probation in the United States." Part One. Joan Petersilia. *Perspectives* (Spring 1998): 30-41. http://www.appa-net.org/eweb/Resources/PPPSW_2013/docs/sp98pers30.pdf. But a true apples-to-apples comparison would reveal that a great percentage of probationers in the United States received at least a brief "taste of jail" as a condition of probation. Thus, a more nuanced look at offender outcomes would render the California numbers roughly consistent with national trends.

²⁶ The "state institutions" category includes sentences to death, prison, California Rehabilitation Center (civil addict), and the Division of Juvenile Justice (youth authority).

The survey hypotheticals, the sentencing choices offered respondents, and the distribution of answers (both absolute numbers and percentages) are provided in Appendices A and B.

What follows is a descriptive summary of the results for each hypothetical, along with an interpretive summary of the individual comments from respondents. For each of the hypotheticals, we extract from the distribution several key numbers:

- (1) The percentage of responses choosing felony probation with a jail term as a condition of probation;
- (2) The percentage of responses choosing an 1170(h) county jail sentence;
- (3) The average length, in months, of the preferred sentence among the responses choosing an 1170(h) sentence;
- (4) Among respondents choosing 1170(h) sentences, the percentage who would frame the sentence as a split sentence; and
- (5) The sum of respondents choosing felony probation and a split sentence, compared to the felony probation percentage from the 2005-2010 baseline drawn from the OAG figures.

These numbers, however, imperfect, give the best sense of the pattern of judicial preferences for particular crimes and offenders and make possible a comparison to the pre-AB 109 OAG data.²⁷

Survey Results

Discussions of the patterns of answers to the hypotheticals in our judicial survey are provided below. The full hypothetical fact patterns and questions, as well as the summary of the survey results, can be found in Appendices A and B. As for our interpretive summary of judges' comments, no formula exists for analyzing this type of qualitative and heterogeneous data. For our purposes here, we isolate and paraphrase comments that have multiple support or offer especially salient insights. Those comments inform the conclusions below.

²⁷ At least two more averages can be extracted from each set. If we set the "sentence" for a felony probation plus mandatory jail time as zero (since technically it is not a sentence but a probation condition), we can put all the responses in the denominator and then recalculate the average sentence—which would then of course be lower. In addition, with respect to split sentences, one could estimate the average ratio of jail-to-supervision chosen by respondents who would issue a split sentence and then factor that fraction into the chosen 1170(h) sentence to estimate the chosen actual jail time. We believe that these latter measures are too rough to be useful; indeed with the recommend "split" answers the respondents were just asked for ranges (i.e., "up to one half"), not specific fractions. Thus, the results for these split sentence fractions are reported only in narrative form where salient.

Hypothetical One: Sale of Methamphetamine

This offender, Brian Brown, has numerous priors for both misdemeanors plus a felony recidivist-theft prior and a felon-in-possession gun prior.

As shown in Table 5, the most notable outcome here is, compared to all the other hypotheticals, a higher percentage of 1170(h) sentences, a lower percentage of probation sentences, and a long average term of years for the jail sentences. We see a very even distribution of outcomes from probation up to a possible five year term, and a fractioning of split sentences roughly averaging a three to one ratio—in other words a tilt towards more jail and less supervision under a split sentence.

Table 5: Summary of Responses for Hypothetical One

Percentage of respondents choosing felony probation with a jail term as a condition of probation:	12.0%
Percentage of respondents choosing an 1170(h) county jail sentence:	88.0%
Average length (months) of the preferred sentence among the respondents choosing an 1170(h) sentence:	40.7 months ²⁸
Of respondents choosing 1170(h) sentences, percentage who would frame the sentence as a split sentence:	40.0%
Sum of respondents choosing felony probation and a split sentence:	52
OAG felony probation percentage from 2005-2010 average:	76.7%
Total number of respondents for this hypothetical:	112

A compendium of the comments²⁹ on this question reflects the concern that trafficking in methamphetamine is viewed with unusually strong condemnation as compared with other N3 crimes:

- *Brown's crime is very socially harmful; while he has weapons priors, he does not himself have a drug problem that could mitigate or allow for rehabilitation.*
- *The system's ability to reduce Brown's capacity for crime is now very limited, because he had previously violated probation, but he should be tested one more time on supervision, with a required risk-needs assessment.*
- *It is unrealistic to burden probation with his case because he has already failed earlier conditional tests, and AB 109 does not itself impose enough consequences for failure.*

²⁸ The average length in months of the preferred sentence among respondents for this hypothetical was calculated by adding the preferred sentence (in months) given by the respondents and dividing the total by the number of respondents.

²⁹ Comments from respondents for all hypotheticals were summarized and paraphrased both for ease of reading and to capture the salient points.

- *Some prosecutors will object to split sentences; moreover, defendants themselves do not want split sentences that would impose any kind of tail, betting instead that a straight sentence might lead to early release.*

Hypothetical Two: Second Degree Store Burglary with Substance Abuse

This offender, Anthony Adams, has misdemeanor and felony and violation priors. In this version of the hypothetical, the information that the offender has an admitted substance abuse problem is given up front as part of the vignette.

Table 6 shows that for this store burglary, a large majority would sentence him to felony probation, and among the recommended 11070(h) sentences we see a tilt toward the lower end (though the fractioning of a split sentence, in the small minority of cases that would give it, averaged about half the sentence).³⁰

Table 6: Summary of Responses for Hypothetical Two

Percentage of respondents choosing felony probation with a jail term as a condition of probation:	64.0%
Percentage of respondents choosing an 1170(h) county jail sentence:	15.0%
Average length (months) of the preferred sentence among the respondents choosing an 1170(h) sentence:	20.8 months ³¹
Of respondents choosing 1170(h) sentences, percentage who would frame the sentence as a split sentence:	7.0%
Sum of respondents choosing felony probation and a split sentence:	71
OAG felony probation percentage from 2005-2010 average:	75.3%
Total number of respondents for this hypothetical:	55

In addition, all respondents said they would impose mandatory treatment; virtually all said their counties had a drug treatment court; and half said they would recommend the offender to that drug court. We surmise that the split on that last question reflects different views on whether the local drug court can be counted on to ensure mandatory treatment, whether the offender’s record make him too culpable to be a worthy

³⁰ There appears to have been confusion in many of the answers on the secondary question of how not knowing about Mr. Adams’s substance abuse problem might alter the response, since many who had first chosen felony probation said they would change their mind, but still chose felony probation. Thus we cannot draw any inferences from this secondary question.

³¹ The average length in months of the preferred sentence among respondents for this hypothetical was calculated by adding the preferred sentence (in months) given by the respondents and dividing the total by the number of respondents.

candidate for diversion, or whether the local drug court is permitted to take offenders whose current crime is not a drug crime (see below).

A compendium of the comments on this question reflects the concern that however the sentence is designed, its goal must be to get the offender into mandatory treatment for his substance abuse.

- *Mandatory treatment should be imposed in lieu of jail time.*
- *Although the choice does not appear in the hypothetical, a preferred sentence would be probation with no jail time as a condition but with mandatory treatment instead.*
- *Unfortunately, in some counties, diversion into drug treatment or mandatory drug treatment is not possible or likely where the current crime is not itself a drug crime; some defendants resist a plea to mandatory treatment even here it is legally or practically possible.*
- *De facto diversion is sometimes possible through early disposition programs.*

Note: For this hypothetical, respondents were asked a secondary question as to how not knowing about the substance abuse problem would have affected their answer. Apparently many respondents misunderstood this, because a large number who had already chosen felony probation said they would change their answer but then chose felony probation again. Thus, we are not using the results from this secondary question.

Hypothetical Two: Delayed Substance Abuse Information

This variation focuses more specific attention on the Mr. Adams's substance abuse by asking it as a secondary question as to whether knowledge thereof would alter the earlier choice.

Table 7: Summary of Initial Responses for Hypothetical Two, Delayed Information

Percentage of respondents choosing felony probation with a jail term as a condition of probation:	39.0%
Percentage of respondents choosing an 1170(h) county jail sentence:	56.0%
Average length (months) of the preferred sentence among the respondents choosing an 1170(h) sentence:	23.5 months ³²
Of respondents choosing 1170(h) sentences, percentage who would frame the sentence as a split sentence:	28.0%
Sum of respondents choosing felony probation and a split sentence:	67
OAG felony probation percentage from 2005-2010 average:	75.3%
Total number of respondents for this hypothetical:	57

Table 7 shows that when respondents did not know about the substance abuse problem, a relatively low percentage chose felony probation and a relatively high percentage chose the 1170h sentence, of which half would make it as split sentence, with a strong tilt towards a fraction of more than half jail time.

When the secondary question directed attention to whether knowledge of the offender's substance abuse problem would change their choice, roughly half said they would. The results are displayed in Table 8.

Table 8: Summary of Modified Responses for Hypothetical Two, Delayed Information

Percentage of respondents choosing felony probation with a jail term as a condition of probation:	68.0%
Percentage of respondents choosing an 1170(h) county jail sentence:	22.0%
Average length (months) of the preferred sentence among the respondents choosing an 1170(h) sentence:	13.3 months ³³
Of respondents choosing 1170(h) sentences, percentage who would frame the sentence as a split sentence:	22.0%
Sum of respondents choosing felony probation and a split sentence:	90
OAG felony probation percentage from 2005-2010 average:	75.3%
Total number of respondents for this hypothetical:	28

A compendium of comments on this question reflects a focus on mandatory drug treatment for this offender.

³² The average length in months of the preferred sentence among respondents for this hypothetical was calculated by adding the preferred sentence (in months) given by the respondents and dividing the total by the number of respondents.

³³ The average length in months of the preferred sentence among respondents for this hypothetical was calculated by adding the preferred sentence (in months) given by the respondents and dividing the total by the number of respondents.

- *Even where a drug diversion court is available, some respondents are concerned that treatment through those programs is insufficiently rigorous.*
- *The offender needs at least six months of rigorous treatment, to follow a jail term.*
- *The offender is on a worrisome trajectory but he is still capable of correction if managed rigorously, preferably in a post-jail mandatory residential program.*

Hypothetical Three: Auto Theft

This offender, Chris Cowan, has misdemeanor and probation violation priors and a felony possession of stolen property; he was being supervised on felony probation when he was arrested.

Table 9 shows that 42% of respondents chose felony probation with a slight majority favoring an 1170(h) jail term, with an average at about the middle term and a tilt towards less than half of the sentence as jail time under a split sentence.

Table 9: Summary of Responses for Hypothetical Three

Percentage of respondents choosing felony probation with a jail term as a condition of probation:	42.0%
Percentage of respondents choosing an 1170(h) county jail sentence:	57.0%
Average length (months) of the preferred sentence among the respondents choosing an 1170(h) sentence:	29.3 months ³⁴
Of respondents choosing 1170(h) sentences, percentage who would frame the sentence as a split sentence:	22.2%
Sum of respondents choosing felony probation and a split sentence:	64
OAG felony probation percentage from 2005-2010 average:	75.3%
Total number of respondents for this hypothetical:	112

A compendium of the comments suggests the view that although this is not a drug crime, because of the offender’s alcohol problem, the sentence should lead to treatment.

- *Although he failed on earlier supervision, he could benefit from another opportunity.*
- *But (as in Hypothetical Two above), the fact the current offense is not a drug crime may limit the chance for imposing mandatory treatment.*

³⁴ The average length in months of the preferred sentence among respondents for this hypothetical was calculated by adding the preferred sentence (in months) given by the respondents and dividing the total by the number of respondents.

- *If he does well on treatment he is a good prospect for success on probation. A combination of jail time and supervision would be efficacious, whether via felony probation or a split sentence.*
- *The length of any jail time imposed here, especially on felony probation, should depend in part on how the nature of his previous violations and the length of much time he previously served.*

Hypothetical Four: Possession of Methamphetamine for Sale

This offender, David Denis, is himself a heavy methamphetamine user with possession priors who violated Proposition 36 probation.

For this offender a relatively low 35% of respondents chose felony probation; a great majority would give 1170(h) sentence with average of the middle term, as shown in Table 10. The fraction on split sentences averages more than half.

A compendium of the comments here suggests that while methamphetamine use itself is not viewed as an egregious felony, this offender seems to be incorrigible.

- *He has shown himself to be not amenable to supervision.*
- *He presents a somewhat hopeless case, mitigated by the fact that the current offense itself is not egregious.*
- *Without much optimism for success, the sentence should tilt toward a jail term with mandatory treatment to follow.*
- *Conventional supervision is not likely to change him.*

Table 10: Summary of Responses for Hypothetical Four

Percentage of respondents choosing felony probation with a jail term as a condition of probation:	35.0%
Percentage of respondents choosing an 1170(h) county jail sentence:	66.0%
Average length (months) of the preferred sentence among the respondents choosing an 1170(h) sentence:	23.7 months ³⁵
Of respondents choosing 1170(h) sentences, percentage who would frame the sentence as a split sentence:	29.0%
Sum of respondents choosing felony probation and a split sentence:	64
OAG felony probation percentage from 2005-2010 average:	75.3%
Total number of respondents for this hypothetical:	112

Hypothetical Five: Auto Theft with Mental Illness

This offender, Evan Edwards, has misdemeanor priors for theft and for being drunk in public. In addition, he was on felony probation for stolen property possession when arrested and he is frequently drunk when arrested. His untreated mental illness is stated in the original hypothetical.

Table 11 shows that a large majority of respondents chose felony probation, with 1170(h) sentences averaging at the middle term. Of the latter, a majority chose a split sentence, with the recommended split fraction at the lenient end—less than half the sentence as jail time.

On the secondary question about whether not knowing of the untreated mental illness would change the chosen sentence, a substantial number of respondents shifted from felony probation to an 1170(h) sentence and recommended split sentence fractions averaging more than half the sentence, as displayed in Table 12.

³⁵ The average length in months of the preferred sentence among respondents for this hypothetical was calculated by adding the preferred sentence (in months) given by the respondents and dividing the total by the number of respondents.

Table 11: Summary of Initial Responses for Hypothetical Five

Percentage of respondents choosing felony probation with a jail term as a condition of probation:	59.0%
Percentage of respondents choosing an 1170(h) county jail sentence:	38.0%
Average length (months) of the preferred sentence among the respondents choosing an 1170(h) sentence:	32.6 months ³⁶
Of respondents choosing 1170(h) sentences, percentage who would frame the sentence as a split sentence:	26.0%
Sum of respondents choosing felony probation and a split sentence:	85
OAG felony probation percentage from 2005-2010 average:	75.3%
Total number of respondents for this hypothetical:	51

Table 12: Summary of Modified Responses for Hypothetical Five

Percentage of respondents choosing felony probation with a jail term as a condition of probation: ³⁷	43.0%
Percentage of respondents choosing an 1170(h) county jail sentence:	56.0%
Average length (months) of the preferred sentence among the respondents choosing an 1170(h) sentence:	32.6 months ³⁸
Of respondents choosing 1170(h) sentences, percentage who would frame the sentence as a split sentence:	29.0%
Sum of respondents choosing felony probation and a split sentence:	72
OAG felony probation percentage from 2005-2010 average:	75.3%
Total number of respondents for this hypothetical:	30

Summary of judges' comments on this hypothetical include the following:

- *A good case for a mental health diversion court if it is possible.*
- *Mental health treatment should be mandatory because he already failed conventional probation.*
- *Felony probation with mandatory treatment in lieu of a jail term as a condition of probation is a good approach.*
- *Poor linkage/lack of collaboration between court and mental health agency is an obstacle in such cases.*

³⁶ The average length in months of the preferred sentence among respondents for this hypothetical was calculated by adding the preferred sentence (in months) given by the respondents and dividing the total by the number of respondents.

³⁷ The answer options for follow-up questions to Hypothetical Five offer two felony probation options: (1) felony probation with a jail term as a condition of probation—10%; and (2) felony probation with a jail term and mandatory treatment as a condition of probation—33%. Thus, we summed the percentages of these two answers, and it is the sum that shown in this table.

³⁸ The average length in months of the preferred sentence among respondents for this hypothetical was calculated by adding the preferred sentence (in months) given by the respondents and dividing the total by the number of respondents.

- *There is a risk that a mental health agency will be too lenient in allowing the offender a choice of treatment protocols.*

Hypothetical Five: Delayed Mental Illness Information

In this variation, special attention is focused on the mental illness factor by making it a secondary question.

Table 13 shows that one third of respondents chose felony probation, with the majority giving 11070(h) sentences and the split fraction averaging more than half.

Table 13: Summary of Initial Responses for Hypothetical Five, Delayed Information

Percentage of respondents choosing felony probation with a jail term as a condition of probation:	34.0%
Percentage of respondents choosing an 1170(h) county jail sentence:	66.0%
Average length (months) of the preferred sentence among the respondents choosing an 1170(h) sentence:	32.8 months ³⁹
Of respondents choosing 1170(h) sentences, percentage who would frame the sentence as a split sentence:	25.0%
Sum of respondents choosing felony probation and a split sentence:	59
OAG felony probation percentage from 2005-2010 average:	75.3%
Total number of respondents for this hypothetical:	61

On the secondary question about *knowing* of the untreated mental illness, an extraordinary 79% would change the sentence: with the overwhelming majority giving felony probation, as shown in Table 14.

A compendium of the comments reflects the view that this is an ideal case for mental health treatment, and divert to a mental health court where possible.

- *Where jail space is scarce, putting this offender in jail is wasteful.*
- *Unfortunately, even where felony probation would be the right sentence, some defendants are resisting this option because an 1170(h) sentence might be more lenient –a shorter tail or none at all upon early release.*

³⁹ The average length in months of the preferred sentence among respondents for this hypothetical was calculated by adding the preferred sentence (in months) given by the respondents and dividing the total by the number of respondents.

Table 14: Summary of Modified Responses for Hypothetical Five, Delayed Information

Percentage of respondents choosing felony probation with a jail term as a condition of probation: ⁴⁰	79.0%
Percentage of respondents choosing an 1170(h) county jail sentence:	12.0%
Average length (months) of the preferred sentence among the respondents choosing an 1170(h) sentence:	24 months ⁴¹
Of respondents choosing 1170(h) sentences, percentage who would frame the sentence as a split sentence:	12.0%
Sum of respondents choosing felony probation and a split sentence:	91
OAG felony probation percentage from 2005-2010 average:	75.3%
Total number of respondents for this hypothetical:	48

Demographic and Other Characteristics of Respondents

As mentioned previously, our survey allowed respondents to voluntarily provide demographic information. Because the majority of respondents provided this information—over 87.5% of all 112 respondents provided some demographic information—we were able to sort their answers across all seven hypotheticals by demographics and then compare their responses to the statewide averages. More information about how demographic information affected the percentage of judges imposing felony probation and those imposing an 1170(h) sentence is provided in the “Analysis” section and in Appendix D. Table 15 below provides demographic and other information—age range, gender, race, and self-rated knowledge of Realignment (with 10 indicating the most knowledge of Realignment)—about the survey’s respondents.

⁴⁰ The answer options for follow-up questions to Hypothetical Five offer two felony probation options: (1) felony probation with a jail term as a condition of probation—4%; and (2) felony probation with a jail term and mandatory treatment as a condition of probation—75%. Thus, we summed the percentages of these two answers, and it is the sum that shown in this table.

⁴¹ The average length in months of the preferred sentence among respondents for this hypothetical was calculated by adding the preferred sentence (in months) given by the respondents and dividing the total by the number of respondents.

Table 15: Survey Demographic and Other Information

	Demographic and Other Information	Number	Percent
Age Range (107 judges)	30-39 years	0	0
	40-49 years	13	12
	50-59 years	57	53
	60-69 years	32	30
	70 years or older	5	5
Gender (106 judges)	Male	85	80
	Female	21	20
Race (98 judges)	White/Non-Hispanic	74	76
	Hispanic	14	14
	Black or African American	7	7
	American Indian or Alaska Native	0	0
	Asian	3	3
	Native Hawaiian or Other Pacific Islander	0	0
Knowledge of Realignment (103 judges)	1-4	10	10
	5-7	26	25
	8-10	67	65

Analysis

Despite the statistical limitations in this survey, certain patterns and themes can be extrapolated, especially when the numbers are construed in light of a fairly ample array of written comments. In addition, these patterns and themes address both our hypotheses and research questions outlined at the beginning of this report.

The dominant pattern of the responses is that **for very common AB 109 felonies, judges choose to impose sentences with the goal of *managing offenders*, generally aiming at a combination of a “taste of jail” and rigorous supervision,⁴² in the hopes of redirecting the offender away from crime. Judges want “jail plus a tail.”**

For all the hypotheticals, a majority of the respondents chose a sentence that includes some combination of jail time and supervision. The majority is the smallest for Hypothetical One, presumably reflecting a condemnation of trafficking methamphetamine and an especially egregious crime. The majority is the largest for property crime offenders who exhibit mental illness or substance abuse problems.

The responses do not suggest that large numbers of judges would use AB 109 to turn county jail into “county jail prisons” for long straight sentences—at least for these fairly generic AB 109 felonies. The reason may lie either in sensitivity to county financial burdens or jail crowding, but the stronger reason may be a continuation of pre-AB 109 tendency toward felony probation or its equivalent.

Research Questions

(1) How often do judges choose an 1170(h) county jail sentence, as opposed to a traditional felony probation sentence? To what extent, and for what types of offenses and offenders, do judges still choose a traditional felony probation outcome?

After AB 109, judges trying to lengthen the period of incarceration or of mandatory supervision for N3 felonies often found **traditional felony probation a better alternative than an 1170(h) sentence**. This pattern aligns with our hypothesis regarding the differences between felony probation and an 1170(h) sentence. Table 16

⁴² The combination of a “taste of jail” and rigorous supervision refers to both felony probation (which usually includes up to one year in jail as a condition of probation) and an 1170(h) split sentence.

shows that **57% of judges preferred to give an 1170(h) sentence**—at least in the initial question following the fact pattern—**over a felony probation sentence, except when the fact pattern contains information about the offender’s substance abuse or mental illness** (bolded in table).

Table 16: Percentage of Judges Choosing Felony Probation vs. 1170(h) Sentence, by Hypothetical and Average⁴³

	Percent Felony Probation	Percent 1170(h) Sentence
Hypothetical One: Drug Sale	12	88
Hypothetical Two: Burglary	64	27
Hypothetical Two: Burglary (Delayed)	39	56
Hypothetical Three: Drug Possession	42	57
Hypothetical Four: Auto Theft	35	65
Hypothetical Five (Initial)	59	38
Hypothetical Five: Delayed (Initial)	34	66
Average	41	57

While a significant percentage of respondents chose traditional felony probation for certain hypotheticals indicated above, these percentages are generally lower than the OAG figures for the relevant category of crimes (see tables in “Findings” section). But because the OAG data include less aggravated versions of these crimes, and, most notably, large numbers of first-time offenders or those with far fewer priors or violations than the offenders in the hypotheticals, even the percentage for felony probation in the survey is likely to be fairly similar to the felony probation figures for pre-AB 109 years. Thus, the tendency of judges to use felony probation as an alternative to state prison now continues as a tendency to use felony probation to avoid placing certain offenders in county jail on a long jail sentence.

⁴³ The percentages shown in this table only include data from answers to questions immediately following the information about the offender and his offense (the hypothetical vignette). Follow-up questions within each hypothetical regarding how judges would respond to the addition or absence of answers were omitted.

(2) When judges do choose an 1170(h) sentence, how often do they “split” the sentence and under what circumstances? When judges choose a split sentence, what is the total length of the sentence and what fractions of jail and supervision time do they choose for various types of offenses and offenders?

On the other hand, Table 17 shows that **when judges choose an 1170(h) sentence, approximately 47% of the time, they chose a split sentence as opposed to a straight jail sentence.** It is important to note that this percentage is significantly higher than the statewide average of 30% for split sentences (see Figure 2). Without having conducted interviews, it is impossible to say for certain whether these judges believe split sentences are harsher than felony probation.⁴⁴ But because felony probation and split sentences are somewhat similar, perhaps the key outcome is this: When we add the felony probation answers to the split sentence answers for each hypothetical, that sum comes very close to, and often exceeds, the traditional felony probation outcomes in the OAG data.

It is possible that some judges who would otherwise have imposed felony probation have substituted 1170(h) split sentences for probation on the theory that it can achieve the same goals, and that it is a mandate reflecting the intent of AB 109. Yet some judges may resist split sentences because they are more comfortable with the formalities of probation; because they fear that supervision will be less rigorous under split sentence supervision than would be true under probation; or because they prefer the extra control effects of waiver of time credits, installation of the maximum possible sentence upon revocation, and a maximum period of up to five years, if that is longer than the maximum sentence.

On the other hand, variations in choice as between split sentences and felony probation may reflect: (1) a virtual barrier to split sentences in some counties where prosecutors oppose them and can essentially block them by not making them part of plea bargains or (2) uncertainty or misunderstanding of the legal relationship between felony probation and split sentencing, as discussed, *supra*, in our “Hypotheses” section, where we note the unresolved statutory ambiguities on this question.

⁴⁴ In Chapter 8: Judges of Petersilia’s “Voices from the Field: How California Stakeholders View Public Safety Realignment” report, *supra*, at 139-155, detailed interviews with sentencing judges similarly reveal very varied—and often ambivalent—views on when to hand down 1170(h) sentences instead of felony probation. Views often vary widely on when, and how, to split a sentence. The interviews in that report suggest some factors influencing a judge’s concerns in making these choices, notably including their relatively greater familiarity with the process of felony probation and their differing expectations as to the quality of 1170(h) supervision as compared to traditional probation.

In addition, among judges who chose split sentences, there is tremendous variation in the chosen fraction as between jail time and supervision. Table 17 also shows the average length in months of respondents choosing split sentences per hypothetical and across all hypotheticals. The variation in judges' chosen fraction for split sentences within and across hypotheticals has resulted in an average length in split sentence of approximately 27 months, or just over two years. This variation may be the result of the absence of any statutory criteria in AB 109 as to how the split should determine (or whether the split should happen at all), as compared to the relatively clear criteria for traditional felony probation.

Table 17: Percentage of Judges Choosing Split Sentence and Length of Split Sentence, by Hypothetical and Average⁴⁵

	Percent Who Chose Split Sentence	Length of Split Sentence (months)
Hypothetical One	46	40.7
Hypothetical Two	47	20.8
Hypothetical Two: Delayed (Initial)	50	23.5
Hypothetical Three	39	29.3
Hypothetical Four	44	23.7
Hypothetical Five (Initial)	68	32.6
Hypothetical Five: Delayed (Initial)	38	32.8
Average	47	27.3

(3) For each of the prior questions, how uniform or how varied are the judges' choices across and within California's 58 counties?

The variance in judges' choices occurs both at the county level and at the demographic level. We briefly describe these deviations below; more information about county variance and demographic variance can be found in Appendices C and D.

⁴⁵ The percentages shown in this table only include data from answers to questions immediately following the information about the offender and his offense (the vignette). Follow-up questions within each hypothetical regarding how judges would respond to the addition or absence of answers were omitted.

County Variance

Comparative analysis by county can yield very few patterns in this survey, in part because in many counties, the number of respondents was so small. On the whole, in counties with a reasonable number of responses, the distribution of answers from most of the hypotheticals roughly resembled the statewide distribution reported above. In a few instances, respondents from a particular county did diverge significantly from the state average for certain hypotheticals.

For example, for Large Urban Southern California County A (see Appendix C for more information), none of the respondents chose felony probation in Hypothetical Two when they were not given information about a mental health issue upfront. A relatively small percentage gave felony probation even when informed about the mental health issue. Similar divergences at the low end for felony probation occurred in Large Urban Southern California Counties B and Large Central Valley County A for Hypothetical Three regarding auto theft. A parallel phenomenon can be seen in Hypothetical Five when the mental illness information is divulged at the beginning.

Although these and similar divergences appear interesting, the data does not permit any clear conclusions. It might well be that with more information about practices and customs in the particular county, research might be able to correlate these divergences with traditional sentencing patterns or more general criminal justice policies in those counties. This survey, however, can only be an indicator for the need for that research; it cannot provide that research. In addition, independent information suggests that in some counties, prosecutors are highly averse to recommending split sentences and such a policy might influence divergent outcomes in our survey results.

Demographic Variance

Given the limitations of the study, we cannot draw any important conclusions from this demographic data. However, sorting the respondents' answers by demographic information does provide some interesting deviations from the statewide averages for several hypotheticals.

Knowledge of Realignment

This demographic question asked respondents to rank their relative knowledge of Realignment and its provisions from a scale of one to ten, ten indicating that the judge has high familiarity with the legislation.

- Hypothetical One (Drug Sale): Results show that regardless of ranking on knowledge of Realignment, the majority of respondents still imposed an 1170(h) sentence. This supports the finding stated previously that judges sentence methamphetamine sales harshly.
- Hypothetical Two (Burglary): Only 35% of judges who rank their knowledge of Realignment (on a scale of one to ten) between five and seven imposed a felony sentence, compared to 64% of the total respondent pool statewide.
- Hypothetical Three (Auto Theft): Survey results show that as respondents increase their ranking—as their knowledge of Realignment increases—they were more likely to impose a felony probation sentence. In contrast, judges seem to be less likely to impose an 1170(h) sentence as their knowledge of Realignment increases. In addition, only 20% of judges who rank their knowledge of Realignment between one and four imposed a felony probation sentence.
- Hypothetical Four (Drug Possession): As respondents increase their ranking, they were slightly less likely to impose an 1170(h) sentence. In contrast, judges seem to be slightly more likely to impose an 1170(h) sentence as their knowledge of Realignment increases.
- Hypothetical Five, Delayed Information (Auto Theft): Similar to Hypothetical Three, as respondents increase their ranking, they are more likely to impose a felony probation sentence. However, as judges seemed to be less likely to impose an 1170(h) sentence as their knowledge of Realignment increases.

Age Range

- Hypothetical One (Drug Sale): 40% of judges ages 70 and over imposed a felony probation sentence, compared to 12% of the total respondent pool statewide.
- Hypothetical Two (Burglary): All judges aged 40-49 imposed a felony probation sentence, compared to 64% of the total respondent pool statewide.
- Hypothetical Four (Drug Possession): Only 15% of those aged 40-49 gave felony probation versus 35% of the total respondent pool statewide
- Hypothetical Five (Auto Theft): 14% of those aged 40-49 and 33% of those aged 70+ gave felony probation, although 59% of the total respondent pool statewide imposed felony probation.

Gender

- Hypothetical Two (Burglary): 75% of females gave felony probation, compared to 64% of the total respondent pool statewide.

- Hypothetical Two, Delayed Information (Burglary): 56% of females imposed a felony probation sentence, whereas only 39% of the total respondent pool statewide.

Race

- Hypothetical Five, Delayed Information (Auto Theft): Only 11% of Hispanic judges gave a felony probation sentence, versus 34% of the total respondent pool statewide.
- Hypothetical Two, Delayed Information (Burglary): None of the Hispanic judges imposed a felony probation sentence, compared to 39% of the total respondent pool statewide.

Conclusions and Recommendations

A strong inference from this study is that in a great majority of AB 109 felony cases, judges believe that rigorous supervision, often including mandatory treatment, is essential to public safety. Yet because the legislation is unclear as to the relationship between felony probation and split sentences, judges understandably exhibit different views on whether to choose traditional felony probation or 1170(h) split sentences when they want offenders mandated to community supervision.

While judges generally favor a combination of jail time and rigorous supervision for AB 109 offenses, there is either conflict or uncertainty (or both) as to the relationship between felony probation and 1170(h) split sentences to achieve these goals. When judges choose 1170(h) sentences, there is wide variation in the choice of length of sentence with a range of roughly one to three years. The limited number of respondents makes it difficult to determine how much of this variation is inter-county and how much, in large counties, is intra-county. Moreover, lack of detail in the pre-AB 109 data makes it impossible to determine how these variations compare to the variations in pre-AB 109 prison sentences. In addition, now that these felony jail sentences can be split, it is difficult to evaluate the degree of variation. How, for example, do we compare the severity of a two-year straight sentence with a three-year split sentence? Judges may await, and surely will benefit from, better information about the relative performance of probation officers in supervising AB 109 mandatory supervision offenders on split sentences, and traditional felony probationers.

In addition, although our survey did not directly address this question, the pattern of choices, and some of the written comments, are consistent with a key observation from the Judges chapter of the *Voices from the Field* report: That judges fear early release by sheriffs and therefore choose split sentences over straight sentences because they believe the split can ensure both more jail time and the supervision tail.

While this report focuses on a very distinct new sentencing regime in California, it has at least two notable sets of implications for other jurisdictions considering sentencing reform. First, regarding discretion and uniformity, California moved from indeterminate to determinate sentencing 40 years ago, and Realignment was not announced as a change in the modern determinate scheme. Nevertheless, Realignment introduced new elements of discretionary sentencing (in the menu of choices available under 1170(h) sentences) and indeterminacy (in that the actual time to be served has become somewhat less certain upon the initial sentence. In addition, this new regime was inserted next to an unchanged felony probation system. Jurisdictions contemplating sentencing reforms should be wary that introducing similar new options next to older options, without

formal guiding criteria, may be inviting wide variation in judicial practice (and the attendant possible unjustified disparity).

Second, our survey shows that in deciding whether and how to hand down sentences involving community supervision, judges are often influenced by their perceptions of the quality and rigor of supervision under the various options. Jurisdictions that rely heavily on judicial discretion to impose supervision should strive to ensure sufficient funding and quality of training and other resources for probation and other supervising officials to ensure that sentencing decisions are not distorted by the fact or perception of unreliable supervision.

Given our findings and analyses, we strongly recommend the following:

- (1) **The Legislature should amend AB 109 to resolve statutory ambiguities as much as possible to clarify and harmonize the relationship between felony probation and split sentences.** As noted earlier,⁴⁶ the Legislation explains the procedural distinction between these two types of sentences but does not instruct judges about the substantive goal of AB 109 in terms of how to choose between these options. The Legislature should provide guidance to judges as when to split and how to apportion the split.⁴⁷
- (2) **To ensure a more coherent and uniform application of AB 109, the California Judiciary should establish consistent approaches to the choices between traditional felony probation and 1170(h) sentences and determine how sentences should be split—under what circumstances and crimes, and what fractions offenders should serve in jail and under mandatory supervision—while still retaining necessary discretion.** Such efforts could include training and other forms of consensus-seeking.

⁴⁶ Ibid. at 20.

⁴⁷ To be sure, devising rules or guidelines for split sentencing is a daunting challenge. Legislators (and judge) will vary widely about the best balance between rule-like precision and judicial discretion. Moreover, devising guidelines can raise constitutional problems. In *Blakely v. Washington*, 542 U.S. 296 (2004), the Supreme Court found a violation of the right to jury trial in a scheme where judges themselves applied a guideline that raised a sentence above what it would have been on the basis of the jury verdict or guilty plea, and in *United States v. Booker*, the Court applied *Blakely* to declare scheme of the United States Sentencing Guidelines unconstitutional 543 U.S. 220 (2005). How *Blakely* would apply to any formula regarding split sentencing and felony probation and split sentencing is very hard to predict, given different approaches the Legislature might take. In particular the mix of jail and supervision under both schemes makes it difficult to rank sentences by severity in a way that constitutional analysis requires. But these challenges should not preclude some effort to bring greater clarity or regularity to these sentencing choices. . Moreover, some state systems, such as Virginia’s, avoid these constitutional problems by relying on non-binding guidelines that are implemented solely through exhortation through consensus and serve to ensure that judges have better information about their colleagues’ practices. See Weisberg, Robert, “How Sentencing Commissions Turned Out to Be a Good Idea,” *Berkeley Criminal Law Journal* 12: 179-20 (2007), at 213-15.

- (3) **To improve the use of the new sentencing tools under AB 109, including split sentences, counties should enhance and increase the availability of effective community-based treatment resources. Such improvements in the availability and effectiveness of treatment programs will likely increase judges' confidence in embracing these sentencing options.** For example, judges who believe that mandatory drug treatment is the ideal choice for certain offenders often worry that drug diversion courts are not available where the current offense is not a drug crime; or conversely, that even where a drug diversion court is possible it does not make treatment sufficiently mandatory and rigorous.

The implementation of Public Safety Realignment in California is correctional experiment virtually unprecedented in its scope. In a recent publication, Joan Petersilia and Jessica Snyder emphasized the importance of Realignment for California and for a nation “struggling to rethink its policies over mass incarceration” and watching how this experiment plays out in its most populous state.⁴⁸ This legislation has affected not only tens of thousands of offenders, but also the many county agencies and individuals who now have the responsibility of charging, sentencing, managing, supervising, and treating them. As a result, Realignment has greatly altered the day-to-day operations and decisions of state and especially local criminal justice actors. This research examining judicial sentencing and discretion in light of AB 109’s sentencing provisions for N3 offenders provides initial impressions on judicial preferences. However, more research is necessary to monitor the law’s full impact on the criminal justice system going forward.

⁴⁸ Petersilia, Joan and Jessica Greenlick Snyder. “Looking Past the Hype: 10 Questions Everyone Should Ask About California’s Prison Realignment.” *California Journal of Politics and Policy*. 5, no. 2 (2013): 266-306.

Bibliography

- Berwick, Megan, Rachel Lindenberg, and Julia Van Roo. "Wobblers & Criminal Justice in California: A Study into Prosecutorial Discretion." *Public Policy Practicum, Stanford University*. (March 2010).
<http://ips.stanford.edu/sites/default/files/shared/DA%20Discretion%20Final%20Report.pdf>.
- Brown, Brian, Legislative Analyst's Office. "The 2012–13 Budget: The 2011 Realignment of Adult Offenders—An Update." (2012).
http://www.lao.ca.gov/analysis/2012/crim_justice/2011-realignment-of-adult-offenders-022212.aspx.
- Byers, Garrick. "Realignment." (2011).
<http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CDEQFjAB&url=http%3A%2F%2Fceb.com%2Fflawalerts%2FRealignment4.doc&ei=B1tUsijDKeCiwKamIDwBg&usg=AFQjCNHflkXPfHo6tkKLnY8qdfyDT6-SjQ&bvm=bv.55123115,d.cGE>.
- California Office of the Attorney General. "Table 40: Adult Felony Arrestees Convicted, 2005-2010, By Convicted Offense Category and Type of Sentence." *Crime in California*. (2005-2010).
<http://oag.ca.gov/sites/all/files/agweb/pdfs/cjsc/publications/candd/cd10/preface.pdf?>
- Couzens, J. Richard. "Realignment and Evidence-Based Practice: A New Era in Sentencing California Felonies." *Federal Sentencing Reporter* 25 (2013).
- Couzens, J. Richard, and Tricia A. Bigelow. "Felony Sentencing After Realignment" (2013). www.courts.ca.gov/partners/documents/felony_sentencing.pdf.
- Chief Probation Officers of California. "Realignment Dashboard." (October 2013).
http://www.cpoc.org/assets/Realignment/dashboard_county.swf.
- Chief Probation Officers of California. "Realignment Dashboard." (October 2013).
<http://www.cpoc.org/assets/Realignment/splitsentencedashboard.swf>.
- Frederick, Bruce and Don Stemen. "The Anatomy of Discretion: An Analysis of Prosecutorial Decision Making." *Vera Institute of Justice* (2012).
<http://www.vera.org/pubs/anatomy-discretion-analysis-prosecutorial-decision-making>.
- Jasso, Guillermina. "Factorial Survey Methods for Studying Beliefs and Judgments." *Sociological Methods and Research*, 34 (2006): 334–423.

- Petersilia, Joan. "Voices from the Field: How California Stakeholders View California Public Safety Realignment." *Stanford Criminal Justice Center* (2014).
- Petersilia, Joan and Jessica Greenlick Snyder. "Looking Past the Hype: 10 Questions Everyone Should Ask About California's Prison Realignment." *California Journal of Politics and Policy*. 5, no. 2 (2013).
- Rappoport, Aaron J. "Realigning California Corrections." *Federal Sentencing Reporter* 25 (2013).
- Rodriguez, Lisa R. "Criminal Justice Realignment: A Prosecutor's Perspective." *Federal Sentencing Reporter* 25 (2013).
- Rossi, P. H. and Anderson, A. B. "The Factorial Survey Approach. An Introduction" in Rossi, P. H. and Nock, S. L. (Eds.) *Measuring Social Judgments: The Factorial Survey Approach*. Beverly Hills: SAGE (1982): 15–67.
- Sauer, Carsten, Katrin Auspurg, Thomas Hinz, and Stefan Liebig. "The Application of Factorial Surveys in General Population Samples: The Effects of Respondent Age and Education on Response Times and Response Consistency." *Survey Research Methods*, 5 (2011): 89–102.
- Shouse, Neil. "How Felony Probation Works in California." Shouse Law Group (2013). <http://www.shouselaw.com/felony-probation.html#1>.
- Storton, Kathryn B. and Lisa R. Rodriguez. "Prosecutors' Analysis of the 2011 Criminal Justice Realignment." *California District Attorneys Association* (2011). <http://www.cpoc.org/assets/Realignment/cdaarealignguide.pdf>.
- Subramanian, Ram and Rebecca Tublitz. "Realigning Justice Resources: A Review of Population and Spending Shifts in Prison and Community Corrections." Vera Institute of Justice (September 2012). http://www.vera.org/sites/default/files/resources/downloads/Realigning_Justice_full_report.pdf.
- Taylor, Brian. "Factorial Surveys: Using Vignettes to Study Professional Judgement." *British Journal of Social Work* 36 no.7 (October 2006): 1187-1207. First published online October 31, 2005.
- Wallander, Lisa. "Measuring social workers' judgements: Why and how to use the factorial survey approach in the study of professional judgements." *Journal of Social Work*, 12 no. 4, (2012): 364-384.
- Wallander, Lisa. "25 years of factorial surveys in sociology: A review." *Social Science Research*, 38, no. 3 (2012): 505-520.

Wallander, Lisa and Jan Blomqvist. "Modeling ideal treatment recommendations: A factorial survey of Swedish social workers' ideal recommendations of inpatient or outpatient treatment for problem substance uses." *Journal of Social Service Research*, 35, no. 1 (2009): 47-64.

Appendix A: Public Safety Realignment Judicial Survey

WELCOME

Q0.1

Thank you for participating in Stanford's California Public Safety Realignment Judicial Survey.

This survey will begin by asking you to indicate the county in which you sit. The identification of your respective county will be used internally for analytical purposes only; we will maintain strict confidentiality of the responses provided in this survey.

The survey will proceed with five hypothetical fact patterns that ask you to select the sentence you would impose for the individual based on the information you are given. For each of these fact patterns, please assume that (1) the case comes to your department for a settlement conference, (2) you are the first judge to have a settlement conference in this case, and (3) the Deputy District Attorney assigned to each case is unwilling to reduce to a lower charge. Understanding that there are nuances in sentencing decisions, please select one answer to each question; there will be an opportunity for you to provide clarifying remarks following each fact pattern.

To preserve the integrity of the survey and its resulting research, we ask that you refrain from taking this survey more than once. The survey will take approximately 20-30 minutes to complete.

Q0.2 Please indicate the county in which you sit.

	Off	On
Del Norte		
Siskiyou		
Modoc		
Lassen		
Shasta		
Trinity		
Humboldt		
Tehama		
Plumas		
Butte		
Sierra		
Nevada		
Glenn		
Mendocino		
Lake		
Colusa		
Yuba		
Sutter		
Placer		
Yolo		
Napa		
Sonoma		
El Dorado		
Sacramento		
Marin		
Solano		
San Francisco		
Contra Costa		
Amador		
Alpine		
San Mateo		
Mono		

Calaveras		
San Joaquin		
Alameda		
Tuolumne		
Stanislaus		
Santa Clara		
Santa Cruz		
Mariposa		
Merced		
Madera		
San Benito		
Monterey		
Fresno		
Inyo		
Tulare		
Kings		
San Luis Obispo		
Santa Barbara		
San Bernardino		
Santa Barbara		
Ventura		
Los Angeles		
Riverside		
Orange		
Imperial		
San Diego		



Q0.3 Has your judicial practice ever included adult criminal sentencing or do you foresee future involvement in adult criminal sentencing?

- Yes
- No

If No Is Selected, Then **END SURVEY**

HYPOTHETICAL ONE

Q1.1 Defendant Brian Brown, 28, is charged with one count of violating California Health and Safety Code §11379 (sell, offer to sell or transportation of methamphetamine). There is also an allegation that Mr. Brown has a prison prior within the meaning of California Penal Code §667.5(b).

On October 15, 2011, Mr. Brown was loitering in an area known for narcotics activity.

- An undercover police officer approaches Mr. Brown and offers to purchase a quarter gram of methamphetamine.
- Mr. Brown sells the methamphetamine to the officer, and the transaction is recorded.
- After arrest, a blood sample obtained from Mr. Brown is found to be negative for methamphetamine.

Mr. Brown has a prior criminal history:

- He has a juvenile record that is not available to you.
- He has prior misdemeanor convictions for petty theft, domestic violence, and possession of a concealed weapon. Each conviction was from a different event.
- He has prior felony convictions for petty theft with a prior conviction, and for the felon-with-a-gun-charge. Mr. Brown went to prison for violating his felony probation on the felon-with-a-gun-charge, and is currently on parole.

Q1.2 Mr. Brown is eligible for sentencing pursuant to California Penal Code §1170(h) on the current offense. Based on the facts known to you, what sentence do you think you would impose?

- I would place Mr. Brown on felony probation with county jail as a condition of probation.
- I would impose a §1170(h) sentence of the mitigated term of two years.
- I would impose a §1170(h) sentence of the mitigated term of two years and add the

prison prior for a total of three years.

- I would impose a §1170(h) sentence of the middle term of three years.
- I would impose a §1170(h) sentence of the middle term of three years and add the prison prior for a total of four years.
- I would impose a § 1170(h) sentence of the aggravated term of four years.
- I would impose a §1170(h) sentence of the aggravated term of four years and add the prison prior for a total of five years.

Display If in Q1.2, I would place Mr. Brown on felony probation with county jail as a condition of probation. Is Not Selected:

Q1.3 Would you impose a straight sentence or would you impose a blended or split sentence pursuant to California Penal Code §1170(h) (5) (b)?

- A straight sentence
- A split sentence pursuant to California Penal Code §1170(h) (5) (b)

Display If in Q1.3, A split sentence pursuant to California Penal Code §1170(h)(5)(b) Is Selected:

Q1.4 Assume that Mr. Brown had been in custody for less than a week, but is now out of custody. How much of the sentence that you imposed above would you have him serve on conditional release?

- Up to six months
- Up to one year
- Up to one half of the sentence
- More than one half of the sentence

Q1.5 If you have additional comments or clarifying remarks, please include them below.

HYPOTHETICAL TWO (EARLY)

Q76 Defendant Anthony Adams, 24, is charged with a second-degree burglary.

On Oct. 10, 2011, Mr. Adams went into Nordstrom:

- Security is immediately suspicious of him because he is wearing a bulky jacket on a

warm day, so they begin observing him through store video surveillance equipment.

- Mr. Adams goes immediately to the nearest rack of expensive men's coats and is observed taking a coat from the rack and placing it beneath his jacket.
- He walks quickly towards the exit and is then stopped by security outside.
- After he is arrested and Mirandized, Mr. Adams admits that he entered Nordstrom with the intent to steal clothing that he hoped to subsequently return for cash.

Mr. Adams has a prior criminal history:

- In 2006, he was convicted of misdemeanor driving under the influence of alcohol.
- In 2008, he was convicted of felony second-degree burglary by breaking into a locked car, driving on a suspended license, and being in violation of his misdemeanor probation. He was placed on felony probation and given six months in the county jail as a condition of probation.
- He violated the probation given for his felony in late 2009, and was given a one-year county jail sentence with probation to terminate on release. He was released from custody about a month before the current offense.

During plea negotiations, defense counsel informs you, and establishes to your satisfaction, that Mr. Adams has a significant, untreated alcohol and substance abuse problem that he is now willing to address.

Q77 Mr. Adams is eligible for sentencing pursuant to California Penal Code §1170(h) on the current offense. Based on the facts known to you, what sentence do you think you would impose?

- I would reduce the charge to a misdemeanor and give Mr. Adams a county jail sentence.
- I would reduce the charge to a misdemeanor and give Mr. Adams probation and a county jail sentence.
- I would place Mr. Adams on felony probation with county jail as a condition of probation.
- I would impose a §1170(h) sentence of the mitigated term of 16 months
- I would impose a §1170(h) sentence of the middle term of two years.
- I would impose a §1170(h) sentence of the aggravated term of three years.

Display If in Q77, I would impose a §1170(h) sentence of the mitigated term of 16 months Is Selected

Or if I would impose a §1170(h) sentence of the middle term of two years. Is Selected

Or if I would impose a §1170(h) sentence of the aggravated term of three years. Is Selected:

Q78 Would you impose a straight sentence or would you impose a blended or split sentence pursuant to California Penal Code §1170(h)(5)(b)?

- A straight sentence
- A split sentence pursuant to California Penal Code §1170(h)(5)(b)

Display If in Q78, A split sentence pursuant to California Penal Code §1170(h)(5)(b) Is Selected:

Q79 Assume that Mr. Adams had been in custody for less than a week, but is now out of custody. How much of the sentence that you imposed above would you have him serve on conditional release?

- Up to six months
- Up to one year
- Up to one half of the sentence
- More than one half of the sentence

Q81 Would not knowing the fact that Mr. Adams has a significant, untreated alcohol and substance abuse problem, which he is now willing to address, change the sentence you impose?

- Yes
- No

If No Is Selected, Then Skip To Q86 Does your county have a drug treatment...

Display If in Q81 Yes Is Selected:

Q82 What sentence would you now impose that is different from the one you chose earlier?

- I would reduce the charge to a misdemeanor and give Mr. Adams a county jail sentence.
- I would reduce the charge to a misdemeanor and order Mr. Adams to obtain treatment for his addictions.
- I would reduce the charge to a misdemeanor and give Mr. Adams misdemeanor probation with a county jail as a condition of probation and order Mr. Adams to

obtain treatment for his addictions.

- I would place Mr. Adams on felony probation with county jail as a condition of probation and order Mr. Adams to obtain treatment for his addictions.
- I would impose a §1170(h) sentence of the mitigated term of 16 months.
- I would impose a §1170(h) sentence of the middle term of two years.
- I would impose a §1170(h) sentence of the aggravated term of three years.

Display If Q82 I would impose a §1170(h) sentence of the mitigated term of 16 months. Is Selected

Or if I would impose a §1170(h) sentence of the middle term of two years. Is Selected

Or If I would impose a §1170(h) sentence of the aggravated term of three years. Is Selected:

Q83 Would you impose a straight sentence or a blended or split sentence pursuant to California Penal Code §1170(h)(5)(b)?

- A straight sentence
- A split sentence pursuant to California Penal Code §1170(h)(5)(b)

Display If in Q83 A split sentence pursuant to California Penal Code §1170(h)(5)(b) Is Selected:

Q84 Assume that Mr. Adams had been in custody for less than a week, but is now out of custody. How much of the sentence that you imposed above would you have him serve on conditional release?

- Up to six months
- Up to one year
- Up to one half of the sentence
- More than one half of the sentence

Display If in Q83 A split sentence pursuant to California Penal Code §1170(h)(5)(b) Is Selected:

Q85 Would you require mandatory treatment as a condition of a blended release?

- Yes
- No

Q86 Does your county have a drug treatment court?

- Yes
- No

Display If in Q86 Yes Is Selected:

Q87 Would you send, or recommend, this defendant to drug treatment court?

- Yes
- No

Q88 If you have additional comments or clarifying remarks, please include them below.

HYPOTHETICAL THREE

Q3.1 Defendant Chris Cowan, 22, is charged with one count of violating Penal Code § 10851 (felony taking or driving a vehicle).

On December 24, 2011, at about 3:00 in the afternoon, Officer Smith is in a high crime neighborhood where there has been a rash of burglaries and auto thefts lately.

- Officer Smith sees a vehicle run a red light. He initiates a vehicle stop and calls in the license plate.
- The vehicle pulls into the parking lot of a nearby shopping mall and stops. As Officer Smith prepares to approach the vehicle, the driver of the car quickly exits the car and begins to run through the crowded parking lot.
- Officer Smith gives chase and apprehends the driver, Mr. Cowan.
- Upon investigation, the officer discovers that the ignition has been punched and the car is being operated with a screwdriver.
- Mr. Cowan tells the officer that he borrowed the car from a friend and did not know for certain that it was stolen, but that he thought it might be.
- Officer Smith contacts the registered owner of the car, and the owner tells the officer that he had parked the car outside his place of business that morning and did not know that the car was missing until he received the call from the police.

Mr. Cowan has a criminal record:

- In 2008, he was convicted of a misdemeanor disturbing the peace.
- In 2009, he was convicted of petty theft. Later in 2009, he was convicted of trespassing and violation of his misdemeanor probation and given a county jail sentence.

- In 2010, Mr. Cowan was convicted of being drunk in public and trespassing. Later in 2010, Mr. Cowan was again arrested for being drunk in public and found to be in possession of stolen property.
- He was on felony probation for the possession of stolen property when arrested for the 10851. There was a warrant out for his arrest for failure to comply with the terms and conditions of probation when he was arrested for the 10851.

Q3.2 Mr. Cowan is eligible for sentencing pursuant to California Penal Code §1170(h) on the current offense. Based on the facts known to you, what sentence do you think you would impose?

- I would reduce the charge to a misdemeanor and give Mr. Cowan a county jail sentence.
- I would reduce the charge to a misdemeanor and give Mr. Cowan probation and a county jail sentence.
- I would place Mr. Cowan on felony probation with county jail as a condition of probation.
- I would impose a §1170(h) sentence of the mitigated term of 16 months
- I would impose a §1170(h) sentence of the middle term of two years.
- I would impose a §1170(h) sentence of the aggravated term of three years.

Display If in Q3.2 I would impose a §1170(h) sentence of the mitigated term of 16 months Is Selected

Or if I would impose a §1170(h) sentence of the middle term of two years. Is Selected

Or if I would impose a §1170(h) sentence of the aggravated term of three years. Is Selected:

Q3.3 Would you impose a straight sentence or would you impose a blended or split sentence pursuant to California Penal Code §1170(h) (5) (b)?

- A straight sentence
- A split sentence pursuant to California Penal Code §1170(h) (5) (b)

Display If in Q3.3 A split sentence pursuant to California Penal Code §1170(h)(5)(b) Is Selected:

Q3.4 Assume that Mr. Cowan had been in custody for less than a week, but is now out of custody. How much of the sentence that you imposed above would you have him serve on conditional release?

- Up to six months

- Up to one year
- Up to one half of the sentence
- More than one half of the sentence

Q3.5 If you have additional comments or clarifying remarks, please include them below.

HYPOTHETICAL FOUR

Q4.1 Defendant David Denis, 26, is charged with one count of violating Health and Safety Code §11378 (possession for sale of methamphetamine).

On October 15, 2011, Mr. Denis is stopped while driving a car with a broken, non-functioning taillight at night.

- During the course of issuing the citation, the officer discovers that Mr. Denis has an outstanding warrant for driving on a suspended license and arrests Mr. Denis.
- During an inventory search of the car, the officer discovers a briefcase containing a gram of methamphetamine which is packaged into individual quarter-gram packets, a notebook that appears to be a pay-owe ledger, and cash.
- After he is Mirandized, Mr. Denis acknowledges that the methamphetamine belongs to him.

Mr. Denis has a prior criminal history:

- He has a juvenile record that is not available to you.
- He has been arrested several times for being under the influence of methamphetamine. He received DEJ on the first two offenses.
- On the third offense, he was given Proposition 36 probation. He repeatedly violated Proposition 36 probation by failing to report, testing dirty, and failing to participate in a drug program.
- While on probation, he was arrested for felony possession of methamphetamine.
- He was found unamenable to treatment at his own request, and given one-year county jail, probation to terminate on release.
- His license was suspended because of points and remains suspended because he has not shown proof of insurance.

Q4.2 Mr. Denis is eligible for sentencing pursuant to California Penal Code §1170(h) on the current offense. Based on the facts known to you, what sentence do you think you would impose?

- I would place Mr. Denis on felony probation with county jail as a condition of probation.
- I would impose a §1170(h) sentence of the mitigated term of 16 months
- I would impose a §1170(h) sentence of the middle term of two years.
- I would impose a §1170(h) sentence of the aggravated term of three years.

Display If in Q4.2 I would place Mr. Denis on felony probation with county jail as a condition of probation. Is Not Selected:

Q4.3 Would you impose a straight sentence or would you impose a blended or split sentence pursuant to California Penal Code §1170(h)(5)(b)?

- A straight sentence
- A split sentence pursuant to California Penal Code §1170(h)(5)(b)

Display If in Q4.3 A split sentence pursuant to California Penal Code §1170(h)(5)(b) Is Selected:

Q4.4 Assume that Mr. Denis had been in custody for less than a week, but is now out of custody. How much of the sentence that you imposed above would you have him serve on conditional release?

- Up to six months
- Up to one year
- Up to one half of the sentence
- More than one half of the sentence

Q4.5 If you have additional comments or clarifying remarks, please include them below.

HYPOTHETICAL FIVE (EARLY)

Q89 Defendant Evan Edwards, 25, is charged with one count of violating Penal Code §10851 (felony taking or driving a vehicle).

Early in the morning on November 15, 2011, Officer Smith is in a high crime neighborhood where there has been a rash of burglaries and auto thefts lately. Officer Smith is in plainclothes in an unmarked vehicle.

- Officer Smith sees a car that is poorly parked with the rear wheels more than 18 inches from the curb.
- He calls the license plate into dispatch and is notified that the car has been reported stolen.
- He looks into the car and sees that the ignition has been punched and the car is being operated with a screwdriver. He also noticed that the interior of the car was messy with food containers, paper and clothing.
- Officer Smith decides to watch the car to see if anyone approaches or tries to drive the vehicle. He then sees Mr. Edwards approach the vehicle and enter the driver's side door.
- Officer Smith approaches the vehicle, and sees Mr. Edwards reaching for the screwdriver. Officer Smith effects a felony arrest.
- After arrest and Mirandizing, Mr. Edwards admits that he knew the car was stolen and that he had been driving it for a couple of days. He also tells Officer Smith that he has been living on the streets and that he was glad to have the car as he could get around and sleep in it.
- Mr. Edwards is disheveled and smells as if he had not bathed in a while. He appears to be under the influence of something, but the blood drawn with the felony arrest did not show the presence of drugs or alcohol.

Mr. Edwards has a criminal record:

- In 2008, he was convicted of a misdemeanor disturbing the peace.
- In 2009, he was convicted of petty theft. Later in 2009, he was convicted of trespassing and violation of his misdemeanor probation and given a county jail sentence.
- In 2010, Mr. Edwards was convicted of being drunk in public and trespassing. Later in 2010, Mr. Edwards was again arrested for drunk in public and found to be in possession of stolen property.
- He was on felony probation for the possession of stolen property when arrested for the 10851.
- There was a warrant out for his arrest for failure to comply with the terms and conditions of probation when he was arrested for the 10851.

Defense counsel discloses to you and the prosecutor that Mr. Edwards has a previously undiagnosed mental illness of schizophrenia. Defense counsel had the defendant evaluated by jail mental health staff. While in custody, Mr. Edwards has been receiving medication to treat his illness.

Q90 Mr. Edwards is eligible for sentencing pursuant to California Penal Code §1170(h) on the current offense. Based on the facts known to you, what sentence do you think you would impose?

- I would reduce the charge to a misdemeanor and give Mr. Edwards a county jail sentence.
- I would reduce the charge to a misdemeanor and give Mr. Edwards probation and a county jail sentence.
- I would place Mr. Edwards on felony probation with county jail as a condition of probation.
- I would impose a §1170(h) sentence of the mitigated term of 16 months
- I would impose a §1170(h) sentence of the middle term of two years.
- I would impose a §1170(h) sentence of the aggravated term of three years.

Display If in Q90 I would impose a §1170(h) sentence of the mitigated term of 16 months Is Selected

Or if I would impose a §1170(h) sentence of the middle term of two years. Is Selected

Or if I would impose a §1170(h) sentence of the aggravated term of three years. Is Selected:

Q91 Would you impose a straight sentence or would you impose a blended or split sentence pursuant to California Penal Code §1170(h)(5)(b)?

- A straight sentence
- A split sentence pursuant to California Penal Code §1170(h)(5)(b)

Display If in Q91 A split sentence pursuant to California Penal Code §1170(h)(5)(b) Is Selected:

Q92 Assume that Mr. Edwards had been in custody for less than a week, but is now out of custody. How much of the sentence that you imposed above would you have him serve on conditional release?

- Up to six months
- Up to one year
- Up to one half of the sentence
- More than one half of the sentence

Q94 Would not knowing the additional facts that Mr. Edwards has been living on the streets and has a previously undiagnosed mental illness of schizophrenia change the sentence you impose?

- Yes
- No

If **No** Is Selected, Then Skip To Q98 **Does your county have a mental health...**

Display If in Q94 **Yes** Is Selected:

Q95 What sentence would you now impose, that is different from the one you chose earlier?

- I would reduce the charge to a misdemeanor and give Mr. Edwards a county jail sentence.
- I would reduce the charge to a misdemeanor and give Mr. Edwards probation and mental health treatment as a condition of probation.
- I would place Mr. Edwards on felony probation with county jail as a condition of probation.
- I would place Mr. Edwards on felony probation with county jail and mental health treatment as a condition of probation.
- I would impose a §1170(h) sentence of the mitigated term of 16 months.
- I would impose a §1170(h) sentence of the middle term of two years.
- I would impose a §1170(h) sentence of the aggravated term of three years.

Display If in Q95 **I would impose a §1170(h) sentence of the mitigated term of 16 months.** Is Selected

Or if **I would impose a §1170(h) sentence of the middle term of two years.** Is Selected

Or if **I would impose a §1170(h) sentence of the aggravated term of three years.** Is Selected:

Q96 Would you impose a straight sentence or would you impose a blended or split sentence pursuant to California Penal Code §1170(h) (5) (b)?

- A straight sentence
- A split sentence pursuant to California Penal Code §1170(h) (5) (b)

Display If in Q96 **A split sentence pursuant to California Penal Code §1170(h)(5)(b)** Is Selected:

Q97 Assume that Mr. Edwards had been in custody for less than a week, but is now out of custody. How much of the sentence that you imposed above would you have him serve on conditional release?

- Up to six months
- Up to one year
- Up to one half of the sentence
- More than one half of the sentence

Q98 Does your county have a mental health treatment court?

- Yes
- No

Display If in Q98 **Yes** Is Selected:

Q99 Would you send, or recommend, this defendant to mental health treatment court?

- Yes
- No

Q100 If you have additional comments or clarifying remarks, please include them below.

HYPOTHETICAL FIVE (LATE)

Q5.1 Defendant Evan Edwards, 25, is charged with one count of violating Penal Code §10851 (felony taking or driving a vehicle).

Early in the morning on November 15, 2011, Officer Smith is in a high crime neighborhood where there has been a rash of burglaries and auto thefts lately. Officer Smith is in plainclothes in an unmarked vehicle.

- Officer Smith sees a car that is poorly parked with the rear wheels more than 18 inches from the curb.
- He calls the license plate into dispatch and is notified that the car has been reported stolen.

- He looks into the car and sees that the ignition has been punched and the car is being operated with a screwdriver. Officer Smith decides to watch the car to see if anyone approaches or tries to drive the vehicle.
- He sees Mr. Edwards approach the vehicle and enter the driver's side door.
- Officer Smith approaches the vehicle, and sees Mr. Edwards reaching for the screwdriver. Officer Smith effects a felony arrest.
- After arrest and Mirandizing, Mr. Edwards admits that he knew the car was stolen and that he had been driving it for a couple of days.

Mr. Edwards has a criminal record:

- In 2008, he was convicted of a misdemeanor disturbing the peace.
- In 2009, he was convicted of petty theft. Later in 2009, he was convicted of trespassing and violation of his misdemeanor probation and given a county jail sentence.
- In 2010, Mr. Edwards was convicted of being drunk in public and trespassing. Later in 2010, Mr. Edwards was again arrested for drunk in public and found to be in possession of stolen property.
- He was on felony probation for the possession of stolen property when arrested for the 10851.
- There was a warrant out for his arrest for failure to comply with the terms and conditions of probation when he was arrested for the 10851.

Q5.2 Mr. Edwards is eligible for sentencing pursuant to California Penal Code §1170(h) on the current offense. Based on the facts known to you, what sentence do you think you would impose?

- I would reduce the charge to a misdemeanor and give Mr. Edwards a county jail sentence.
- I would reduce the charge to a misdemeanor and give Mr. Edwards probation and a county jail sentence.
- I would place Mr. Edwards on felony probation with county jail as a condition of probation.
- I would impose a §1170(h) sentence of the mitigated term of 16 months
- I would impose a §1170(h) sentence of the middle term of two years.
- I would impose a §1170(h) sentence of the aggravated term of three years.

Display If in Q5.2 I would impose a §1170(h) sentence of the mitigated term of 16 months Is Selected

Or if I would impose a §1170(h) sentence of the middle term of two years. Is Selected

Or if I would impose a §1170(h) sentence of the aggravated term of three years. Is Selected:

Q5.3 Would you impose a straight sentence or would you impose a blended or split sentence pursuant to California Penal Code §1170(h)(5)(b)?

- A straight sentence
- A split sentence pursuant to California Penal Code §1170(h)(5)(b)

Display If in Q5.3 A split sentence pursuant to California Penal Code §1170(h)(5)(b) Is Selected:

Q5.4 Assume that Mr. Edwards had been in custody for less than a week, but is now out of custody. How much of the sentence that you imposed above would you have him serve on conditional release?

- Up to six months
- Up to one year
- Up to one half of the sentence
- More than one half of the sentence

Q5.5 Please assume the following additional facts: Officer Smith notices that the interior of the car is messy with food containers, paper and clothing. Mr. Edwards tells Officer Smith that he has been living on the streets and that he was glad to have the car as he could get around and sleep in it. Mr. Edwards is disheveled and smells as if he had not bathed in a while. He appears to be under the influence of something, but the blood drawn with the felony arrest did not show the presence of drugs or alcohol. Defense counsel discloses to you and the prosecutor that Mr. Edwards has a previously undiagnosed mental illness of schizophrenia. Defense counsel had the defendant evaluated by jail mental health staff. While in custody, he has been receiving medication to treat his illness.

Q5.6 Would these additional facts change the sentence you would impose?

- Yes
- No

If No Is Selected, Then Skip To Q5.10 Does your county have a mental health...

Display If in Q5.6 **Yes Is Selected:**

Q5.7 How does this change the sentence you would impose?

- I would reduce the charge to a misdemeanor and give Mr. Edwards a county jail sentence.
- I would reduce the charge to a misdemeanor and give Mr. Edwards probation and mental health treatment as a condition of probation.
- I would place Mr. Edwards on felony probation with county jail as a condition of probation.
- I would place Mr. Edwards on felony probation with county jail and mental health treatment as a condition of probation.
- I would impose a §1170(h) sentence of the mitigated term of 16 months.
- I would impose a §1170(h) sentence of the middle term of two years.
- I would impose a §1170(h) sentence of the aggravated term of three years.

Display If in Q5.7 **I would impose a §1170(h) sentence of the mitigated term of 16 months. Is Selected**

Or if **I would impose a §1170(h) sentence of the middle term of two years. Is Selected**

Or if **I would impose a §1170(h) sentence of the aggravated term of three years. Is Selected:**

Q5.8 Would you impose a straight sentence or would you impose a blended or split sentence pursuant to California Penal Code §1170(h)(5)(b)?

- A straight sentence
- A split sentence pursuant to California Penal Code §1170(h)(5)(b)

Display If in Q5.8 **A split sentence pursuant to California Penal Code §1170(h)(5)(b) Is Selected:**

Q5.9 Assume that Mr. Edwards had been in custody for less than a week, but is now out of custody. How much of the sentence that you imposed above would you have him serve on conditional release?

- Up to six months
- Up to one year
- Up to one half of the sentence
- More than one half of the sentence

Q5.10 Does your county have a mental health treatment court?

- Yes
- No

Display If in Q5.10 Yes Is Selected:

Q5.11 Would you send, or recommend, this defendant to mental health treatment court?

- Yes
- No

Q5.12 If you have additional comments or clarifying remarks, please include them below.

HYPOTHETICAL TWO (LATE)

Q2.1 Defendant Anthony Adams, 24, is charged with a second-degree burglary.

On Oct. 10, 2011, Mr. Adams went into Nordstrom:

- Security is immediately suspicious of him because he is wearing a bulky jacket on a warm day, so they begin observing him through store video surveillance equipment.
- Mr. Adams goes immediately to the nearest rack of expensive men's coats and is observed taking a coat from the rack and placing it beneath his jacket. He walks quickly towards the exit and is then stopped by security outside.
- After he is arrested and Mirandized, Mr. Adams admits that he entered Nordstrom with the intent to steal clothing that he hoped to subsequently return for cash.

Mr. Adams has a prior criminal history:

- In 2006, he was convicted of misdemeanor driving under the influence of alcohol.
- In 2008, he was convicted of felony second-degree burglary by breaking into a locked car, driving on a suspended license, and being in violation of his misdemeanor probation. He was placed on felony probation and given six months in the county jail as a condition of probation.
- He violated the probation given for his felony in late 2009, and was given a one-year county jail sentence with probation to terminate on release. He was released from custody about a month before the current offense.

Q2.2 Mr. Adams is eligible for sentencing pursuant to California Penal Code §1170(h) on the current offense. Based on the facts known to you, what sentence do you think you would impose?

- I would reduce the charge to a misdemeanor and give Mr. Adams a county jail sentence.
- I would reduce the charge to a misdemeanor and give Mr. Adams probation and a county jail sentence.
- I would place Mr. Adams on felony probation with county jail as a condition of probation.
- I would impose a §1170(h) sentence of the mitigated term of 16 months
- I would impose a §1170(h) sentence of the middle term of two years.
- I would impose a §1170(h) sentence of the aggravated term of three years.

Display If in Q2.2 I would impose a §1170(h) sentence of the mitigated term of 16 months Is Selected

Or if I would impose a §1170(h) sentence of the middle term of two years. Is Selected

Or if I would impose a §1170(h) sentence of the aggravated term of three years. Is Selected:

Q2.3 Would you impose a straight sentence or would you impose a blended or split sentence pursuant to California Penal Code §1170(h)(5)(b)?

- A straight sentence
- A split sentence pursuant to California Penal Code §1170(h)(5)(b)

Display if in Q2.3 A split sentence pursuant to California Penal Code §1170(h)(5)(b) Is Selected:

Q2.4 Assume that Mr. Adams had been in custody for less than a week, but is now out of custody. How much of the sentence that you imposed above would you have him serve on conditional release?

- Up to six months
- Up to one year
- Up to one half of the sentence
- More than one half of the sentence

Q2.5 Please assume the following additional facts: During plea negotiations, defense counsel informs you, and establishes to your satisfaction, that Mr. Adams has a significant, untreated alcohol and substance abuse problem that he is now willing to address.

Q2.6 Would this fact change the sentence you would impose?

- Yes
- No

If **No** Is Selected, Then Skip To Q2.11 **Does your county have a drug treatment...**

Display If in Q2.6 **Yes** Is Selected:

Q2.7 How does this change the sentence you would impose?

- I would reduce the charge to a misdemeanor and give Mr. Adams a county jail sentence.
- I would reduce the charge to a misdemeanor and order Mr. Adams to obtain treatment for his addictions.
- I would reduce the charge to a misdemeanor and give Mr. Adams misdemeanor probation with a county jail as a condition of probation and order Mr. Adams to obtain treatment for his addictions.
- I would place Mr. Adams on felony probation with county jail as a condition of probation and order Mr. Adams to obtain treatment for his addictions.
- I would impose a §1170(h) sentence of the mitigated term of 16 months.
- I would impose a §1170(h) sentence of the middle term of two years.
- I would impose a §1170(h) sentence of the aggravated term of three years.

Display If in Q2.7 **I would impose a §1170(h) sentence of the mitigated term of 16 months. Is Selected**

Or if **I would impose a §1170(h) sentence of the middle term of two years. Is Selected**

Or if **I would impose a §1170(h) sentence of the aggravated term of three years. Is Selected:**

Q2.8 Would you impose a straight sentence or would you impose a blended or split sentence pursuant to California Penal Code §1170(h) (5) (b)?

- A straight sentence
- A split sentence pursuant to California Penal Code §1170(h) (5) (b)

Display If in Q2.8 A split sentence pursuant to California Penal Code §1170(h)(5)(b) Is Selected:

Q2.9 Assume that Mr. Adams had been in custody for less than a week, but is now out of custody. How much of the sentence that you imposed above would you have him serve on conditional release?

- Up to six months
- Up to one year
- Up to one half of the sentence
- More than one half of the sentence

Display If in Q2.8 A split sentence pursuant to California Penal Code §1170(h)(5)(b) Is Selected

Q2.10 Would you require mandatory treatment as a condition of a blended release?

- Yes
- No

Q2.11 Does your county have a drug treatment court?

- Yes
- No

Display If in Q2.11 Yes Is Selected

Q2.12 Would you send, or recommend, this defendant to drug treatment court?

- Yes
- No

Q2.13 If you have additional comments or clarifying remarks, please include them below.

CLOSING

Q71 The following 5 questions are voluntary, however, providing this information would greatly aide in our research.

Q72 How many years have you served on the bench?

Q73 How familiar are you with AB 109/Public Safety Realignment Legislation? On a scale of 1 to 10, with 10 indicating the most familiarity.

- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10

The above is shown as a sliding scale of 1 to 10.

Q74 Please indicate your age range.

- 30-39 years
- 40-49 years
- 50-59 years
- 60-69 years
- 70 years or older

Q76 Please indicate your gender.

- Male
- Female

Q75 Please indicate your race.

- White/Non-Hispanic
- Hispanic
- Black or African American
- American Indian or Alaska Native
- Asian
- Native Hawaiian or Other Pacific Islander

Q6.1 If you would like a copy of our final report, please provide your e-mail address below.

Q6.2 Can we contact you with follow-up questions if they arise? If so, please provide your e-mail address below.

After the "Submit" button is selected, this message is shown:

Thank you again for participating in our survey. We greatly appreciate your time and effort.

If you have any questions about the survey's content, please do not hesitate to contact Professor of Law and Co-Director of the Stanford Criminal Justice Center, Robert Weisberg, at weisberg@law.stanford.edu. If you are experiencing technical issues, please contact Lisa Quan at ltquan@law.stanford.edu.

For more information about our research projects, please visit <http://www.law.stanford.edu/programs/center/scjc>.

Appendix B: Judicial Survey Results

Overall Report

Q0.2. Please indicate the county in which you sit.

Question	On	Total Responses
Los Angeles	17	114
Orange	15	114
San Diego	13	114
Kern	11	114
Santa Clara	6	114
Fresno	4	114
San Mateo	4	114
Riverside	3	114
Monterey	3	114
Tulare	3	114
Ventura	3	114
Stanislaus	2	114
Sonoma	2	114
Sacramento	2	114
Contra Costa	2	114
Merced	2	114
Alameda	2	114
San Francisco	2	114
Yolo	2	114
San Bernardino	2	114
Nevada	2	114
Tehama	1	114
Butte	1	114
Siskiyou	1	114
Madera	1	114
Humboldt	1	114
San Joaquin	1	114
Placer	1	114
Santa Barbara	1	114
Sutter	1	114
Napa	1	114
Kings	1	114
Santa Cruz	1	114

Mendocino	1	114
Solano	1	114
Imperial	0	114
Inyo	0	114
San Luis Obispo	0	114
San Benito	0	114
Amador	0	114
Sierra	0	114
Glenn	0	114
Lake	0	114
Plumas	0	114
Trinity	0	114
Modoc	0	114
Lassen	0	114
Shasta	0	114
Colusa	0	114
Yuba	0	114
Mono	0	114
Calaveras	0	114
Tuolumne	0	114
Alpine	0	114
Del Norte	0	114
El Dorado	0	114
Marin	0	114
Mariposa	0	114

Q77. Has your judicial practice ever included adult criminal sentencing or do you foresee future involvement in adult criminal sentencing?

#	Answer	Response	%
9	Yes	112	98%
10	No	2	2%
	Total	114	100%

HYPOTHETICAL ONE

Q1.2. Mr. Brown is eligible for sentencing pursuant to California Penal Code §1170(h) on the current offense. Based on the facts known to you, what sentence do you think you would impose?

#	Answer	Response	%
1	I would place Mr. Brown on felony probation with county jail as a condition of probation.	13	12%
2	I would impose a §1170(h) sentence of the mitigated term of two years.	12	11%
3	I would impose a §1170(h) sentence of the mitigated term of two years and add the prison prior for a total of three years.	26	23%
4	I would impose a §1170(h) sentence of the middle term of three years.	18	16%
5	I would impose a §1170(h) sentence of the middle term of three years and add the prison prior for a total of four years.	29	26%
6	I would impose a § 1170(h) sentence of the aggravated term of four years.	6	5%
7	I would impose a §1170(h) sentence of the aggravated term of four years and add the prison prior for a total of five years.	8	7%
	Total	112	100%

Q1.3. Would you impose a straight sentence or would you impose a blended or split sentence pursuant to California Penal Code §1170(h)(5)(b)?

#	Answer		Response	%
1	A straight sentence		53	54%
2	A split sentence pursuant to California Penal Code §1170(h)(5)(b)		46	46%
	Total		99	100%

Q1.4. Assume that Mr. Brown had been in custody for less than a week, but is now out of custody. How much of the sentence that you imposed above would you have him serve on conditional release?

#	Answer		Response	%
1	Up to six months		3	7%
2	Up to one year		10	22%
3	Up to one half of the sentence		23	50%
4	More than one half of the sentence		10	22%
	Total		46	100%

Q1.5. If you have additional comments or clarifying remarks, please include them below.

Text Response
Meth kills. I see it daily.
This crime is barely a felony, you should use better examples.
He might have an outside shot at the ROC intensive drug treatment program. I would refer him for screening for the ROC program before sentencing him.
I give up, these questions do not include all the necessary variables. Is this an early plea, a conviction after trial. I need more information. This survey is seeking information in an unrealistic vacuum and will then present results that are not based upon real world scenarios.
I would give him three years actual custody, two years supervised release
Small amount of dope on his first dope offense. Would be a county time case but for the fact he was on parole and has a valid 667.5b prior. As a result, it is a low term case, strike the prior.
The fact that he previously violated probation and is now on parole would be my reason for imposing the midterm and the one year prior.
Again, intensive Tx after the CJ stint along with careful monitoring. If he deliberately fails, he is looking at a severe sentence.
Defendants benefit from some period of transition from custody to living in the community, where services targeting their risk factors can be provided, which is why I would give a period of Mandatory Supervision.
If he would agree to treatment and other terms of supervision.
The remaining last year would be on conditional release.
His gun possession offenses, both felony and misdemeanor, mitigate against giving him the benefit of the doubt that I gave in the previous hypothesis.
This is presuming that the defendant went to trial and lost, as there seems to be no mitigating factors. If it were a situation where the defendant was willing to plead earlier to a reasonable offer, I would consider that a mitigating factor.
I would give him the 4 as a plea agreement, otherwise there is little incentive to plead. I'd have him do 2, 1 actual, 2 on community supervision, hoping our probation services in custody, and then out may change his behavior. The gun aspect adds a level of concern for public safety, but he'll be out at a relatively point in any event.
Before deciding to place the defendant on probation, I would want a scored risk/needs assessment and input from the probation office as to what evidence-based practices would suggest would be efficacious probation terms.
I am assuming the sentence is post trial and that there are no mitigating circumstances (none were presented in the fact pattern).

<p>It appears to me that this defendant does not himself have a drug problem but the gun charge and priors indicate that sales of narcotics is the driving issue here, the gun charge will lead me to inquire about gang connections. His disregard of the law is also a factor.</p>
<p>It seems appropriate to impose a measure of punishment as an incentive not to repeat the conduct (say, a year of local custody, which ends up 6 months' actual time), then provide some modicum of services that may enable him to support himself by a legitimate means.</p>
<p>why give a blended sentence? In the end he would be serving equal time (approx.) if I gave probation and 1 year in jail. On the blended sentence I am burning the tail time and in the end burdening probation (doing the job of parole in our county) a already proved unsuccessful candidate for community supervision. Just do the time and be done.</p>
<p>The hypo did not tell me the length of his most recent felony sentence. This usually makes a difference to me.</p>
<p>The DA in our county will not agree to split sentences so only ordered on sheet pleas.</p>
<p>In my view, AB109 has thus far been a disaster. My spouse represents parolees and (consistent with my experience) their knowing that the consequences for bad conduct are significantly diluted, they offend with more regularity and with increasing disregard for the justice system or its power.</p>
<p>18 months in custody and 18 months of supervision with drug conditions.</p>
<p>Another option I could consider is an 1170(h) commitment, with a so-called split sentence. In my mind, the practical effect is nearly identical.</p>
<p>If Delancey Street is an option he would care to ask for, I would give him a maximum ESS. If he completes at least the 2 year program and subsequently violates for a non serious/violent felony, I would not have him serve the entire sentence. Only if he failed DS would that occur.</p>
<p>I might even give him 4 years (mid-term plus the prior) with 2 years in custody at half-time and 2 years of mandatory supervision.</p>
<p>If I did a split sentence it would be upper term 4 years, split 2 and 2.</p>
<p>If the attorneys negotiate a split sentence, say of 5 years with the last three on supervision, I would opt for that. In my county, the DA's don't normally offer the split sentence as part of a negotiated disposition. The defendants typically don't want the supervised "tail" and are uninterested in split sentences and the probation department is scrambling to employ enough probation officers to handle their existing case load so often times defendants are left unsupervised and split sentences are largely a give-away because the lapse of time reduces the potential sentence for any subsequent violations. If the Legislature "fixed" the diminishing available time remaining in the event of a probation violation, I would be more inclined to impose a split sentence for many of these N3's with moderate drug and theft records.</p>
<p>I'd expect the parties to submit a plea agreement calling for the defendant to serve two years, mitigated term with no mandatory supervision, the parties are well aware Mr. Brown would be early outed after about 3 or 4 months</p>

I would prefer a heavier hammer over Mr. Brown's head with more options in reserve. Mr. Brown's criminal history is moderate to light, he does not present as having substance abuse issues and yet he appears to be a professional criminal. I would be interested in what his risk-needs assessment might show and whether he would be a good candidate for efforts at behavior modification that might change his life course entirely. If such efforts fail, we might have most of five years of incarceration time available.

Without significant prior drug issues, not included to sentence a split sentence.

I would most likely be looking at a probationary sentence with a year or longer inpatient drug treatment program. If I imposed the split sentence I would strongly consider having the defendant serve the MSR portion of a split sentence in an inpatient drug treatment program.

I see this man as a serious threat to public safety. I am not clear whether there are two prior gun charges, or, one, but, in any event, his desire to reoffend has not slaked, despite all of his violations and even incarceration in State Prison. I would offer the aggravated term, without the prison prior, solely for the purpose of early settlement in the felony arraignment court.

Statistic	Value
Total Responses	33

HYPOTHETICAL TWO (EARLY)

Q77. Mr. Adams is eligible for sentencing pursuant to California Penal Code §1170(h) on the current offense. Based on the facts known to you, what sentence do you think you would impose?

#	Answer	Response	%
1	I would reduce the charge to a misdemeanor and give Mr. Adams a county jail sentence.	0	0%
2	I would reduce the charge to a misdemeanor and give Mr. Adams probation and a county jail sentence.	5	9%
3	I would place Mr. Adams on felony probation with county jail as a condition of probation.	35	64%
4	I would impose a §1170(h) sentence of the mitigated term of 16 months	9	16%
5	I would impose a §1170(h) sentence of the middle term of two years.	4	7%
6	I would impose a §1170(h) sentence of the aggravated term of three years.	2	4%
	Total	55	100%

Q78. Would you impose a straight sentence or would you impose a blended or split sentence pursuant to California Penal Code §1170(h)(5)(b)?

#	Answer	Response	%
1	A straight sentence	8	53%
2	A split sentence pursuant to California Penal Code §1170(h)(5)(b)	7	47%
	Total	15	100%

Q79. Assume that Mr. Adams had been in custody for less than a week, but is now out of custody. How much of the sentence that you imposed above would you have him serve on conditional release?

#	Answer	Response	%
1	Up to six months	1	14%
2	Up to one year	2	29%
3	Up to one half of the sentence	3	43%
4	More than one half of the sentence	1	14%
	Total	7	100%

Q81. Would not knowing the fact that Mr. Adams has a significant, untreated alcohol and substance abuse problem, which he is now willing to address, change the sentence you impose?

#	Answer	Response	%
1	Yes	28	51%
2	No	27	49%
	Total	55	100%

Q82. What sentence would you now impose that is different from the one you chose earlier?

#	Answer		Response	%
1	I would reduce the charge to a misdemeanor and give Mr. Adams a county jail sentence.		0	0%
2	I would reduce the charge to a misdemeanor and order Mr. Adams to obtain treatment for his addictions.		0	0%
3	I would reduce the charge to a misdemeanor and give Mr. Adams misdemeanor probation with a county jail as a condition of probation and order Mr. Adams to obtain treatment for his addictions.		0	0%
4	I would place Mr. Adams on felony probation with county jail as a condition of probation and order Mr. Adams to obtain treatment for his addictions.		15	54%
5	I would impose a §1170(h) sentence of the mitigated term of 16 months.		9	32%
6	I would impose a §1170(h) sentence of the middle term of two years.		2	7%
7	I would impose a §1170(h) sentence of the aggravated term of three years.		2	7%
	Total		28	100%

Q83. Would you impose a straight sentence or a blended or split sentence pursuant to California Penal Code §1170(h)(5)(b)?

#	Answer		Response	%
1	A straight sentence		10	77%
2	A split sentence pursuant to California Penal Code §1170(h)(5)(b)		3	23%
	Total		13	100%

Q84. Assume that Mr. Adams had been in custody for less than a week, but is now out of custody. How much of the sentence that you imposed above would you have him serve on conditional release?

#	Answer	Response	%
1	Up to six months	1	33%
2	Up to one year	0	0%
3	Up to one half of the sentence	2	67%
4	More than one half of the sentence	0	0%
	Total	3	100%

Q85. Would you require mandatory treatment as a condition of a blended release?

#	Answer	Response	%
1	Yes	3	100%
2	No	0	0%
	Total	3	100%

Q86. Does your county have a drug treatment court?

#	Answer	Response	%
1	Yes	53	96%
2	No	2	4%
	Total	55	100%

Q87. Would you send, or recommend, this defendant to drug treatment court?

#	Answer		Response	%
1	Yes		28	53%
2	No		25	47%
	Total		53	100%

Q88. If you have additional comments or clarifying remarks, please include them below.

Text Response
This case does not meet the criteria for drug court as there are no drug charges alleged. I would handle the treatment through my court. Most counties drug treatment courts are for cases involving or that include drug charges.
Def will have access to drug and alcohol services while on mandatory supervision.
I would most likely give this defendant a suspended state prison sentence with a waiver of all back time with probation and residential treatment program of 6 months to 1 year.
Our drug treatment court handles charged and admitted drug crimes. We do not have a drug court set up for general felony crimes.
The prior gun charge is a disqualifier. Without that conviction, he would be a potential candidate for Drug Court treatment.
I would impose the drug treatment myself. The treatment would be rigorous and carefully monitored. My court is one of many in Los Angeles County where drug treatment is routinely imposed. My court is a so-called early disposition program (EDP) court, where felony cases are resolved prior to preliminary hearing. In essence my court is a de facto "drug treatment court."
Alcohol is not a substance generally addressed in our drug treatment court.
I would send defendant to drug court if requested.
Initially, I was not given the option of placing defendant on probation on condition that he complete a residential treatment program (oddly, you allow for that option only when the fact pattern takes his addiction out of the equatio- a very strange choice on your part). Not havoing that option I chose a split sentence.
Only drug charges go to drug court. Felony burg also DQs him.
If eligible; however, I would impose a term of incarceration to precede such a program.
Would impose 6-12month live-in residential treatment; defendant may have to waive back time credits; would consider imposing and suspending low term on condition that he complete the live in treatment program.
1. Most defendants in a non-drug case will not accept substance abuse conditions and unless there is a nexus between the offense(s) and drug/alcohol use the court is powerless to impose such conditions. Thus the driving force of the current offense(s) is never addressed. 2. In our county the defendant in the hypothetical would not be sent to drug treatment court because the offense is not a drug offense. Instead, the defendant would be placed on 3 years of formal probation and the probation department would monitor his treatment.
Another option would be a residential program approved by probation and the court as a condition of probation, with no custody credit earned while in the program.

we have a very extensive drug/alcohol court for those who are clearly addicted with prior convictions for drugs. We do have a stand alone alcohol program, however, that is DUI court.
I might put him in residential treatment rather than drug court, however often our drug court places probations in residential treatment. I'd want input from probation regarding the specifics.
Jail has not impacted this individual. He has never had an opportunity for treatment. Using the criminal justice system as a means to engage him in treatment is an obvious preferred choice.
Not unless there was a specific request to do so – the crime is petty and the loss was recovered. Also you did not give enough sentencing choices – I would not reduce to a misdemeanor unless the defendant pled to the sheet because in your hypo you say the DA is unwilling to reduce (in our county the DA likely would reduce and I would approve). Also jail time would be very little based on lack of serious conduct.
I would likely modify defendant's one-year county jail sentence so that he would be placed into an intensive day-treatment program operated by our probation department called, Bridges; or, I would make a condition of his probation that he enter and complete an approved residential treatment program.
I receive defendant's post-PH; so they have already served an average of 60-90 actual custody time – I am assuming that when I would make the referral.

Statistic	Value
Total Responses	20

HYPOTHETICAL THREE

Q3.2. Mr. Cowan is eligible for sentencing pursuant to California Penal Code §1170(h) on the current offense. Based on the facts known to you, what sentence do you think you would impose?

#	Answer	Response	%
1	I would reduce the charge to a misdemeanor and give Mr. Cowan a county jail sentence.	0	0%
2	I would reduce the charge to a misdemeanor and give Mr. Cowan probation and a county jail sentence.	1	1%
3	I would place Mr. Cowan on felony probation with county jail as a condition of probation.	47	42%
4	I would impose a §1170(h) sentence of the mitigated term of 16 months	26	23%
5	I would impose a §1170(h) sentence of the middle term of two years.	27	24%
6	I would impose a §1170(h) sentence of the aggravated term of three years.	11	10%
	Total	112	100%

Q3.3. Would you impose a straight sentence or would you impose a blended or split sentence pursuant to California Penal Code §1170(h)(5)(b)?

#	Answer	Response	%
1	A straight sentence	39	61%
2	A split sentence pursuant to California Penal Code §1170(h)(5)(b)	25	39%
	Total	64	100%

Q3.4. Assume that Mr. Cowan had been in custody for less than a week, but is now out of custody. How much of the sentence that you imposed above would you have him serve on conditional release?

#	Answer		Response	%
1	Up to six months		5	20%
2	Up to one year		5	20%
3	Up to one half of the sentence		8	32%
4	More than one half of the sentence		7	28%
	Total		25	100%

Q3.5. If you have additional comments or clarifying remarks, please include them below.

Text Response
Given the fed cap, if the defendant was given custody time in local jail, this defendant would be deemed a non-violent offender and would be out back on the streets in weeks if not days.
Pointless survey.
the nature of the prior stolen property conviction would affect the sentence.
He clearly has a substance abuse problem given the conviction history and I would want to know how long he has been on felony probation for the first felony conviction. The less time the more likely I would give him a further opportunity at probation. He clearly to me at least needs supervision and direction to services to target his criminogenic needs.
The defendant would be placed on an intensive supervision probation.
For a non-violent property crime, probation is my normal option absent much more aggravating circumstances
This defendant's profile resembles that of a drug addict; but without evidence of drug addiction, I would not impose probation. Otherwise, probation with intensive treatment might well be in the cards.
Evidence that the car was recently stolen, the defendant running from the police and his lying about not knowing it was stolen even though it was being operated with a screwdriver would mitigate against him.
If the defendant had already served 365 days on his felony 496, I would probably terminate that probation and give him 1170(h) 16 months on both. In our county, he probably would have only done weekends on his first felony. I would try him on probation and straight time on his second case.
Again, this is presuming the defendant went to trial and lost.
I would put him on a second grant of felony probation, 2 years county jail, knowing he'll serve 1 year in, then have 1 year left on probation to offer serves, in custody and follow-up out. Alternatively I'd split a prison sentence and give him 2 years, again he'll serve 1 in, 1 year community supervision. I wouldn't max him at 3 years since there would be no incentive to plead.
would probably receive 365 day sentence,
Again, I am assuming this is post-trial and that there are no mitigating circumstances
This realignment is a fraud upon the public.
In Orange County this defendant doesn't have a long record and though he has not complied with probation I would usually offer a year and probation or the 1170(h) sentence. The D.A. will always offer a split sentence and so the defendant's are opting for

the split sentence, usually 8 months in and 8 month tail, so now he will do less time than he would with the probationary sentence and have less of a tail and ... usually...less supervision upon release.	
The reason for offering the midterm is to avoid the cost of a trial.	
read my earlier comments.	
If the DA wanted a split sentence, I would probably go with a mid term 2 years, split 1 and 1.	
Defendant already has a felony theft conviction. You don't move backward to misdemeanors with more serious offenses.	
I'd expect the parties to submit a plea agreement for 16 mos both cases CC and a straight sentence with no mandatory supervision. In our county the defendant would serve about a month in custody.	
I would also consider an alternative sentence of 3 years aggravated, 1170(h), with split sentence calling for 6 months I/C (3 mos actual)	
I am a strong advocate for inpatient drug treatment programs in most drug possession cases or theft offenses where drug addiction appears to be the motivating factor.	
Who was his Felony probation officer, what allegation was the source of the probation violation warrant, and is there any more information felony probation wishes to offer? Are there factors or factors are there that relate to something the Court might order to assist the defendant with rehabilitation - substance abuse counseling, GED class, job training? Or is he not the sort to benefit from such programs?	
Given the defendant's history of alcohol abuse, I would want him on probation so that I could add the additional condition of his plea that he complete a residential six month probation approved alcohol/drug rehab program as a condition of probation, within the first year of probation and at the direction of probation. It appears that defendant's underlying problem that may be the trigger to his other crimes is substance abuse. I would sentence him to a year in county jail, but, allow him to be released directly into a residential treatment program after he's served a minimum of the actual time to get credit for at least six months of it. This person, once he successfully completes the program, should do well on probation and learn how to restructure his life into a law-abiding one.	
Statistic	Value
Total Responses	24

HYPOTHETICAL FOUR

Q4.2. Mr. Denis is eligible for sentencing pursuant to California Penal Code §1170(h) on the current offense. Based on the facts known to you, what sentence do you think you would impose?

#	Answer	Response	%
1	I would place Mr. Denis on felony probation with county jail as a condition of probation.	39	35%
2	I would impose a §1170(h) sentence of the mitigated term of 16 months	23	21%
3	I would impose a §1170(h) sentence of the middle term of two years.	36	32%
4	I would impose a §1170(h) sentence of the aggravated term of three years.	14	13%
	Total	112	100%

Q4.3. Would you impose a straight sentence or would you impose a blended or split sentence pursuant to California Penal Code §1170(h)(5)(b)?

#	Answer	Response	%
1	A straight sentence	41	56%
2	A split sentence pursuant to California Penal Code §1170(h)(5)(b)	32	44%
	Total	73	100%

Q4.4. Assume that Mr. Denis had been in custody for less than a week, but is now out of custody. How much of the sentence that you imposed above would you have him serve on conditional release?

#	Answer		Response	%
1	Up to six months		9	28%
2	Up to one year		4	13%
3	Up to one half of the sentence		8	25%
4	More than one half of the sentence		11	34%
	Total		32	100%

Q4.5. If you have additional comments or clarifying remarks, please include them below.

Text Response
Although he doesn't qualify for Prop 36 treatment, I would impose conditions of probation that he attend a drug treatment program, attend NA meetings, and be tested 2x per month. This is what we call Quasi Prop 36, which is a "no tolerance" chance at rehab. Imposition of sentence would be suspended and he would do some Jail as condition of probation
Meth kills. If he is not interested in rehabilitation then I propose we take him off the street.
I would send him to the ROC program which is a very intensive drug rehabilitation program which last two years. After a two week in custody dry our period, it is an out of custody program unless there are violations of probation.
Drug treatment would be part of the sentence. Questions do not appear based on the reality of the court and doesn't include all applicable sentencing choices. The answers also don't include a split or blended sentence. This survey could be better written.
This man desperately needs treatment and I would order and supervise that Tx closely and if , after a period of time he does not indicate a genuine desire to change his life, then state prison, high or mid term would be the sentence.
Becasue he is not amendable to supervision, he needs to be incarcerated for as long as possible for the safely of the community. Most evidence based practices suggest that most people and teh community benefit from having at least some transition from custody to living in the community- so I would give 60-90 days of mandatory supervision.
I would give the defendant a longer sentence and split it with mandatory drug counseling if he would accept but my experience is that defendants do not want supervision if they can avoid it and will take a little more time in custody (Low term in this case) to avoid supervision. They know with overcrowded jails and good and work time the most they can be held on a 16 month sentence is 8 months but in reality will only do about 3 months.
Assuming that the risk/needs assesment indicates what he risks and needs are, I would impose a greater supervision period.
Again, I would only grant probation with intense residential treatment carefully monitored. Without such treatment this defendant is definitely a candidate for 1170(h) state prison.
In our county, one gram is not a substantial amount. However, if the cash found was a large sum, I would reconsider because it would then appear that he is larger dealer rather than just a small fish in a large pond.
This defendant doesn't want help. I would not waste supervision resources on him until such time that he actually wanted some treatment.

Again, this presumes that this sentencing is after trial
I would put him in our drug court. Prop 36 is much less structured than drug court and thus less effective. I would give drug court a try, our drug court has a level of success.
Again, assuming this is after trial and there are no mitigating circumstances
I would insist that he participate in a drug treatment program while in custody. Since he had done one year in custody already I would start with that however, I would suspend or stay balance upon satisfactory reports from the custody program after 90 actual days I would also consider having him server the balance of the year in a live in residential drug treatment program with a waiver of credits if he drops out or fails to complete
Defendants often opt out of Drug rehab because there is less supervision now if they are not in the program and less opportunity to be caught if still using. Giving a probationary sentence give me, the Judge, a longer tail (3 years) and a period of time of incarceration. With the 1170(h) sentence I have less of a tail and less control though maybe a few more months in jail.
Although his crime was for sales, it is a small amount. Sales usually disqualify defendants from Drug Court. However, this is a case where I might order he be assessed for drug court suitability.
It is still unclear what resources and what level of supervision is available in my county. Many defendants are released well before the term imposed.
I would reserve jurisdiction to impose the mandatory supervision to determine whether defendant was willing to participate in treatment. If not, it would be a straight sentence with treatment in custody.
I do not believe that the criminal justice system works when someone, as this, has had multiple chances and continues to offend. The successes I've seen, anticdotally, as a prosecutor and a judge (as well as a parent for that matter) are when there are clear, defined consequences for actions. If it is clear and simple, people seem to respond far better. When a consequence is imposed, they know that the line is clear. When the "one more chance mantra" is continually imposed, the line becomes very blurry and defendants (and people) are unsure of the consequence of their conduct. I've NEVER seen a positive outcome in this type of circumstance.
The defendant is a low level drug dealer trying to support his addiction. Drug abuse is still the driving force. A16 month or 2 year sentence is not long enough to provide the treatment required. I would impose 16 months in custody and the remainder would be supervised.
I cannot tell whether the DEJ cases were felonies or not and whether or not judgment was entered on any of them. If any of those cases or subsequent arrests resulted in felony convictions, my sentence might change to a 1170(h) local prison term.
with a gram, he is probably selling to use. He has failed in prior programs although Prop. 36 is not a good program or indicator. I would offer probation with an ESS if he asked for Delancey Street.
I would like to see the Juvenile file infomation

The other sentencing option I would consider would be a split sentence of some sort. However, a year county jail and 3 years probation will likely provide more supervision of him so I'd be most likely to follow the probation route.
It would be unusual for me not to know about the juvenile record.
Given the small amount of drugs it is likely that he is only selling to support his habit.
I'd expect the parties in this matter to pursue a plea agreement of 16 months, expecting the defendant to serve about a month.
Again, my sentencing decision would be driven by the small amount of meth and the modest criminal history. I can see that he has significant substance abuse issues, but those are likely beyond my purview in this hypo.
But I would make the jail sentence modifiable to a residential treatment program if recommended by Probation.
Given his history, this defendant clearly has a drug problem. If amenable, I'd likely place him in a similar treatment status as the last defendant. To accomplish this, I would have to grant him probation of suspend a prison sentence.
Would also consider ESS sentence.
I would be trying to place the defenant in a long term inpatient drug treatment program.
I would also add one year at county jail, which can be deemed satisfied by successful completion of a 6 month residential substance abuse treatment program.
We are done. He doesn't want help and I won't waste limited unfunded resources on an individual that doesn't want help and won't try.on the "hope" that the cure might take. I also won't give him less time than his last sentence.
He doesn't comply with any terms of probation and he is careening out of control. The law does not require a useless act: I would simply impose max and hope that the time he has to reflect in custody, persuades him to turn his life around.

Statistic	Value
Total Responses	36

HYPOTHETICAL FIVE (EARLY)

Q90. Mr. Edwards is eligible for sentencing pursuant to California Penal Code §1170(h) on the current offense. Based on the facts known to you, what sentence do you think you would impose?

#	Answer	Response	%
1	I would reduce the charge to a misdemeanor and give Mr. Edwards a county jail sentence.	1	2%
2	I would reduce the charge to a misdemeanor and give Mr. Edwards probation and a county jail sentence.	1	2%
3	I would place Mr. Edwards on felony probation with county jail as a condition of probation.	30	59%
4	I would impose a §1170(h) sentence of the mitigated term of 16 months	9	18%
5	I would impose a §1170(h) sentence of the middle term of two years.	6	12%
6	I would impose a §1170(h) sentence of the aggravated term of three years.	4	8%
	Total	51	100%

Q91. Would you impose a straight sentence or would you impose a blended or split sentence pursuant to California Penal Code §1170(h)(5)(b)?

#	Answer	Response	%
1	A straight sentence	6	32%
2	A split sentence pursuant to California Penal Code §1170(h)(5)(b)	13	68%
	Total	19	100%

Q92. Assume that Mr. Edwards had been in custody for less than a week, but is now out of custody. How much of the sentence that you imposed above would you have him serve on conditional release?

#	Answer	Response	%
1	Up to six months	5	38%
2	Up to one year	0	0%
3	Up to one half of the sentence	6	46%
4	More than one half of the sentence	2	15%
	Total	13	100%

Q94. Would not knowing the additional facts that Mr. Edwards has been living on the streets and has a previously undiagnosed mental illness of schizophrenia change the sentence you impose?

#	Answer	Response	%
1	Yes	30	59%
2	No	21	41%
	Total	51	100%

Q95. What sentence would you now impose, that is different from the one you chose earlier?

#	Answer		Response	%
1	I would reduce the charge to a misdemeanor and give Mr. Edwards a county jail sentence.		0	0%
2	I would reduce the charge to a misdemeanor and give Mr. Edwards probation and mental health treatment as a condition of probation.		0	0%
3	I would place Mr. Edwards on felony probation with county jail as a condition of probation.		3	10%
4	I would place Mr. Edwards on felony probation with county jail and mental health treatment as a condition of probation.		10	33%
5	I would impose a §1170(h) sentence of the mitigated term of 16 months.		6	20%
6	I would impose a §1170(h) sentence of the middle term of two years.		7	23%
7	I would impose a §1170(h) sentence of the aggravated term of three years.		4	13%
	Total		30	100%

Q96. Would you impose a straight sentence or would you impose a blended or split sentence pursuant to California Penal Code §1170(h)(5)(b)?

#	Answer		Response	%
1	A straight sentence		8	47%
2	A split sentence pursuant to California Penal Code §1170(h)(5)(b)		9	53%
	Total		17	100%

Q97. Assume that Mr. Edwards had been in custody for less than a week, but is now out of custody. How much of the sentence that you imposed above would you have him serve on conditional release?

#	Answer	Response	%
1	Up to six months	2	22%
2	Up to one year	2	22%
3	Up to one half of the sentence	2	22%
4	More than one half of the sentence	3	33%
	Total	9	100%

Q98. Does your county have a mental health treatment court?

#	Answer	Response	%
1	Yes	37	73%
2	No	14	27%
	Total	51	100%

Q99. Would you send, or recommend, this defendant to mental health treatment court?

#	Answer	Response	%
1	Yes	28	76%
2	No	9	24%
	Total	37	100%

Q100. If you have additional comments or clarifying remarks, please include them below.

Text Response
There is no funding for it so it is not useful.
I don't think he would qualify for our mental health court. I would ask our DMH social worker to get involved in a treatment program for him as a condition of probation.
I would consider sending him to Mental Health Court if his diagnosis made him eligible, and if the structure of the program would assist him in probiving for his needs. Whether he takes advantage of it is another issue...
This hypo confuses me. Under the original facts, I would place the defendant in a residential dual diagnosis program. If I were unaware of his mental health issues, I would place him in a residential drug treatment program. My "EDP" court is also a de facto mental health court, serviced by a staff member from the County Department of Mental Health; but my court is not an official mental health treatment court. A very significant percentage of the felony defendants I see, approximately 20%, have serious mental health issues.
This is the same defendant I would not give probation if he had already served 365 on his prior felony. I would refer him to Mental Health Court if he wanted to go. If he didn't, I would sentence him to a big chunk of local time and make mental health treatment a term on his probation.
Not knowing the defendant was living on the street, and the mental health diagnosis would not necessarily change the sentence, but it would change the structure. We do not have a mental health court but we are using realignment monies for mental health in jail, transition out, and follow-up services. I would have some background on him before committing to a plea agreement.
If the mental health court would take him, and if the prosecution agreed, I would have no problem sending the defendant there.
Again, I was not given the option of placing the defendant on probation on condition that he receive mental health treatment until I was asked to assume that there were no facts supporting a history of mental illness. This makes no sense-had I had that option in the first place (where I assume mental illness) I would have chosen it.
I would impose max and suspend sentence and place on probation with drug/alcohol in house terms
If eligible
I was slightly confused by the previous set of questions. My initial sentencing decision considered the fact that defendant had a mental illness. I was then asked to assume I didn't know he had a mental illness. If there were no serious mental health issues at play, I might treat the case more punitively. However, on these facts, even assuming no mental health issues, I'd still probably put the guy on felony probation with jail time.

I would also indicate that eh felony could be reduced to misd if complies with menatl health court terms and conditions.	
That was my first thought when reading the fact pattern.	
Possibly. Our mental health court is just starting with limited resources and spaces. He might qualify for our mental health court	
We have a mental health program that is handled by probation. Completion of the program can be made a term and condition of probation or of mandatory supervision.	
I would consider a lengthy county jail sentence, and would consider making it modifiable to a residential program at the discretion of the probation department.	
I would send him to mental-health court IF: (1) I had reason to believe he was in need of or could benefit from the program (it sounds from the hypo, however, that I might be unaware of any mental-health condition/issue (?)); and/or (2) he qualified for the program.	
In our county BHC (Behavioral Health Court) is reserved mostly for felonies. He seems to qualify, as he has an Axis 1 diagnosis. He can be assisted with housing, treatment and monitoring of his medication compliance. And he seems not to have any violence in his history. But the problem is County Mental Health, they do not like to collaborate with the Court and they do not like to have our clients monitored so strictly and remanded for non-compliance. They prefer that clients simply be able to choose or not choose medication compliance. Funding administered by the Court - so that County Mental Health cannot simply withdraw their support and services, is necessary. County Mental Health does not even provide these services - they themselves use a SUBCONTRACTOR to provide out patient mental health services!!	
I was confused by the questions that asked if I would change the sentence if I didn't know about his schizophrenia and homelessness ~ then, gave options reflecting that I would have to know about it. I tried to work around that as best I could.	
Statistic	Value
Total Responses	19

HYPOTHETICAL FIVE (LATE)

Q5.2. Mr. Edwards is eligible for sentencing pursuant to California Penal Code §1170(h) on the current offense. Based on the facts known to you, what sentence do you think you would impose?

#	Answer	Response	%
1	I would reduce the charge to a misdemeanor and give Mr. Edwards a county jail sentence.	0	0%
2	I would reduce the charge to a misdemeanor and give Mr. Edwards probation and a county jail sentence.	0	0%
3	I would place Mr. Edwards on felony probation with county jail as a condition of probation.	21	34%
4	I would impose a §1170(h) sentence of the mitigated term of 16 months	20	33%
5	I would impose a §1170(h) sentence of the middle term of two years.	16	26%
6	I would impose a §1170(h) sentence of the aggravated term of three years.	4	7%
	Total	61	100%

Q5.3. Would you impose a straight sentence or would you impose a blended or split sentence pursuant to California Penal Code §1170(h)(5)(b)?

#	Answer	Response	%
1	A straight sentence	25	63%
2	A split sentence pursuant to California Penal Code §1170(h)(5)(b)	15	38%
	Total	40	100%

Q5.4. Assume that Mr. Edwards had been in custody for less than a week, but is now out of custody. How much of the sentence that you imposed above would you have him serve on conditional release?

#	Answer	Response	%
1	Up to six months	3	20%
2	Up to one year	1	7%
3	Up to one half of the sentence	7	47%
4	More than one half of the sentence	4	27%
	Total	15	100%

Q5.6. Would these additional facts change the sentence you would impose?

#	Answer	Response	%
1	Yes	48	79%
2	No	13	21%
	Total	61	100%

Q5.7. How does this change the sentence you would impose?

#	Answer	Response	%
1	I would reduce the charge to a misdemeanor and give Mr. Edwards a county jail sentence.	0	0%
2	I would reduce the charge to a misdemeanor and give Mr. Edwards probation and mental health treatment as a condition of probation.	4	8%
3	I would place Mr. Edwards on felony probation with county jail as a condition of probation.	2	4%
4	I would place Mr. Edwards on felony probation with county jail and mental health treatment as a condition of probation.	36	75%
5	I would impose a §1170(h) sentence of the mitigated term of 16 months.	3	6%
6	I would impose a §1170(h) sentence of the middle term of two years.	1	2%
7	I would impose a §1170(h) sentence of the aggravated term of three years.	2	4%
	Total	48	100%

Q5.8. Would you impose a straight sentence or would you impose a blended or split sentence pursuant to California Penal Code §1170(h)(5)(b)?

#	Answer	Response	%
1	A straight sentence	0	0%
2	A split sentence pursuant to California Penal Code §1170(h)(5)(b)	6	100%
	Total	6	100%

Q5.9. Assume that Mr. Edwards had been in custody for less than a week, but is now out of custody. How much of the sentence that you imposed above would you have him serve on conditional release?

#	Answer	Response	%
1	Up to six months	2	33%
2	Up to one year	0	0%
3	Up to one half of the sentence	2	33%
4	More than one half of the sentence	2	33%
	Total	6	100%

Q5.10. Does your county have a mental health treatment court?

#	Answer	Response	%
1	Yes	46	75%
2	No	15	25%
	Total	61	100%

Q5.11. Would you send, or recommend, this defendant to mental health treatment court?

#	Answer	Response	%
1	Yes	41	89%
2	No	5	11%
	Total	46	100%

Q5.12. If you have additional comments or clarifying remarks, please include them below.

Text Response
<p>Given the crowded jails and prisons and fed caps, a criminal defendant sentenced to a year in jail may actually spend as little as 45 days. thus local incarceration is not a deterrent.</p>
<p>AGAIN, these questions are not reality. You have not giving me enough information. You are also forgetting under the new realignment system, many defendants are REFUSING to accept probation as they serve very little more time in many circumstances then they are released without parole or probation. Moreover, the inmates are aware of an EARLY KICK from jail in this and many other counties. PLEASE you will obtain infomation from non real world statistics. Come watch court and see how it really works.</p>
<p>The nature of the receiving stolen property would affect how I sentenced him, and it is not specified. If it was a small amount of property I would treat it differently than if he had prior stolen vehicle, for example. My first consideration would be a referral to Mental Health Court.</p>
<p>While I had to pick one of the possible sentences for the purpose of this survey, in reality a DA or PD may convince me to do something different than what I picked. Factors I consider include how early in the process is the plea taking place, how has the defendant done on probation overall, and are there evidentiary problems.</p>
<p>If asked to. Otherwise, I handle these myself. Many of the people we see in court have mental illnesses.</p>
<p>our mental health treatment court only takes people from custody after they have been evaluated. I would do a carrot and stick approach. If he was accepted into Mental Health Court i would suspend his sentence in county jail if he was not acceptable to BHC then I would require he participate in some similar program in custody and after 60-90 actual days suspend balance of sentence, or see if Probation could find him community placement again, with the carrot and stick approach</p>
<p>In Orange County defendants are screened for drug court or mental health court at an ealier stange of the proceedings.</p>
<p>Our mental treatment court is very selective of whom would qualify and for what disorders. If he did not qualify for the mental health court I would send him out to Orange County Health Care services for recommendations and then have a return to my court periodically for compliance reviews. Jail time is not significant to me in these types of cases (credit time served, 120 days, 180 days...who cares because until he is tied up with services he will still be stealing cars to sleep in).</p>
<p>Our courthouse located in South Central LA has a full time mental health consultant who I would ask to interview and assess the defendant or would consider appointing an expert for an evaluation.</p>
<p>My county has a dual diagnosis court, for which I'm assuming this defendant would be</p>

eligible.	
Minimal jail would be imposed. 3 years of formal probation. The defendant would be ordered to our mental health court for an assessment and supervision.	
It is not exactly a Mental Health court. We have an outstanding Collaborative Court which includes homeless court and most of those case involve mental health. Better yet, if he is a combat vet with PTSD, our VET Court is outstanding(and is not soical work)	
Initial eligibility for Mental Health Court is determined by DA. Nature of charge may preclude him based on their eligibility criteria.	
We would have to assess him and get input from the mental health court treatment team regarding his suitability.	
When a mental health issue and/or a substance abuse issue is first noted, treatment for the condition is always the preferred initial option.	
The problem is not addressed by your survey. The problem is that county jails cannot hold all the people sentenced under P.C. section 1170(h). A "splt" sentence requires a jusge to have a thought process where the defendant is not a good candidate for probation but then turn around and, by giving him a split sentence, efectively put the defendant back on probation. A judge must now decide how he ios going to fill up the jail. All my thoughts go to which ones most deserve a full sentence. In addition, offenders are doing far shoter sentences due to county parole and work furlogh than they would do in state prison. Most are reoffending when released.	
Statistic	Value
Total Responses	16

HYPOTHETICAL TWO (LATE)

Q2.2. Mr. Adams is eligible for sentencing pursuant to California Penal Code §1170(h) on the current offense. Based on the facts known to you, what sentence do you think you would impose?

#	Answer	Response	%
1	I would reduce the charge to a misdemeanor and give Mr. Adams a county jail sentence.	0	0%
2	I would reduce the charge to a misdemeanor and give Mr. Adams probation and a county jail sentence.	3	5%
3	I would place Mr. Adams on felony probation with county jail as a condition of probation.	22	39%
4	I would impose a §1170(h) sentence of the mitigated term of 16 months	11	19%
5	I would impose a §1170(h) sentence of the middle term of two years.	15	26%
6	I would impose a §1170(h) sentence of the aggravated term of three years.	6	11%
	Total	57	100%

Q2.3. Would you impose a straight sentence or would you impose a blended or split sentence pursuant to California Penal Code §1170(h)(5)(b)?

#	Answer	Response	%
1	A straight sentence	16	50%
2	A split sentence pursuant to California Penal Code §1170(h)(5)(b)	16	50%
	Total	32	100%

Q2.4. Assume that Mr. Adams had been in custody for less than a week, but is now out of custody. How much of the sentence that you imposed above would you have him serve on conditional release?

#	Answer		Response	%
1	Up to six months		2	13%
2	Up to one year		2	13%
3	Up to one half of the sentence		6	38%
4	More than one half of the sentence		6	38%
	Total		16	100%

Q2.6. Would this fact change the sentence you would impose?

#	Answer		Response	%
1	Yes		28	49%
2	No		29	51%
	Total		57	100%

Q2.7. How does this change the sentence you would impose?

#	Answer	Response	%
1	I would reduce the charge to a misdemeanor and give Mr. Adams a county jail sentence.	0	0%
2	I would reduce the charge to a misdemeanor and order Mr. Adams to obtain treatment for his addictions.	0	0%
3	I would reduce the charge to a misdemeanor and give Mr. Adams misdemeanor probation with a county jail as a condition of probation and order Mr. Adams to obtain treatment for his addictions.	3	11%
4	I would place Mr. Adams on felony probation with county jail as a condition of probation and order Mr. Adams to obtain treatment for his addictions.	19	68%
5	I would impose a §1170(h) sentence of the mitigated term of 16 months.	1	4%
6	I would impose a §1170(h) sentence of the middle term of two years.	1	4%
7	I would impose a §1170(h) sentence of the aggravated term of three years.	4	14%
	Total	28	100%

Q2.8. Would you impose a straight sentence or would you impose a blended or split sentence pursuant to California Penal Code §1170(h)(5)(b)?

#	Answer	Response	%
1	A straight sentence	0	0%
2	A split sentence pursuant to California Penal Code §1170(h)(5)(b)	6	100%
	Total	6	100%

Q2.9. Assume that Mr. Adams had been in custody for less than a week, but is now out of custody. How much of the sentence that you imposed above would you have him serve on conditional release?

#	Answer	Response	%
1	Up to six months	1	17%
2	Up to one year	2	33%
3	Up to one half of the sentence	0	0%
4	More than one half of the sentence	3	50%
	Total	6	100%

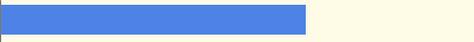
Q2.10. Would you require mandatory treatment as a condition of a blended release?

#	Answer	Response	%
1	Yes	6	100%
2	No	0	0%
	Total	6	100%

Q2.11. Does your county have a drug treatment court?

#	Answer	Response	%
1	Yes	56	98%
2	No	1	2%
	Total	57	100%

Q2.12. Would you send, or recommend, this defendant to drug treatment court?

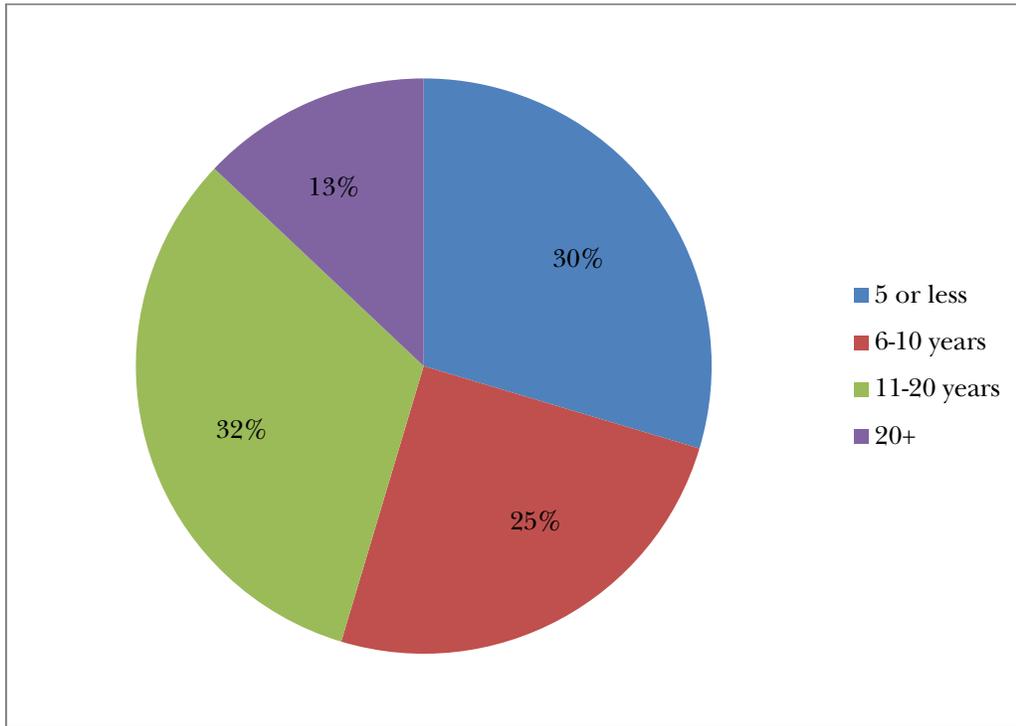
#	Answer		Response	%
1	Yes		36	64%
2	No		20	36%
	Total		56	100%

Q2.13. If you have additional comments or clarifying remarks, please include them below.

Text Response
When I send defendants to rehab I expect that they embrace 12 steps. When they return to my court they must recite and be prepared to discuss the first 3 steps of 12 steps. If they don't know it, I conclude they are not serious and act accordingly.
The reduced funding for drug court treatment makes it non-useful. This defendant needs inpatient treatment in a regular program
not enough information
I would send him to our RSAT program. This is an in custody drug and alcohol treatment program. It is 6 months in length, followed by intensive probation supervision for one year, followed by ordinary probation for one year.
Placement into the Drug Court would be my first choice if the defendant would accept it and has the ability to participate.
I run several drug treatment courts and my probationary sentence would include a substantial interlude in treatment after the jail stint which would be for a modest period of time.
D is youthful, and assuming a drug or alcohol problem needs treatment and to address his criminogenic needs through probation. His history is increasingly serious but not yet extensive. I would give him another opportunity with increased services to do better.
He would have as a term of probation to get treatment.
Our drug court primarily handles just drug charges. In this defendant's case, I would place him on mandatory supervision after doing six months in custody (90 real days after good time) and then have him placed, as a condition of his supervision, into a residential treatment plan and aftercare.
Much like the first case this defendant is a risk to the public to steal property. Like the first the options are similar, each has progressed to felony sentencing, but if treatment, drug court, alcohol treatment may work it's a benefit to all, the defendant, those around him, and the community.
I would make such a recommendation only if the prosecution agreed that it was appropriate.
I think he needs more than what the drug court can provide. I envision some in custody/live in treatment programs and more monitoring than drug court provides
Drug Court in our county is an alternative sentencing program. Defendants must live within the county.
In over 20 years in the California criminal justice system, as a prosecutor and judge, the most successful addicts I've seen are those who "hit bottom" and desire to change on their own. I've seen (and the research bears this out) very few "successes" through the

drug court.	
We presently have a felony drug court. Participants typically have a suspended prison term. Since I would place this defendant on probation in this case without a suspended prison term, I would not send him to our felony drug court. However, I would include treatment conditions on his probation.	
If I decided to give the defendant a chance at rehab, I would place him on felony probation, order him to serve a year in the county jail, and order him to complete a one year in patient treatment program after his jail sentence. I usually also allow early release to a program after 90 or 120 actual days, if bed space is available.	
This Deft. may not qualify for the minimal standards of our drug court. I would send him if he did or keep it in my court if he didn't.	
I am the judge that runs the drug treatment court.	
I would also consider an alternative sentence of 3 years aggravated, 1170(h), with split sentence calling for 12 months I/C (6 mos actual)	
I would refer the defendant to drug court, provided he met the criteria.	
While this defendant appears to be intractable, and has, indeed, violated his probations, I would allow him to go to Drug Court because it is such a stringent and uber-supervised program that yields great results. As for any other type of program, no, because it would require such initiative, which defendant has woefully lacked up until now. Drug Court is such a labor intensive program, that it just might work for this recidivist; so, yes, I would send him to Drug Court.	
Statistic	Value
Total Responses	21

Q72. How many years have you served on the bench?



Statistic	Value
Total Responses	108

Q73. How familiar are you with AB 109/Public Safety Realignment Legislation? On a scale of 1 to 10, with 10 indicating the most familiarity.

#	Answer	Response	%
0	0	0	0%
1	1	3	3%
2	2	1	1%
3	3	5	5%
4	4	1	1%
5	5	6	6%
6	6	7	7%
7	7	13	13%
8	8	17	17%
9	9	29	28%
10	10	21	20%
	Total	103	100%

Q74. Please indicate your age range.

#	Answer	Response	%
1	30-39 years	0	0%
2	40-49 years	13	12%
3	50-59 years	57	53%
4	60-69 years	32	30%
5	70 years or older	5	5%
	Total	107	100%

Q76. Please indicate your gender.

#	Answer	Response	%
1	Male	85	80%
2	Female	21	20%
	Total	106	100%

Q75. Please indicate your race.

#	Answer	Response	%
1	White/Non-Hispanic	74	76%
2	Hispanic	14	14%
3	Black or African American	7	7%
4	American Indian or Alaska Native	0	0%
5	Asian	3	3%
6	Native Hawaiian or Other Pacific Islander	0	0%
	Total	98	100%

Q6.1. If you would like a copy of our final report, please provide your e-mail address below.

Statistic	Value
Total Responses	64

Q6.2. Can we contact you with follow-up questions if they arise? If so, please provide your e-mail address below.

Statistic	Value
Total Responses	68

Appendix C: Judicial Survey Results— County Outliers

Below are several tables noting, by hypothetical, county deviations from statewide averages.

Table 18: Hypothesis Two: Second Degree Burglary with Delayed Information on Substance Abuse

	Felony Probation (Initial)	1170(h) Sentence (Initial)	With Additional Information, % Would Change Answer	Felony Probation (Modified)*	1170(h) Sentence (Modified)*
Statewide (57 judges)	39%	56%	49%	79%	22%
Large Urban Southern CA County A (7 judges)	0%	100% (29% - 16 months; 43% - 2 years; 29% - 3 years)	29%	50%	50%

*Percentages for these categories are based on respondents who stated they would change their answer based on the addition information given, i.e., it is 79% of the 49%, not 79% of the total 57 judges who were given this hypothetical.

Table 19: Hypothesis Three: Auto Theft

	Felony Probation (Initial)	1170(h) Sentence (Initial)
Statewide (112 judges)	42%	57%
Large Central Valley County A (11 judges)	9%	91% (45% - 16 months; 36% - 2 years; 9% - 3 years)
Large Urban Southern CA County B (17 judges)	18%	82% (41% - 16 months; 29% - 2 years; 12% - 3 years)

*Percentages for these categories are based on respondents who stated they would change their answer based on the addition information given.

Table 20: Hypothesis Five: Auto Theft with Mental Illness

	Felony Probation (Initial)	1170(h) Sentence (Initial)	Without the Additional Information, % Would Change Answer	Felony Probation (Modified)*	1170(h) Sentence (Modified)*
Statewide (51 judges)	59% (41% also imposed misdemeanor probation)	38%	59%	43%	56%
Large Central Valley County A (4 judges)	0%	100% (25% - 16 months; 50% - 2 years; 25% - 3 years)	75%	33%	67% (33% - 2 years; 33% - 3 years)
Large Urban Southern CA County A (6 judges)	50%	50% (50% - 3 years)	50%	33%	67% (33% - 2 years; 33% - 3 years)
Large Urban Southern CA County C (4 judges)	25% (25% also imposed misdemeanor probation)	50% (25% - 16 months; 25% - 2 years)	25%	0%	25% (16 months)

*Percentages for these categories are based on respondents who stated they would change their answer based on the addition information given.

Appendix D: Demographic and Other Information

Below are several tables which provide information about how the percentages of judges who impose felony probation versus an 1170(h) sentence differ by demographic categories. Bolded cells indicate where the percentages deviate from statewide averages for that particular hypothetical, but do not consider whether these deviations are statistically significant.

Table 21: Age Range

	Ages 40 49		Ages 50 59		Ages 60 69		Ages 70+	
	% Felony Probation	% 1170(h) Sentence						
Hypothetical One: Drug Sale	0.0	100.0	8.7	91.2	15.6	84.3	40.0	60.0
Hypothetical Two: Burglary	100.0	0.0	54.8	32.3	61.5	38.4	50.0	0.0
Hypothetical Two: Burglary (Delayed)	37.5	50.0	46.2	46.2	21.0	78.9	67.0	33.3
Hypothetical Three: Drug Possession	38.5	61.5	43.9	56.1	37.5	62.5	60.0	40.0
Hypothetical Four: Auto Theft	15.4	84.6	36.8	63.2	40.6	59.4	40.0	60.0
Hypothetical Five (Initial)	14.3	85.7	68.0	28.0	71.4	28.6	33.0	33.0
Hypothetical Five: Delayed (Initial)	33.3	67.0	37.5	62.5	27.8	72.2	50.0	50.0
Average	34.1	64.1	42.3	54.2	39.3	60.6	48.6	39.5

Table 22: Gender

	Male		Female	
	% Felony Probation	% 1170(h) Sentence	% Felony Probation	% 1170(h) Sentence
Hypothetical One: Drug Sale	11.8	88.0	9.5	90.5
Hypothetical Two: Burglary	57.5	32.5	75.0	16.7
Hypothetical Two: Burglary (Delayed)	35.5	60.0	55.5	33.0
Hypothetical Three: Drug Possession	41.0	57.0	42.0	57.0
Hypothetical Four: Auto Theft	38.8	61.2	23.8	76.0
Hypothetical Five (Initial)	55.8	41.2	69.2	23.0
Hypothetical Five: Delayed (Initial)	33.0	67.0	37.5	62.5
Average	39.1	58.1	44.6	51.4

Table 23: Race

	White		Hispanic		Black		Asian	
	% Felony Probation	% 1170(h) Sentence						
Hypothetical One: Drug Sale	13.5	86.5	14.3	85.7	0.0	100.0	0.0	100.0
Hypothetical Two: Burglary	64.5	22.6	66.0	22.2	60.0	40.0	100.0	0.0
Hypothetical Two: Burglary (Delayed)	37.2	58.1	0.0	100.0	50.0	50.0	100.0	0.0
Hypothetical Three: Drug Possession	40.5	58.1	57.1	42.9	42.9	57.1	67.0	33.0
Hypothetical Four: Auto Theft	37.8	62.2	28.6	71.4	28.6	71.4	33.0	67.0
Hypothetical Five (Initial)	60.5	34.2	40.0	60.0	50.0	50.0	67.0	33.0
Hypothetical Five: Delayed (Initial)	41.7	58.3	11.1	88.9	60.0	40.0	0.0	0.0
Average	42.2	54.3	31.0	67.3	41.6	58.4	52.4	33.3

Table 24: Knowledge of Realignment

	Ranked 1 4		Ranked 5 7		Ranked 8 10	
	% Felony Probation	% 1170(h) Sentence	% Felony Probation	% 1170(h) Sentence	% Felony Probation	% 1170(h) Sentence
Hypothetical One: Drug Sale	10.0	90.0	11.5	88.5	9.0	91.0
Hypothetical Two: Burglary	50.0	33.0	35.7	42.9	77.8	18.5
Hypothetical Two: Burglary (Delayed)	25.0	50.0	41.7	58.3	37.5	57.5
Hypothetical Three: Drug Possession	20.0	80.0	38.5	57.7	44.8	55.2
Hypothetical Four: Auto Theft	30.0	70.0	30.8	69.2	38.8	61.2
Hypothetical Five (Initial)	50.0	33.0	40	50.0	71.0	29.0
Hypothetical Five: Delayed (Initial)	25.0	75.0	31.3	68.8	33.0	67.0
Average	30.0	62.0	32.8	62.2	44.6	54.2