

Corrections Realignment: One Year Later

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Summary

In 2011, California changed the way it manages low-level felons convicted of “nonserious, nonviolent, nonsexual” offenses. It redirected 30,000 recently convicted offenders who would have gone to state prison to county jail, shifted the after-prison supervision of about 50,000 offenders from state parole agents to county probation departments, and revised its procedures dealing with sentencing, good-time credits, and parole. Altogether, these changes represent the most significant shift in California corrections policy in decades.

Proponents of realignment believe that counties can do a better job than the state in managing low-level felons—i.e., the counties can achieve higher levels of offender rehabilitation, correspondingly lower levels of recidivism, and less (or at least not more) crime—and all for a lower cost than accomplished by the state.

Realignment and state prisons. From the point of view of the California Department of Corrections and Rehabilitation (CDCR), realignment is working well. The state prison population is falling rapidly. There were 24,000 fewer offenders in the state’s institutional prisons in July 2012 than there were in September 2011 (a month before realignment began), enabling CDCR to move strongly in the direction of the population reduction targets ordered by the courts. Although CDCR projects it will not meet the court-ordered population goal in 2013, the reduction in population has nonetheless been large.

CDCR is also striving to improve the quality of medical and mental health care available in the prisons and is building a major prison health care facility in Stockton, scheduled to open in summer 2013. These efforts may encourage the courts to consider ending the federal receivership of prison health care in California.

Realignment and county jails. As might be expected, county jails are feeling the effects of realignment, which has transferred some 30,000 offenders to county supervision. Although the jail system in California has a rated capacity of about 76,000 and an average offender population of 71,060, many individual jails are already crowded (Loftstrom and Kramer 2012).

Several counties are responding to this population pressure by building additional jail space. But new space alone will not be able to house this increasing population, at least any time soon. Local law officials will need to master techniques for managing substantial parts of their “jail” population outside of jail. Within limits, county sheriffs can release offenders on their own recognizance, managing them at home, work, or school through electronic surveillance or with probation-like check-in and other conditions.

Sheriffs are also beginning to face some of the same problems experienced by the prison system. For example, the federal lawsuits that drove realignment were fundamentally about the poor health care in prisons, and this issue could shift to county jails. A legal suit alleging that Fresno’s jail is providing unconstitutionally inadequate health care was filed in December 2011.

Post-Release Community Supervision. Under a new arrangement called Post-Release Community Supervision (PRCS), low-level offenders released from state prison are now supervised by county probation officers. Probation will play an important role in the question of whether or not counties are truly able to do a better job than the state in rehabilitating low-level felons. Probation officers will both supervise released offenders and arrange for drug treatment, mental health care, counseling, housing, educational programs, employment assistance, and other services to help offenders successfully reenter society. Many counties are now rushing to hire more probation officers and get offender services in place.

Sentencing. Realignment has also affected California's determinate sentencing policies, which prescribe specific sentences for each crime. Before realignment, an offender who received a mandatory three-year prison sentence would spend three years in prison (less credits) and up to three years on parole. After realignment, the offender would still be sentenced to three years; but it could mean three years in jail, for example, or one year in jail and two years on probation, and there is no longer any parole requirement. Thus, total supervised time is much less after realignment than before.

Funding for realignment. Arguments surrounding realignment funding are dominated by three issues:

- *Is the state paying enough?* The answer depends in part on the accuracy of state projections of the number of offenders that will be shifted to each county.
- *Is the funding distributed fairly?* Counties were asked to devise their own formula for distribution, which they did through the California State Association of Counties. This initial formula was considered inadequate and it was revised for the 2012–13 fiscal year. It is expected to be revised again in future years as counties develop a better understanding about the costs and burdens of realignment.
- *Is the funding reliable?* Counties worry that a future governor and legislature might cut realignment funding, while leaving the workload. An initiative guaranteeing future funding, sponsored by the governor, has qualified for the November 2012 ballot.

Realignment and crime. Crime rates in the nation and in California have declined for several years. A core premise of realignment is that it will not lead to any increase in crime and may even reduce it further. However, this may not be the case, given the shorter sentences and alternative programs that bring offenders more quickly into the local community. Preliminary data indicate that some communities around the state are experiencing an increase in property crime, particularly burglary and motor vehicle theft, while others are seeing a continuing decline in criminal activity. Unfortunately, the cause and effect relationships within these communities are confounded by a prolonged recession and severe budget cuts to local law enforcement and social service programs. Crime rates and realignment need to be closely monitored and carefully analyzed.

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Introduction

In 2011, California changed, or “realigned,” the way it manages felons convicted of low-level crimes—i.e., “non-serious, non-violent, non-sexual” offenses. The state is redirecting about 30,000 recently convicted low-level felons who would have gone to state prisons before realignment to county jails and shifting after-prison supervision of more than 50,000 offenders from state parole agents to county probation officers.¹ This redirection will continue gradually through 2015. The state also changed its policies and procedures surrounding sentencing, parole, good-time credit, and other related concerns. Altogether, these changes represent the largest shift in California criminal justice policy in decades.

Although realignment shifts responsibility (and money) for offenders to the state’s 58 counties, it does not specify how counties are to manage prisoners or supervise released offenders. There is little state oversight and few new state regulations, although a new Board of State and Community Corrections has been created to provide coordination and technical assistance. Counties are not required to account for how they spend the money they get from the state to cover realignment costs. Nor are they required to report on the number of prisoners or probation cases they handle, the length of sentences, or their rates of rehabilitation and recidivism. Success or failure is each county’s option.

Realignment was compellingly driven by a federal court order that the state reduce prison crowding. This directive was upheld by the United States Supreme Court in May 2011, after many appeals by the state. At their peak population, the prisons were housing 200 percent of their design capacity.² The court ordered the state to reduce the crowding to no more than 137.5 percent within two years, specifying target reductions to be achieved by the state every six months. This meant that the state had to either reduce the prison population by about 30,000 prisoners or increase prison capacity.

Realignment introduced many changes in California law:

- Individuals recently convicted of a “nonviolent, nonserious, nonsexual” felony, and who have no prior convictions for crimes that exceed these standards, are to serve their sentences in county jails, or possibly outside of jail under sheriff management. Previously, they would have served their time in state prison. (“Nonviolent” and “nonserious” are defined in California’s Three Strikes Law.³ “Nonsexual” is defined as an offense that does not require an individual to register as a sex offender.)
- Previously, offenders followed up their prison terms with up to three years in their communities under state supervision known as parole. Under realignment, offenders whose most recent crimes were nonviolent, nonserious, and nonsexual in nature are supervised by county probation officers when released from prison and are subject to somewhat different rules under a new Post Release Community Supervision (PRCS) program.

¹ These estimates from the California Department of Finance, considered the most authoritative available, were used in negotiations over the enactment of corrections realignment in 2011. The numbers are the average count of offenders expected to be jailed or under community supervision after completion of initial realignment efforts. See California Department of Finance, *Proposed Realignment—Local Cost Summary and Assumption Statements*, www.dof.ca.gov/budget/historical/2011-12/documents/Restructure_and_Realignment_new.pdf; *Realignment—Adult Inmate Daily Population Projections by County*, www.cdcr.ca.gov/realignment/docs/Realignment-Population-Projections-Final.pdf; and *Realignment—Community Supervision and State Parole Average Daily Population Projections by County* (2011), www.cpoc.org/php/realign/coplans/imperial3.pdf.

² Design capacity is defined by the California Department of Corrections and Rehabilitation as “the number of prisoners a prison can house based on one inmate per cell, single-level bunks in dormitories, and no beds in spaces not designed for housing.” (CDCR, “Court-Ordered Targets for CDCR Inmate Population Reduction,” www.cdcr.ca.gov/realignment/3jp-chart.html.) There is room for argument about whether this is a completely reasonable definition, given that some cells might be able to hold two inmates and that double bunks might be feasible in some situations.

³ California Penal Code, Sections 667.5 and 1192.7.

- Offenders still subject to state parole supervision (i.e., those who started parole before realignment began in October 2011 or those convicted of more serious crimes) would have been returned to state prison for parole violations; but now, under realignment, nearly all will be sent to county jail.
- Before realignment, felons were subject to “determinate” prison sentences (i.e., a given amount of time, as specified in state law for each crime),⁴ nearly always followed by up to three years of parole. Following realignment, judges can now “split” a determinate sentence for a low-level offender into jail time and probation time, and there is no longer a parole requirement. Moreover, regardless of the court-determined sentence, the actual time a prisoner spends in jail can be reduced by the county sheriff, depending upon available jail space. Thus, an offender’s total supervised time is likely to be considerably shorter under realignment.

Realignment is also a grand experiment, in the more or less scientific sense that it offers the chance to test a working hypothesis about correctional policy. The hypothesis proposed by the governor and realignment’s legislative sponsors is that counties can do a better job than the state in managing low-level felons—“better” in the sense that counties can achieve higher levels of offender rehabilitation, lower levels of recidivism, and less (or at least not more) crime, all at a lower cost to the taxpayers than if the state were managing these offenders. A second, implied hypothesis is that counties can manage many more offenders outside of jails without crime increasing. However, it should be noted again that realignment is limited to low-level felons. The state would continue to keep felons who committed more serious or violent crimes in state prisons.

Some systematic data have been gathered about the workings of realignment since its establishment in October 2011, particularly with regard to the Post Release Community Supervision program. Much less is known about how jails are faring. In the latter case, we can only rely upon examples and anecdotes. This report offers a view of the progress of realignment so far.

From the state’s point of view, the results during this first year have been good. The prison population has fallen rapidly (declining by some 24,000 inmates between September 2011 and July 2012), and the state is likely to come at least close to meeting its court-ordered reduction by 2014. The Department of Corrections and Rehabilitation’s parole responsibilities are also declining, and the department is trimming both its budget and its plans for new prison construction.

Counties, however, are struggling in their efforts to manage a growing jail population and to develop probation programs for their rapidly increasing realigned caseloads. They had little time for preparation, and given the scale of change occurring, it is remarkable how little public complaint has come from local law enforcement.

It would certainly be a plus if corrections realignment cost less than alternative approaches. Whether this will turn out to be true is both complicated and uncertain. CDCR’s budget is about the same as it was before realignment, and the state is sending counties around \$1 billion to pay for their new responsibilities. Thus, total state and local expenditures come to more than CDCR’s budget before realignment. However, a more thoughtful comparison would be to consider the difference between total realignment costs and what CDCR’s budget would be if it were to try to satisfy the federal court’s requirements without realignment.

How realignment will affect crime rates is also uncertain. Both property and violent crime rates have been generally declining in California (and in the rest of the country) since at least the early 1990s.⁵ Preliminary

⁴ The law did allow judges some discretion, enabling them to choose a longer or shorter term than “normal” if warranted by the circumstances in the case before them.

⁵ See California Department of Justice, “California Crimes, 1983–2009,” statistical crime chart, at <http://oag.ca.gov/crime>.

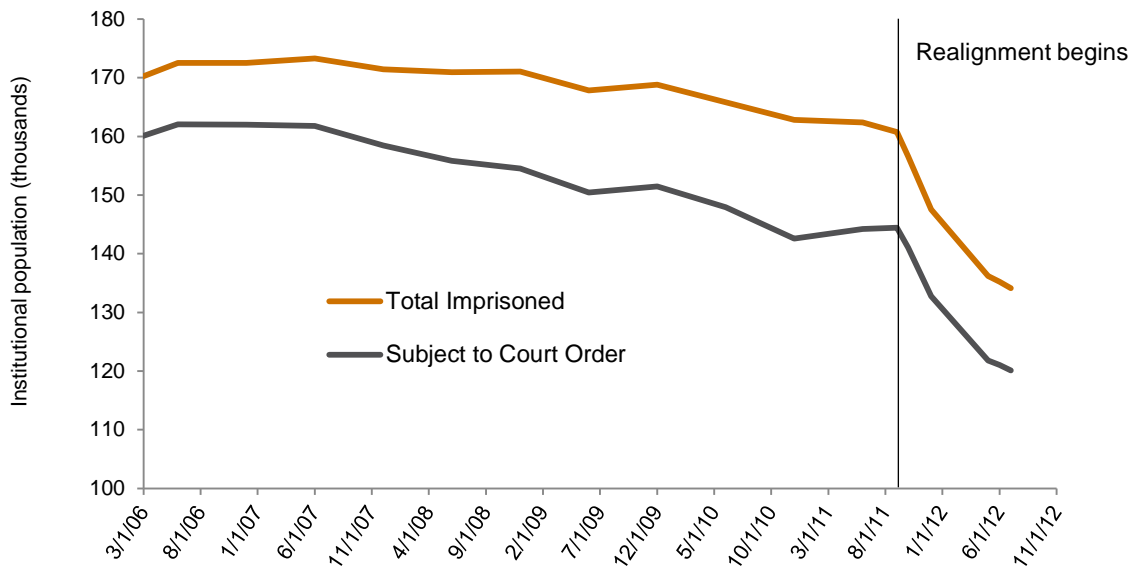
data now suggest that crime rates are increasing in some communities throughout the state. However, the cause and effect relationships between realignment and criminal activity are far from clear and difficult to ascertain, given the confounding effects of a prolonged recession and severe budget cuts to local law enforcement and social service programs.

Realignment and State Prisons

Prison Population Levels and the Court-Imposed Cap

From the point of view of the California Department of Corrections and Rehabilitation, realignment has been a success. The department, along with the governor and legislature, have been working toward reducing the prison population since its peak in 2006. Their initial efforts met with only modest success, derived primarily from changes in sentencing law and parole procedures and by sending prisoners to contracted prison space in other states. With the introduction of realignment, however, the prison system began to experience a rapid and dramatic decline in its population, as shown in Figure 1. Several factors contributed to this developing trend. As a matter of course, prisoners who completed their sentences were released to parole or to county supervision; either way, they left prison. However, low-level felons who would have been sent to prison were now sentenced by the courts to terms in county jail or placed under other local supervision.⁶ So a major inflow was diverted. In addition, parole violators who would have returned to state prison were sent instead to county jail. And parole violators who committed new low-level crimes and received new sentences were also sent to county jail or placed under other local supervision. Inmates released from prison to county PRCS programs and who subsequently committed new crimes would also be sentenced to jail, not state prison as in the past.

FIGURE 1
After realignment, the prison population declined rapidly and dramatically



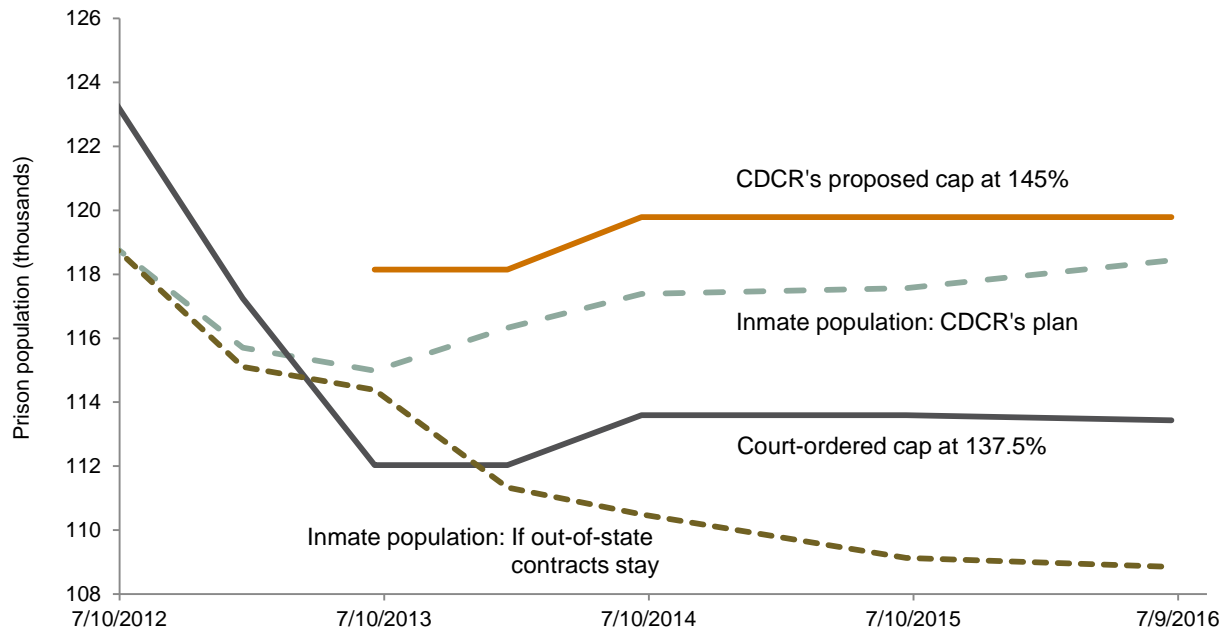
SOURCE: California Department of Corrections and Rehabilitation, *Monthly Report of Population as of Midnight* (various dates).

To date, this population reduction has been sufficient to satisfy the court order. CDCR's institutional population was lower than the 133,000 cap set by the court for December 2011, and the prison population had 3,054 fewer inmates than required to meet a June 2012 benchmark of 124,000.

⁶ For an analysis of the decline in the number of new prisoners sentenced to CDCR, see Center on Juvenile and Criminal Justice, *Update: Eight Months into Realignment: Dramatic Reductions in California's Prisoners* (June 2012).

Going forward, things are less certain. The court requires that the institutional prison population be reduced to 137.5 percent of design capacity (i.e., 110,000 inmates if prison facilities are not increased) by June 27, 2013, and then to remain at no more than 137.5 percent of capacity thereafter. However, the population cap will become higher as the state brings additional prison capacity currently under construction on line. And realignment reductions will slow and then stop. What happens with respect to the court cap depends on choices CDCR makes. Figure 2 shows two possibilities.

FIGURE 2
California prison population levels and targets



SOURCE: CDCR, *The Future of California Corrections* (2012), Appendix G, with PPIC calculations.

The line labeled “Court Ordered Cap at 137.5%” shows the institutional prison population levels required by the court order now in effect. The line is adjusted upward in mid-2013 to reflect the additional design capacity that will come on line as construction of the new prison health care facility in Stockton is completed. The line labeled “Inmate Population: CDCR’s Plan” shows the department’s preferred scenario.⁷ It shows the projected post-realignment prison population rising over several years as the department receives back the 9,500 prisoners (or at least the “slots”) now housed under contract in other states. In August 2012, the department reported to the court that it would only be able to reduce crowding to 145 percent of design capacity and requested that the court suspend the population caps altogether. It argued that the state can provide constitutionally acceptable medical and mental health care at that level. This may be a compelling argument, because the department is building a new health care center, and because independent evaluations of the health care facilities at most of the prisons have improved considerably. The figure shows this higher limit as the line labeled “CDCR Proposed Cap at 145%.” Note that the department’s preferred scenario comes in below the 145 percent cap, although not by much.

⁷ CDCR, *The Future of California Corrections* (2012), p. 8 and Appendix G.

The figure also shows prison populations if CDCR did not receive back the out of state prisoners. It comfortably satisfies the court's 137.5 percent limit, with about 4,500 slots to spare. If the court agreed to a 145 percent standard, there would be almost 11,000 slots to spare. These slots/beds would be useful if the state were to consider assuming responsibility for certain prisoners realigned to counties under current law, such as those with major medical or mental health problems.⁸ They may also be needed if the state prison population increases in the years following the 2016 range of the figure.

There are, of course, policy reasons for bringing back the out of state prisoners. It would make family visitation easier, and the money paid to prison guards and other service providers would be invested in the California economy. The wisdom of contracting out this traditionally public function has arguments on both sides.

Medical and Mental Health Care

In a case first filed in 1990, federal courts ruled that the mental health care provided in California's prisons was constitutionally inadequate. They reached a similar conclusion about the medical care in California's prisons in 2001. After several years of little progress, the courts appointed a special master, and then, escalating, a receiver to take over management of medical care in the state's prisons. They then ordered the prisons to reduce population levels after concluding that crowding meant prisons did not have enough space to allow adequate health care.⁹

CDCR reports that it has made major improvements in prison health care. The quality of care at each prison is evaluated periodically by the Office of Inspector General (a state agency created to inspect and oversee the operation of CDCR, including its health care delivery). The resulting ratings have been improving, and many prisons now equal or exceed the standard for constitutionally adequate care determined by the receiver. The department also reports that it has plans to improve medical facilities at prisons throughout the state, and that realignment has freed up space for this purpose. In addition, the department is building a major "California Health Care Facility" in Stockton, scheduled to open in summer 2013, that will serve as a hub for inmates needing more complex medical and mental health care.

The new and upgraded prison facilities will also be used to treat inmates with mental health problems, although CDCR reports that realignment has significantly reduced the number of inmates needing mental health care. Before realignment, the department estimates it had 38,804 inmates needing mental health care. By April 2012, the population needing these services had dropped by 7,392 patients.¹⁰ The latter number provides a rough estimate of the number of inmates moved to county supervision under realignment who may need mental health care.

CDCR Reorganization and Cost Comparisons

Taking realignment into account, CDCR issued a new "blueprint" in spring 2012 announcing that it intended to close one old prison facility, build a few new facilities on existing prison grounds, and cancel its plans to build additional prisons. The blueprint also noted that the department was going to change the way it

⁸ Prison slots or beds are not all the same. Beds suitable for inmates with medical care or mental health needs may have special requirements, at least some of the time. Security levels also vary. But overall, more available space increases management flexibility.

⁹ Courts have repeatedly required that California counties maintain jail populations that do not exceed the jail equivalent of design capacity. It is curious that state prisons can exceed capacity by 137 percent while jails cannot.

¹⁰ CDCR, *The Future of California Corrections* (2012), pp. 29–30.

assigns security levels to prisoners, mostly by downgrading some prisoners to lower (and therefore less expensive) levels. These changes should help lower the cost of running the remaining prison system.

The most interesting cost question about realignment, which we address here, is whether it will save the state as much money as it expects. In 2010–11, before realignment, CDCR managed all imprisoned and paroled felons with a budget of \$8.9 billion. In 2012–13, the state paid both CDCR and local governments to manage this same population, at a combined cost of \$9.8 billion (\$8.9 billion for CDCR and \$857 million for local governments). Thus, the cost for managing this felon population has increased by almost \$1 billion as a result of realignment.

This comparison is somewhat untenable, however, since we cannot revert to the overcrowded prisons of 2010, given the federal court order. A more realistic approach would be to consider what it would cost to keep all sentenced felons in state prison and yet satisfy the court’s noncrowding requirements. The CDCR blueprint estimates that this would require nine new prisons at a cost of \$7.5 billion. It assumes that the construction costs would be financed by selling lease-revenue bonds, with an annual debt service payment of \$550 million. In addition, the expenses necessary to run the new prisons, including hiring guards, would cost \$1.6 billion per year.¹¹ Thus, the total cost of adding enough new prison capacity to satisfy the court order would be roughly \$2.2 billion per year (operating costs + debt service). This suggests at least two observations:

- If at some point California were to decide that realignment was not working well, it could direct CDCR to build nine new prisons and, over time, return sentenced felons to the prison system. This would cost about \$2.2 billion per year. Of course, the state would no longer need to pay local governments about \$1 billion per year for their realignment work. So the net additional cost would be \$1.2 billion per year. There is no expectation, however, that realignment might be reversed, and commitments to its implementation are being made at the local and state levels, including a ballot measure in November 2012 to create a constitutional guarantee of state funding for realignment.
- The state should realize a cost benefit from realignment. It will pay counties about \$1 billion to manage low-level felons instead of spending \$2.2 billion to undertake this job itself. Of course, the question arises as to whether the state is giving counties enough money to adequately do their job. If it turns out that the state needs to pay the counties more for their involvement in realignment, then obviously the cost savings for the state will be smaller.

¹¹CDCR, *The Future of California Corrections*, p.15.

Realignment and County Jails

Felons sentenced to county jails through realignment began arriving at the jails in October 2011, at the rate of about 2,000 prisoners each month statewide. There are several pathways through which this may occur. The most likely involves individuals convicted of low-level felonies after October 2011, who are generally sentenced directly to jail. In addition, offenders on state parole who violate their parole conditions can be sent to jail for up to 180 days if the Board of Parole Hearings revokes their parole. Before realignment, most parolees would have been sent back to state prison. Offenders on Post Release Community Supervision can be flash incarcerated for up to 10 days by the probation department or remanded to jail for up to 180 days by a court.

Managing their jail populations is one of the most important responsibilities undertaken by county sheriffs. And realignment has complicated this job. Before realignment, offenders could be sentenced to jail for up to a year. Ideally, the sheriff would hold an offender in jail for the term of the sentence and then release him/her. However, dealing with reality is a little more difficult. Many county jails are effectively full, and to make space for new arrivals, the sheriff must release other offenders from jail. This is not a new problem. For example, during the third quarter of 2011, just before the initiation of realignment, jails gave early release to 11,233 inmates per month because of lack of space.¹² And realignment will now shift roughly 30,000 offenders to the counties, compelling most sheriffs to rely on out-of-jail management (OJM) for a significant share of their caseload. Realignment gives sheriffs new authority and methods for managing this function.

Jail Crowding and Population Management

County jails have a rated statewide capacity of about 76,000 beds.¹³ Before realignment, they had an average daily population of slightly more than 71,000. During the first three month of realignment, the state prison population declined by about 12,800 felons. Though not all of this decline was caused by realignment, counties are clearly not in a position to both incarcerate all of the inmates they managed prior to realignment and all of the realigned offenders.

In fact, before realignment began, many county jails were already facing capacity constraints, with 17 counties operating under court orders to limit the number of inmates in their jails. Many counties plan to take advantage of partial state funding to add jail beds to manage their new and greater responsibility. However, the high costs of construction and operations are likely to limit the number of new jail facilities.

Sheriffs in counties with crowded jails must ration jail space by deciding who might best be kept in jail and who might most safely (or “least unsafely”) be let out. This is not a new task for sheriffs, but one with pressures considerably heightened by realignment. Each sheriff manages three somewhat distinct populations in jail:

- Inmates serving a local sentence, such as for a misdemeanor. According to the Jail Population Survey from the Corrections Standards Authority, this group accounted for 29 percent of the statewide jail population in 2011, before the implementation of realignment.

¹² CDCR, Corrections Standards Authority, *Jail Profile Survey, 2011, Third Quarter Survey Results* (2011).

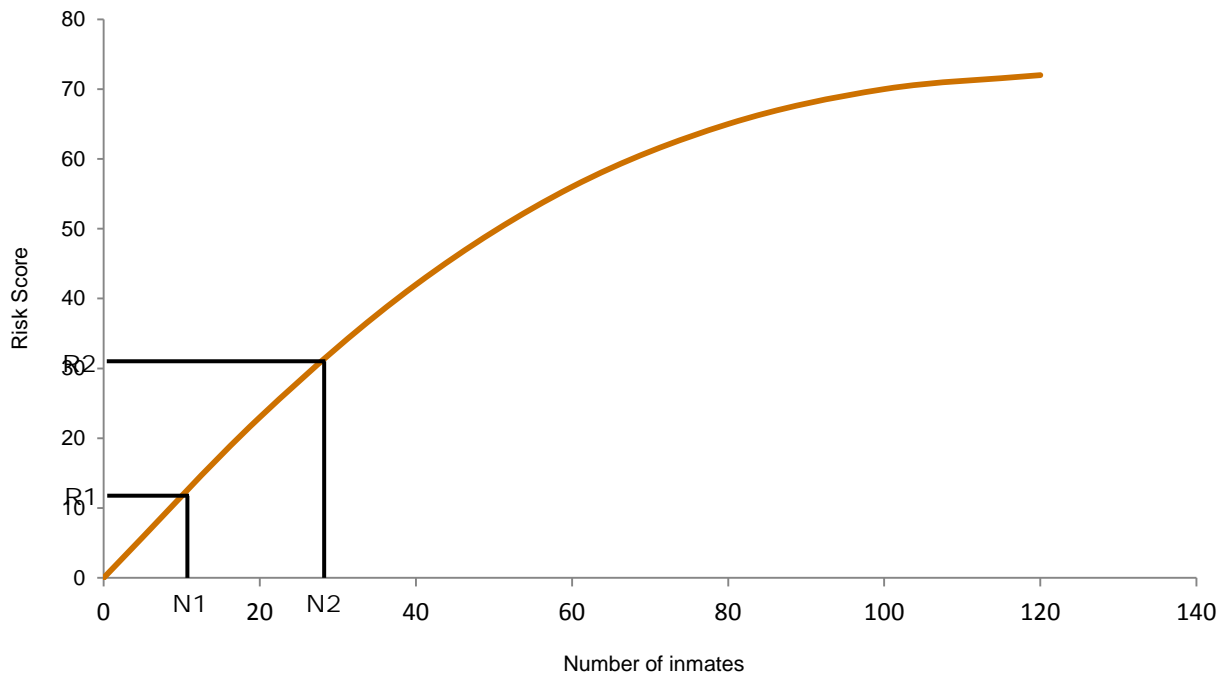
¹³ The data reported in this paragraph is from Magnus Lofstrom and Katherine Kramer, *Capacity Challenges in California's Jails* (2012).

- Inmates not yet sentenced, who are waiting for trial or other resolution (71 percent of the statewide jail population before realignment).
- Realigned inmates, including recently sentenced low-level offenders, parolees remanded to jail, and PRCS revocations.

Rules for managing these populations vary somewhat. But generally, a sheriff with an overcrowded jail will rank all inmates for risk before choosing who will be placed in out-of-jail management (OJM). Risk has several dimensions, including risk of a new crime, of not showing up for a court appearance, or of condition violations, such as drug use. There are a number of statistical tools that attempt to measure these risks for individual offenders and that have demonstrated at least modest success, which could be used to create a rough rank order.¹⁴

Figure 3 presents a purely hypothetical chart of a number of inmates ranked by risk. The precise shape is unknown, but it must rise to the right.¹⁵ Suppose that a sheriff was releasing N1 inmates before realignment, with an R1 risk of additional crime. Then suppose he receives 20 additional inmates through realignment who have the same risk profile as the jail’s prior inmates. To maintain his jail population at an acceptable level, he must rely upon OJM practices for more inmates (N2). The risk level of the additional offenders managed outside of jail is higher simply because the number of offenders is higher. This does not mean that they will necessarily commit more crime, but that the probability of additional crime is increased.

FIGURE 3
Inmates ranked by risk



¹⁴ Current assessment tools commonly identify risk, in the sense used here, and “needs”, which means the kinds of services, therapy, conditions, or interventions that might help minimize risk. Risk and needs interact. The risk curve shown in Figure 3 assumes that the sheriff is prepared to fulfill “needs” to the degree that is practical and usual.

¹⁵ Although there is an abundant literature about criminal risk assessment, its charts and analysis mostly concern the predictive accuracy of the assessments. The question of how risk changes as N increases for a given population appears to be somewhat novel.

The inmates most likely to be released, or at least managed out of jail, would be those ranked to the left of N2. They might be inmates awaiting trial, inmates serving local sentences, or realigned inmates, or most likely, a mix of all three. But the choice is not simply between jail or release. The sheriff has a range of OJM options:

- Within limits, he can authorize early release of an offender serving a sentence.
- He can release someone not yet sentenced on his/her own recognizance.
- He can release an offender subject to light or intense probation-like supervision by sheriff deputies.
- He can release someone to home detention with GPS monitoring.
- He can release someone to receive drug treatment, to work, to attend school, or for some other purpose, perhaps in combination with other methods of supervision.

All of these options were included within the strategic design of realignment, which did not intend that counties should keep offenders locked up for their entire nominal sentence, as state prisons had done. Rather, counties were expected to keep offenders in jail for part of their sentence, and manage them out of jail for the rest. Given jail capacity problems, most sheriffs will have little choice but to gain experience with these techniques.

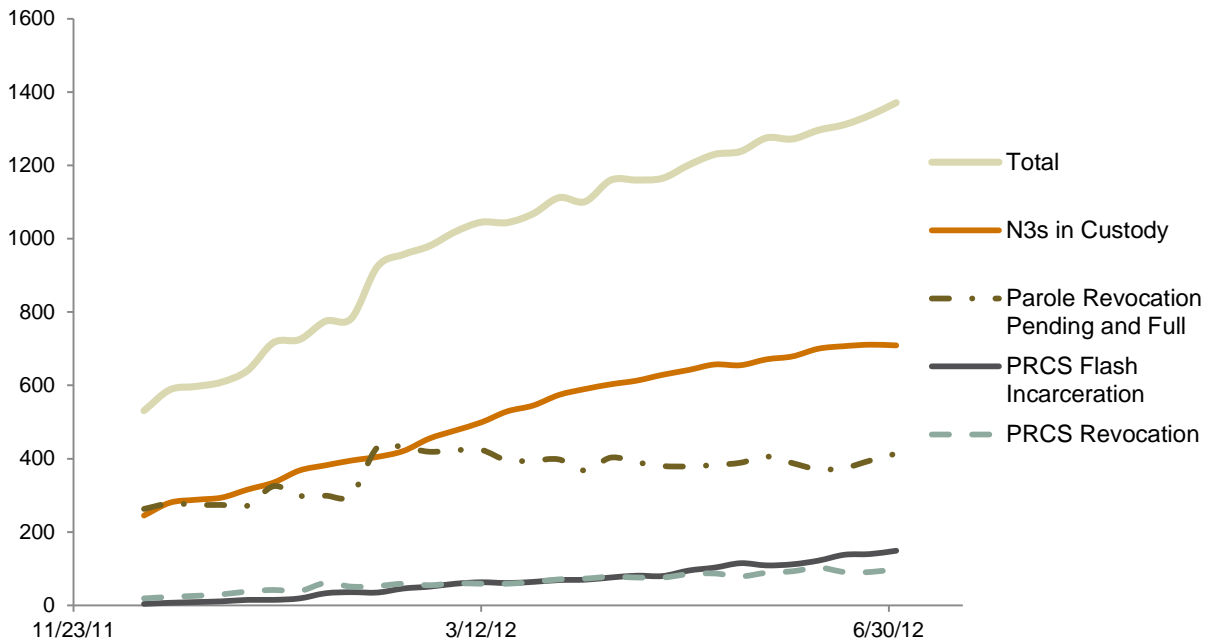
Some County Examples

Realignment legislation does not require that counties report on their number of realignment jail inmates or how they are faring. Some county sheriffs, however, are developing their own data collection systems. We present four examples below.

San Diego County

Figure 4 shows how the various offender groups are contributing to the growth in San Diego’s realignment population. “N3s in Custody” refers to the “nonserious, nonviolent, nonsexual” offenders sentenced to jail terms after October 1, 2011, and still in custody. After steadily increasing for several months, this population seems to be leveling off, as expected. The number of parolees remanded to jail increased rapidly in February but has since stabilized. These offenders are still supervised by state parole officers. Under realignment, their parole can be “revoked” for up to 180 days by the state Board of Parole Hearings, and they can be held in jail pending a decision by the Board of Parole Hearings.¹⁶ Similarly, county probation deputies can “flash incarcerate” a PRCS offender for up to 10 days for a violation, and a court can revoke the status of a PRCS offender and send the offender to jail for up to 180 days. The number of PRCS cases sent to jail has been growing. This probably reflects the steady increase in the number of PRCS offenders being sent to the county, the improving capacity of the probation department to manage this rather sudden population increase, and the increased amount of time some of these offenders have had to commit violations of their PRCS conditions or new crimes, and to get caught.

FIGURE 4
Sources of realignment jail population: San Diego County



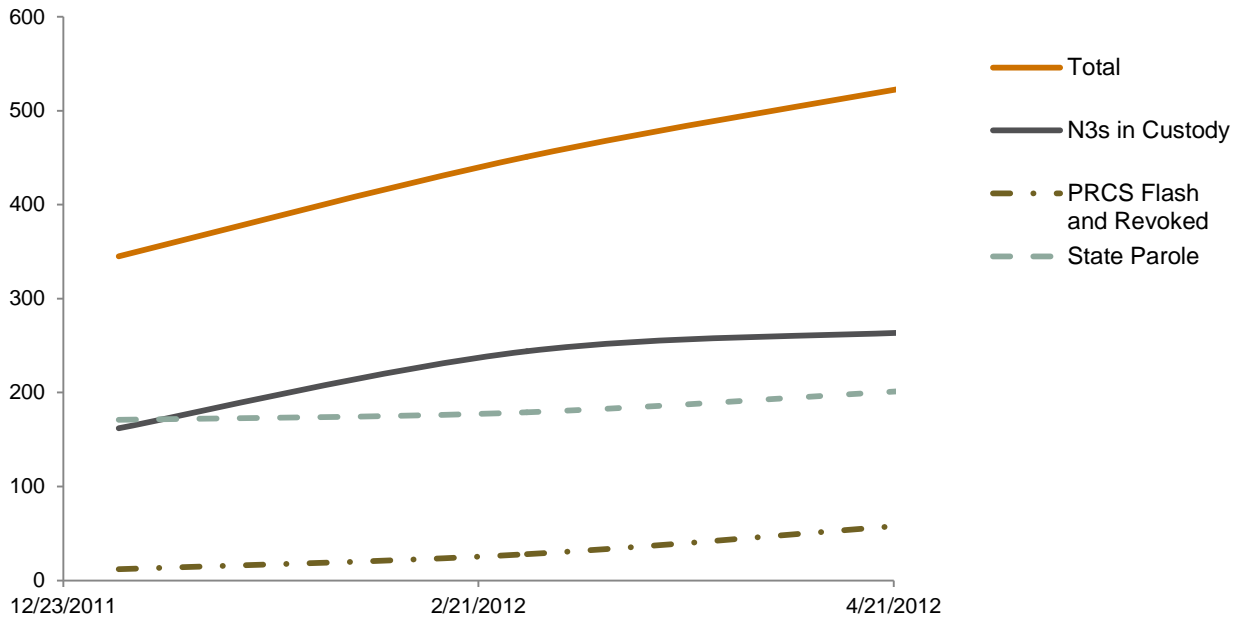
SOURCE: County of San Diego, *AB 109—Public Safety Realignment Update (various dates)*, www.sdcountry.ca.gov/probation/ccp.htm.

¹⁶ Beginning in mid 2013, parolees will be subject to flash incarceration by their parole officer, and their parole will be subject to revocation by the courts rather than the Board of Parole Hearings.

Santa Clara County

Figure 5 shows similar data for Santa Clara County. It is notable that the number of PRCS offenders sent to jail has steadily increased, just as in San Diego County. And the number of parolees remanded to jail is remarkable. In December 2011, there were more parolees than recently sentenced felons in jail.

FIGURE 5
Sources of realignment jail population: Santa Clara County



SOURCE: County of Santa Clara, *Public Safety Realignment Program Monthly Status Report (various dates)*.

Los Angeles County

Los Angeles reports realignment jail information in a different way, which allows an alternative perspective on its effects. By the end of March 2012, the county jail had received 4,772 inmates that the county attributed to realignment. The total jail inmate population increased from 15,463 just before realignment to 17,460 in late March. By then, realigned inmates made up 27 percent of the jail’s population.

As of May 2012, the county had not released any N3s until they had served their full sentences. The county reports that it currently has some 30 N3s each month on GPS monitoring outside of jail (0.6 percent of the realignment population). Before realignment, the county had housed about 1300 felons under contract with CDCR. That number declined to 818 by March 2012, since CDCR had more space in state prisons. The number of jail inmates with new sentences not involving realignment, charged but not sentenced, or held for other county-level reasons (such as misdemeanors) declined by more than 1,500. It is not clear whether some were released early, and if so, whether this was pre-realignment business as usual or was undertaken in order to accommodate the realigned population.

The county jail has a rated capacity of 16,537. But capacity is elastic in Los Angeles. The county has 4,300 jail beds available that had been shut down because of budget cuts, and which it plans to re-open as needed. It has additional space available in fire camps for suitable prisoners, and it is also exploring contracting for

space in several Community Corrections Facilities that had provided local prison space under contract with CDCR and that is now available.

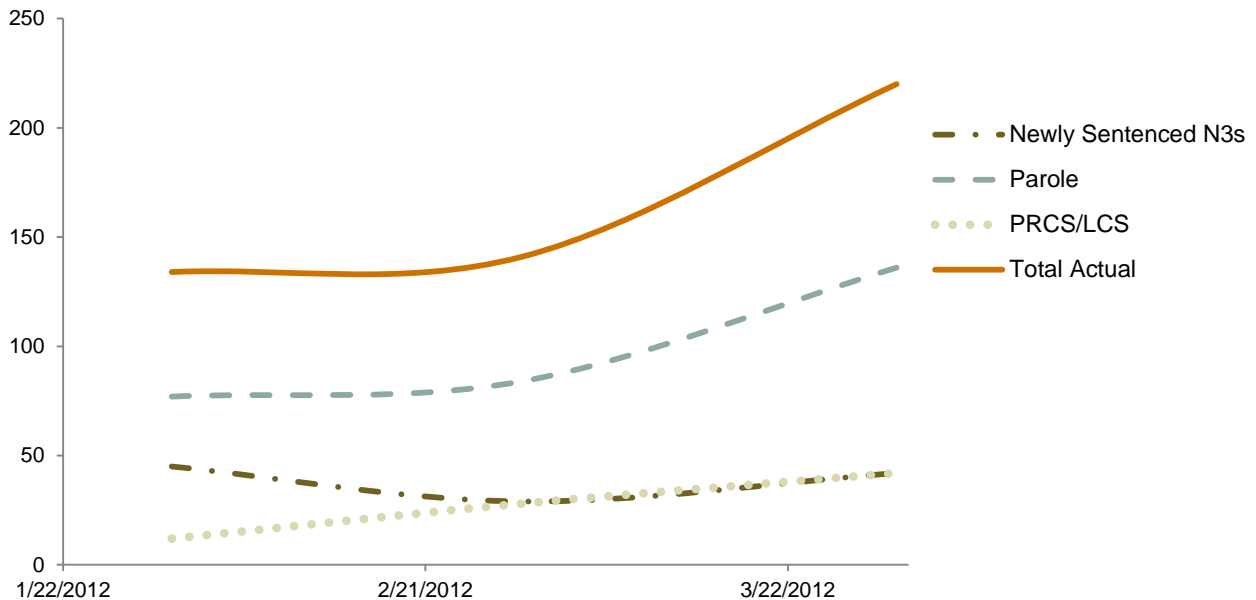
An interesting observation from the Los Angeles experience is that many N3s had been in jail long enough before they were sentenced that they had only a few months to serve after conviction. For example, recently sentenced inmates arriving at the jail in November 2011 received an average sentence of 24 months, but they had only nine months remaining after deducting the time they had already served. By April 2012, 427 N3 inmates (about 10% of realignment inmates) had been released after serving their full term. If other counties are having similar experiences, this phenomenon may help make management of the realigned population easier.

San Joaquin County

San Joaquin County has been subject to a court-imposed jail population cap since 1989. In 2010, before realignment, the county released 1,737 inmates in order to satisfy the consent decree—951 before they had served their full sentence, and 786 before trial or other resolution of their case. If the county were to receive 200 additional inmates through realignment, it would need to move 200 inmates out of jail. However, this does not mean that these offenders would have to be released from custody and supervision—the county does have several OJM possibilities. The county is also working on a plan to build a new, larger jail.

County officials are currently reporting their monthly jail admissions due to realignment for the first three months of 2012. The most striking thing is that parolees being remanded to jail exceed the number of recently sentenced N3s by 300 percent, and the percentage is rising rapidly. As with the other counties, the number of PRCS cases in jail is also steadily increasing.

FIGURE 6
Components of monthly jail admissions: San Joaquin County



SOURCE: San Joaquin County Community Data Co-Op, AB 109—Public Safety Realignment in San Joaquin County (2012).

What Do These Examples Tell Us about the Effects of Realignment on Jail Populations?

We have examined the data from only four counties. The time covered is short, and it is early in realignment's trajectory. The reporting and data are by no means comprehensive, and it is far too soon to draw any firm conclusions. Nevertheless, the experiences of these counties provide some early insights into the possible problems and directions of this sweeping new reform.

- Although the same legal framework applies to all of these counties, the data they gather and the relationships they report between realignment and their jails are often quite different. Some can provide accurate details on the parole and PRCS populations occupying their jails; others cannot. Some report monthly arrivals; others report end of the month jail populations. They use different terminology to describe the PRCS population and N3s under probation-like supervision after serving a jail sentence. These different approaches make it more difficult to understand the effects of realignment. In an effort to create a common conceptual framework and language, the sheriffs' and probation officers' statewide associations have developed standard survey forms for the counties to use in reporting data on the realignment populations in their jails and under their supervision in the local communities.
- Parolees whose parole is revoked, or who commit a new low-level felony, are sent back to jail. These offenders represent a significant share of the realigned jail population in all of the counties we discussed above. Parole incentives have changed in a possibly important way. Before realignment, the state paid counties for each day a parolee was held in county jail, and if his parole was revoked, the state then became responsible for housing him in state prison. The high level of parolees churning into and out of prison was recognized as expensive for the state and also as a significant source of prison overcrowding. These problems were swept away by realignment. If the Board of Parole Hearings revokes an offender's parole, the parolee goes to jail. He becomes the county's problem. And the county gets no additional payment. In theory, the county's realignment allocation from the state covers the cost. But the amount of funding the county receives from the state is the same whether many or few parolees are remanded to jail. This new approach may motivate parole officers to be less inhibited about sanctioning parolees. Should this happen, it is likely to increase county costs and add considerably to the burden on county jail space. The parolee-in-jail experience of the counties examined above suggests that this phenomenon may vary a good deal from county to county. Keeping track of the number of parolees remanded to jail is important, and accurate reporting of these occurrences and their effects should be encouraged among the counties. The survey prepared by the state sheriffs' association will collect some information about parolees booked into county jails, but it does not appear to include the total number of parolees in jail on a particular day (for example, the last day of each month). An analytical comparison of the number of parole revocations before and after realignment for low-level offenders might also be enlightening.
- The number of PRCS cases sent to jail for flash incarceration or revocation are still modest, but they are growing steadily in counties that report these numbers. Although fewer PRCS cases will be sent to counties in the future, this decline will be offset to some extent by the need to supervise N3s with split sentences after their jail time. CDCR's experience was that a high proportion of this population violated parole conditions and was returned to prison. It is possible that counties will have an analogous experience, except that the N3s will now be returned not to prison but to jail (or to out-of-jail management by the sheriff). The numbers could in time represent a significant portion of the realignment jail population.

Medical and Mental Health Care

Corrections realignment was energized by federal court rulings directing the state to reduce the population of its institutional prisons by roughly 30,000 prisoners, or add an equivalent amount of additional prison space. But the underlying court cases were not about crowding. They were about health care. There were two cases. The first found that the mental health care provided in state prisons was so inadequate that it amounted to “cruel and unusual punishment,” in violation of the Eighth Amendment of the national Constitution. The second reached a similar conclusion about medical care in state prisons.

The mental health and medical care issues have largely been forgotten in the bustle of adapting to realignment. But they still represent a fundamental problem and seem certain to be revisited. The irony is that in order to resolve the medical and mental health complaints, the state is sending a large group of prisoners from a state prison system with rapidly improving health care to county jails with less capacity to provide such care.

The state prison system has made considerable progress in this area, including beginning construction of a major prison health care center in Stockton and improving the quality of care at many of its prison clinics. There is reason to be optimistic that this part of the legal challenge is manageable. The state and the court are at least talking about a path toward ending federal receivership of the prison health care system.¹⁷

The capacity of county jails to provide medical and mental health care varies from county to county. Some counties have medical staff on duty in their jails, some contract with private health care providers. Probably all rely on the county hospital or other outside provider for the most serious medical and mental health problems. Several counties have observed that realigned prisoners have more medical and mental health needs than other jail inmates, and that it is costing more than expected. But we have not seen any quantitative documentation or evaluation of these costs.

Although there have been some past complaints about mental health and medical care in jails, they have been qualified by the reality that jail terms tend to be comparatively brief—in most cases limited to no more than a year and usually much less. However, the state is now shifting to the counties about 30,000 prisoners who would have been subject to federal court health care oversight; and in doing so, the state is increasing the number of prisoners who are likely to be serving longer sentences in jail and who may thus have a greater claim to adequate health care. It would not be surprising if the health care scrutiny that occurred at the state level now begins to focus on the county jails as well.

County vulnerability in this area is likely to come from two directions through the legal system. The first would involve a direct challenge to the adequacy of health care in individual counties, as has already occurred in Fresno County. On December 13, 2011, the Prison Law Office (which played a major role in the lawsuits leading to court orders to reduce the state prison population) filed an action against Fresno County in federal court, claiming that it denied inmates adequate medical and mental health care.¹⁸ Although currently in a very preliminary stage, this action has the potential to follow a trajectory similar to the two cases against state prisons.

¹⁷ *Plata v. Brown*, N. C01-1351 TEH, Order Proposing Receivership Transition (May 2012).

¹⁸ *Fresno Bee*, March 23, 2012; Prison Law Office website, “Fresno Jail Prisoners Sue over Dangerous Conditions,” www.prisonlaw.com/events.php. The Complaint filed with the court is available at www.prisonlaw.com/pdfs/HallComplaint.pdf.

A second direction through which a legal challenge may occur is illustrated by a recent federal court order. The case of *Armstrong v. Brown* concerned the protections given to state prison inmates by the Americans with Disabilities Act. In 1996, the court ordered the California corrections department to take steps to comply with ADA requirements. In January 2012, the court ordered the state to ensure that county jails holding state prisoners as a result of realignment satisfied the ADA requirements that the court had ordered applied to state prisons. Recall that realignment sends released inmates whose parole has been revoked to county jail rather than returning them to state prison. The court held that these prisoners are still in state custody, at least in part, and that the state is responsible for ensuring ADA compliance even in county jails.

Although it has not happened yet, it is conceivable that the courts could issue a similar order focusing on the medical and mental health care of this same group of parole violators in county jails.

Both of these legal possibilities have the potential to compel counties to improve the medical and mental health care provided in county jails. The cost of doing so would be substantial, and both possibilities would raise difficult questions about whether the level of financial support from the state to counties for realignment was adequate. They might also call into question whether prisoners with serious medical and mental health problems might be more economically and professionally managed at centralized statewide facilities rather than in each of the state's 58 counties.

Some of the financial burden on the counties might be alleviated through the federal Affordable Care Act. One of the intentions of the act is to increase access to health insurance and to expand Medicaid eligibility. Although the act specifically excludes individuals who are incarcerated from these benefits, a June 28 ruling by the Supreme Court extends health care coverage to the large population of nonviolent offenders with mental illness and chemical addiction who cycle in and out of the nation's.¹⁹ Other possibilities may also exist under federal law:

- The Affordable Care Act makes low-income males eligible for Medicaid coverage for the first time, which means that the federal government will contribute substantially to the costs of their medical and mental health care. Probably most jail and prison inmates qualify as low-income males. The law also increases coverage and benefits for low-income females.
- Individuals in jail waiting for a court determination may be eligible for insurance and Medicaid coverage. Recall that 70 percent of jail inmates in California are now in this category.
- Offenders on probation or Post Release Community Supervision may also be eligible.
- Medicaid and insurance coverage for mental health care may be increased.

¹⁹ Michael DuBose, "Medicaid Expansion and the Local Criminal Justice System," *American Jails* (November–December 2011), www.cochs.org/files/medicaid_expansion/2011_ND_Medicaid%20Expansion_DuBose.pdf.

Post-Release Community Supervision

Before realignment, felons who had served their time in prison were released to three years of supervision by a state parole officer. They could be released from parole after a year if they had no violations. If they violated their parole conditions or committed a new felony, they could be sent back to prison. After realignment, offenders whose most recent conviction was for a nonserious, nonviolent, nonsexual crime and who have served their sentences in state prison are released to counties for a period of Post Release Community Supervision. Although nominally a three-year period, the county can end post release supervision after six months if the offender has not violated his PRCS conditions, and must release him after one year if there are no violations. The county can use a range of sanctions if the offender violates the conditions of his supervision, including reprimand, adding new release conditions and reporting requirements, flash incarceration for up to 10 days, or, if a court concurs, revocation of PRCS for up to a nominal 180 days (which, with credits, could be reduced to 90 days actually served). The offender might also be convicted of a new crime and draw a new sentence.

PRCS is crucial to the success of realignment, especially for these two reasons:

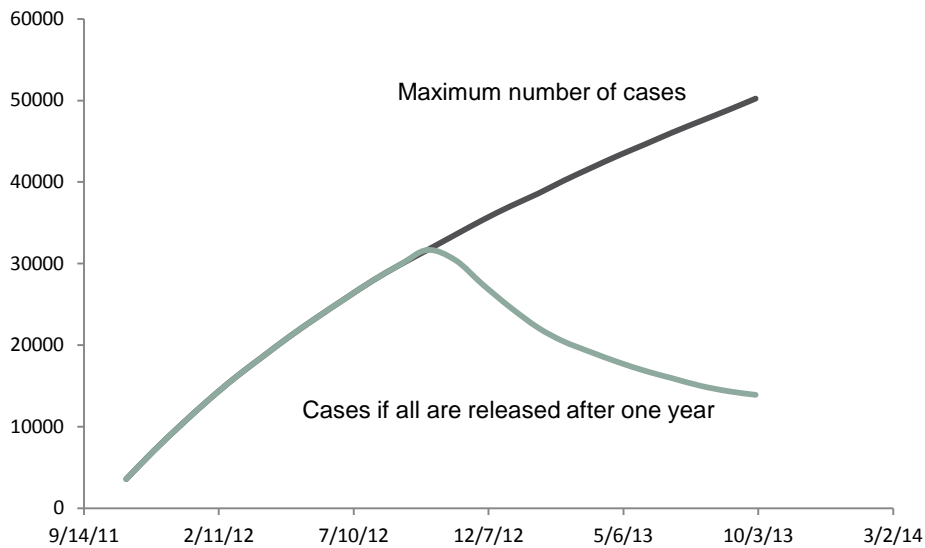
- Although realigned inmates may receive some rehabilitative services while in jail, the range and importance of these services increases substantially when an offender is released. Counties may do a better job than state parole officers in providing these services. The counties certainly have more experience running the kinds of programs that might be helpful, such as drug treatment and mental health services, housing and employment assistance, and education programs within their geographic area and demographic setting.
- Before realignment, all of the offenders now in PRCS would have been on the streets, subject to supervision by a state parole officer. Whether parole or PRCS is more effective at reducing crime, or whether it makes any difference at all, is still an open question without any answers.

Number of PRCS Cases

Figure 7 illustrates the expected time trajectory of PRCS cases statewide. The line labeled “Maximum Number of Cases” shows the accumulation of all offenders subject to PRCS after their release from state prison through 2013. This number will grow to somewhere over 50,000 cases, but the number of new cases will decline over time as fewer and fewer low-level offenders are left to be released from state prison. Most of these offenders will have a nominal three-year term of supervision. However, that term will end at one year if an offender has no violations, or possibly at six months if the offender has no violations and the probation officer chooses to end the supervision. The lower line in the graph shows the population decline that would occur if all offenders were released after one year.²⁰ Reality will most likely lie somewhere between these two lines. The lower line could conceivably bend downward more sharply if counties were to use the six month release option extensively. In any case, the number of PRCS cases is almost certain to decline to some modest number of cases after a few years.

²⁰ People on PRCS who have no violations for six months may have their supervision ended at that time, at the option of the probation authority. There is no way to know how often this may occur. It is conceivable that some drop-off in the rate of accumulation may occur after six months for this reason.

FIGURE 7
Projected PRCS cases: California



SOURCE: CDCR, *Spring 2011 Based on AB 109 Legislation Projected Institutional Discharges to Post Release by County and Month* (2011).

NOTE: CDCR has produced two sets of PRCS projections, the first in spring 2011 and the second in December 2011. The second set of projections (which includes estimates of the number of offenders assigned to PRCS because their parole was revoked) are somewhat higher and represent a shorter period of time. The figure is based on the spring projections, since their longer time period offers a more complete picture of how PRCS realignment can be expected to unfold. The December projections track with the spring projections shown in the figure but are about 4,700 cases higher by September 2012.

Checking In

As was the case before realignment, inmates leaving state prison for PRCS are given a bus ticket and \$200. They are directed to travel to their place of residence (usually the last place they lived outside of prison) and to report to the county probation department within five days. Most do. Los Angeles, for example, reports that 85 percent of these offenders check in within five days and 90 percent within 10 days. The sheriff or city police, depending on jurisdiction, will visit the address given by the offender if he fails to report to the probation department within a few days. If contact remains unsuccessful, the county asks a court to issue a warrant for the offender’s arrest. By late spring, Los Angeles, San Diego, Santa Clara, and San Joaquin counties had “failure to report” rates ranging from 13 to 23 percent. The recently released Chief Probation Officers of California (CPOC) survey reports somewhat lower numbers, perhaps because it counts only offenders who fail to make their check-in with probation and for whom a warrant is issued. Some counties may count those who are late but eventually appear, or those who make their initial appearance but fail to report as required later on. Comparing any of these numbers with the “failure to report” rates recorded by CDCR parole officers will require considerable care.

Transitions

Reports from probation departments suggest that the development of support mechanisms for realignment are progressing at a reasonable pace. Plans are being formulated for providing drug treatment, mental health care, housing and transportation assistance, education, and other services for PRCS cases (most counties already provide some of these services). Positions for deputy probation officers have been authorized

(although many of these positions have yet to be filled), Requests for Proposals are under way, and contracts with service providers are being negotiated.

Of course, there is also a learning curve. For example, Los Angeles found that after assessing incoming PRCS cases and referring the appropriate cases to drug treatment, a surprisingly small number of individuals showed up for treatment (only 3% of those referred in October and 9% in November). However, by March the county had a 51 percent follow-up rate. The likely reason for this dramatic improvement? The county informed those who were directed to treatment that failure to comply could result in flash incarceration and added mandatory treatment as a condition for their release from the PRCS program. Hopefully, as counties learn certain lessons, they will share information with others on what works and what doesn't.

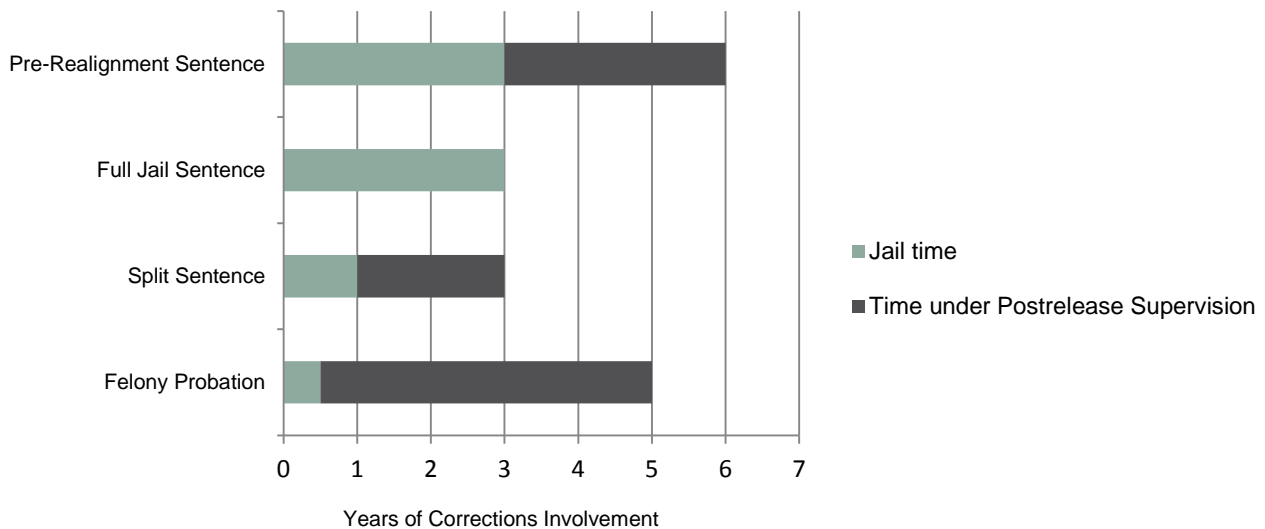
Sentencing

The transfer of offenders from state to county responsibility has captured most of the public attention surrounding realignment. But realignment and its related legislation also fundamentally changed the structure of California’s criminal sentencing laws, at least for crimes below the level of “strikes” for purposes of the state’s “Three Strikes” law.²¹ The nature of these changes has become clearer as the courts have endeavored to give them practical meaning.

For decades, California’s criminal sentencing law for felons has been “determinate,” specifying three possible sentence terms for each crime (short, medium, and long). A judge can deliver a short-term or long-term sentence if there are special mitigating or aggravating circumstances, but usually the middle term is considered appropriate. For example, the sentence for damaging insured property with the intent to defraud an insurance company is two, three, or five years.²² In most cases before realignment, the offender would have been sentenced to three years in state prison, followed by three years of parole (Figure 8). The prison time could have been reduced by good time credits, but otherwise the offender would spend three years in prison with no possibility of early release due to extraneous circumstances such as a crowded prison. The parole time could have been reduced to a little over a year if no violations occurred.

Realignment offers several sentencing possibilities, all shorter than in the period preceding realignment. One is to sentence the offender to spend the full determinate sentence in jail. In this case, he would spend three years in jail and would then be immediately released from all supervisory authority. The three-year parole period is no longer applicable. The offender would have no post-release supervisory period, and perhaps no re-entry assistance. This is shown as the “Full Jail Sentence” in Figure 8.

FIGURE 8
Sentencing possibilities before and after realignment



NOTE: Figure shows sentencing possibilities for a crime with a three-year determinate sentence, if there are no unusual circumstances.

²¹ California’s Three Strikes law, enacted in 1994, increases the length of prison sentences for offenders who commit additional crimes after first being convicted of a serious or violent crime. The sentence for a second felony (even if not serious or violent) is doubled. After two convictions for serious or violent crimes, the sentence for any subsequent felony is life, with a 25-year minimum prison term.

²² California Penal Code, Section 548.

A second option open to the court is to impose a “split sentence,” whereby the authorized time is split between jail and probation. The total of jail and probation time cannot exceed the authorized determinate sentence (in this example, three years). Thus, the sentence might involve one year in jail and two years on probation.

A third possibility is “felony probation.” In this case, an offender could be nominally sentenced to three years in jail, but with the sentence suspended and replaced by post-release supervision. If the offender violates the conditions of his probation, he can be returned to jail for the full three-year term, although more-graduated sanctions might be imposed for lesser violations. The supervisory time cannot exceed five years in this example. Some jail time could be included. Observers who believe that probation supervision can be beneficial if it lasts long enough may favor this option, since it extends the supervisory time. Felony probation was quite common in California before realignment. Statewide, about 75 percent of all felony sentences were of this type. But counties vary widely. Some sent most felony offenders to prison, others relied heavily on felony probation.

The first statewide information about how these new sentencing options are being used comes from the CPOC survey. It reports that 15 percent of sentences subject to realignment rules in October 2011 were split. By March 2012, 24 percent of realignment sentences were split. This upward trend suggests that counties may be using split sentences more often as they become familiar with them. The survey also found that the use of the split sentence option varied by county and region.

- In San Diego County, 706 offenders were sentenced under realignment rules between October 2011 and the end of April 2012. Of these, 166 (24%) received split sentences. The longest full-term sentence was 10 years and four months. The longest split sentence was for 10 years, with seven years in jail and three on probation.
- In Los Angeles County, judges and district attorneys have been less enthusiastic about split sentences: 4,389 realignment inmates were sentenced under realignment rules between October 2011 and the end of March 2012. Only 258 (6%) received split sentences.
- In San Joaquin County, 278 offenders were sentenced under realignment rules. A remarkable 171 (62%) received split sentences.

The situation still remains fluid for an offender who is sentenced to jail. The sheriff who manages the jail has to deal with practical realities, including the possibility of overcrowding. He can keep an offender in jail for his full jail sentence, but he is also authorized to place the offender under home detention with electronic surveillance. The individual may be allowed to go to work or to class, to go shopping or perform other errands, or to undertake other activities authorized by the sheriff. These options are discussed below.

Reporting

The realignment of about 30,000 offenders from state prison to county jails and of some 50,000 parolees to county supervision represents a major change in the state's criminal justice system, and one that is likely to affect the people of California in many ways. It may alter crime rates in one way or another and increase taxpayer costs for managing both jail inmates and offenders subject to community supervision. It may improve the chances that offenders will be "rehabilitated," which would benefit both the offenders and the public. It may alter the conditions under which offenders are incarcerated, including medical and mental health care and rehabilitative and educational opportunities. It might also involve counties in a tangle of lawsuits over these matters. Yet the realignment legislation did not require any data collection or evaluation of this rapidly changing situation, nor did it require any public information programs to help citizens better understand the shape and progress of realignment. Fortunately, a number of organizations have begun to gather data on the ways in which the program is being implemented and are tracking some of its early results. Probably the most ambitious effort in this regard is the work being done by the California State Sheriffs' Association and the Chief Probation Officers of California; they are developing a statewide data reporting framework in which all counties would voluntarily participate. The Probation Officers recently released their first survey covering the period from October 2011, when realignment began, through March 2012. The new Board of State and Community Corrections is also now operational and has a functioning web site which will serve as a public repository for realignment data.

County sheriffs throughout the state have agreed upon a monthly report form that includes:

- The number of new N3s sentenced to county jail under realignment, the number being held in "alternative custody" through GPS monitoring and so on, and the number returned to jail from alternative custody. It does not include a count of the number of N3s actually in jail at the end of the month.
- The number of PRCS offenders who have violated the conditions of their supervision or who have been flash incarcerated and the number booked for new offenses. Again, it does not include the number of PRCS offenders actually in jail at the end of the month.
- The number of parole violators booked into jail for a parole violation, the number in jail because of revocation, and the number booked with new local charges or serving time for committing a new local offense. Again, it does not include a count of the number of parole violators actually in jail at the end of the month.

This information will be helpful and is a good first step toward realignment transparency. However, there are some significant gaps in the information. For one thing, the impact of realignment on the jails is probably best judged by the number of realigned offenders actually in jail or alternatively managed each month. This drives at least a good part of the sheriff's realignment-related costs, and it is one of the more important elements in the Department of Finance's realignment financing model, which is used in determining the total amount of money channeled from the state to the counties to pay for realignment. The jail count should include at least three groups of offenders: the number of N3s sentenced to jail; the number of PRCS offenders flash incarcerated, revoked, pending revocation, or booked for other reasons; and the number of parolees flash incarcerated, revoked or pending revocation, or booked for other reasons. The sheriffs' form does not provide these counts, or even recognize the potential significance of mandatory supervision cases.

The probation officers use a survey form that includes the number of PRCS cases reporting to the county each month, the number of warrants issued for those who have not contacted their supervisor, and the number of PRCS offenders released each month after 6 months, 12 months, or longer under supervision. It also asks for the number of cases of “recidivism,” which is defined as conviction for a new felony. It includes a count of PRCS cases active each month. It also includes the number of sentences under realignment rules each month, including the number of split and unsplit sentences. It should be noted that offenders often receive sentences for more than one crime, so the number of realigned offenders sentenced each month will usually be significantly fewer than the number of sentences. Thus, the number of offenders affects jail crowding more directly than the number of sentences.

It is surprising that the survey does not ask for the number of mandatory supervisions of N3s after split sentences, as well as their flash/revocation statistics. Over time, these supervisions are likely to become an important part of each county’s probation realignment workload.

In the past, sheriffs reported monthly jail population data to the Correction Standards Authority in the CDCR. Realignment legislation terminated the CSA (effective July 2012) and replaced it with a Board of State and Community Corrections (BSCC) separate from CDCR. Recent legislation directs the BSCC to collect and make available realignment data, and thus the board will post data collected from the sheriff and probation officer surveys on its web site. Legislation also directs the courts to cooperate and provide data on court activities related to realignment. These arrangements are evolving.

If the surveys discussed above are revised to include more information, they will provide a good framework for understanding the scale of realignment’s effects and for assessing whether the amount of money the state is providing is adequate. But other important questions will remain: What works? What does not? How does county rehabilitative programming in jail or on PRCS affect the likelihood that an offender will avoid further crime? How do out-of-jail and probation supervision practices affect the likelihood of increased crime?

Since we have 58 counties doing 58 different things, it may be possible to learn useful lessons from their experiences. But this kind of analysis will require more detailed data, perhaps down to the level of individual offenders. And this may require researchers to embed themselves in cooperative individual counties, one by one.

Realignment and Female Prisoners

Realignment affects female offenders differently than males. Although females make up a small portion of prison inmates (about 5 percent), they are likely to constitute around 13 percent of realignment populations. This is because female inmates who would have gone to state prison are more than twice as likely as males to fall into the low-level offender category subject to realignment. Female prisoners require jail space separate from male inmates, require female guards for some purposes, respond to correctional practices and programs differently than males, are somewhat more likely than male inmates to have drug problems, and are more likely to have experienced physical abuse. Jail space for female prisoners is less likely to be specialized for high- and low-security levels, and in some cases it may be more difficult to adapt facilities to a substantial increase in female populations. The majority of female prisoners are mothers and sole caretakers of young children.

Realignment offers special opportunities for female offenders. In many cases they will be housed much nearer their children. They may especially benefit from programs such as child visitation, parenting training, drug treatment, and other rehabilitation programs designed particularly for women.

So far, little explicit attention has been given to female prisoners in responding to realignment. All counties were ordered to prepare a plan for implementing realignment and, to date, 50 have been submitted. Of those prepared so far, most mention female prisoners only in passing or not at all. Only a couple discuss new programs or space for female prisoners.

Funding for Realignment

Corrections realignment requires counties, and to some extent cities, to undertake a considerable amount of additional work. The state set aside \$367 million to pay for this cost in the 2011–12 fiscal year (after realignment was in practice for only nine months)²³ and has included \$857.5 million in the 2012–13 fiscal year budget. It plans to pay local governments \$1.01 billion for this purpose in 2013–14.

Funding corrections realignment raises at least three questions:

- Is the state paying enough?
- Is the available funding distributed fairly among counties?
- Will the funding be reliable in the future?

Is the State Paying Enough?

The state funding model for realignment does not intend to cover the costs of managing realigned offenders in the same way the state did. Rather, counties are expected to lock up offenders less and to rehabilitate more. The question of whether the state funding is adequate for this alternative correctional policy will depend in part on whether the state estimates of county jail inmates are accurate. It will take some time to determine whether or not they are.

Counties may argue that corrections realignment constitutes a substantial unfunded mandate, since it clearly requires that they do a great deal of additional work; and some may argue that the resulting costs are insufficiently covered. The governor's tax and realignment funding initiative, described below, would add language to the state constitution declaring that realignment, as enacted in 2011, is not a mandate for which reimbursement could be required. If approved by the voters, it probably ends the debate.

Is the Available Funding Distributed Fairly among Counties?

The administration asked counties to develop funding formulas to help determine how the available money would be divided among counties for the 2011–12 and 2012–13 fiscal years. As might be expected, the resulting formulas have been controversial. At any rate, the 2011–12 allocation of money was based on three criteria: the estimated number of realigned offenders expected to be sent to each county, each county's population between ages 18 and 64, and each county's success with a program enacted in 2009 to reduce the number of offenders each county sent to state prison. The first criterion has been the most controversial. On the one hand, it is clearly related to the actual workload and costs each county will incur as a result of realignment. But on the other hand, counties that were getting large numbers of realigned prisoners were counties that had been sending a high proportion of their newly convicted felons to state prison. Other counties which would get fewer realigned prisoners had sentenced more of their felons to felony probation, which meant they remained under county management (although they could be sent to state prison if they seriously violated their probation conditions). These counties argued they had been acting in accordance

²³ California Department of Finance, Realignment (2012), p. 3 (www.ebudget.ca.gov/pdf/BudgetSummary/Realignment.pdf).

with realignment policies even before realignment was enacted, and that they should be compensated accordingly.

For 2012–13 and 2013–14, the counties proposed a compromise formula that guaranteed each county a base level of funding based on its 2011–12 amount and that allocated additional funding based on a rather complicated mix of population, the 2011–12 formula, and the number of realigned offenders sent to the county.²⁴ The funding formula will most likely continue to evolve as the counties gain experience with realignment realities, but it is likely to remain controversial.

Will the Funding Be Reliable in the Future?

The governor says he is committed to providing dependable funding for corrections realignment. But counties worry that a future governor or legislature might reduce the amount of funding or assign counties responsibility for additional offenders without increasing the funding. The governor has proposed to write a funding commitment into the state’s constitution. This proposal has qualified for California’s November 2012 statewide ballot as Proposition 30. The measure also includes a temporary increase in the state income tax and sales tax.²⁵ It commits the state to continue realignment funding as described in the initial 2011 legislation enacting realignment, including the possibility of growth in revenues. If the legislature should decline to appropriate at least that amount, the initiative directs the Controller to pay the money to local governments anyway. The amendment also declares that any county responsibilities due to Public Safety Realignment as enacted in 2011 cannot be held to be a mandate for which the state would have to reimburse local costs.

²⁴ See California State Association of Counties, *AB 109 Allocation: Recommended Approach for 2012–13 and 2013–14* (2012).

²⁵ California Secretary of State, *Qualified Statewide Ballot Measures, November 2012 Statewide Ballot Measures, Proposition 30, Temporary Taxes to Fund Education. Guaranteed Local Public Safety Funding. Initiative Constitutional Amendment*. Available at www.sos.ca.gov/elections/ballot-measures/qualified-ballot-measures.htm.

Realignment and Crime

As elsewhere in the nation, crime in California has been declining for several years. The crime report issued by the California Attorney General in 2010 noted that the crime rate had dropped in every violent and property offense category. Violent crime overall was at its lowest level since 1968, and property crime had declined 62 percent from its peak in 1989.

A core premise of the realignment sponsors is that shifting offenders to county responsibility will at the very least maintain levels of public safety and perhaps even reduce crime rates further. Proponents argue that before realignment, counties had less incentive to pursue crime deterrence policies because the responsibility and the cost for those convicted were passed on to the state; now that counties will be responsible for low-level offenders, local officials will be more committed to programs designed to deter crime, such as drug and alcohol treatment, mental health treatment, and counseling, employment, and housing assistance.

With so much at stake, crime rates will be watched very closely. If public safety levels can be maintained with fewer offenders in jail or prison, policymakers will need to consider the implications; certainly this outcome would benefit offenders, their communities, and state and local governments. On the other hand, if realignment leads to higher crime rates, policymakers will face a host of difficult decisions and probably expensive alternatives.

Data on the relationship between realignment and crime is still limited to observations of the first few months of the new policy's implementation and is certainly not sufficient to undertake a thorough assessment of the effects of realignment on public safety. Early data indicate that some communities around the state have seen an increase in property crimes, particularly burglary and motor vehicle theft. San Francisco and Bakersfield, for example, saw notable jumps in burglary cases in recent months. But a few, such as San Diego and Burbank, have seen a decline in these same categories. Of course there are many factors at play that could affect crime rates, including a prolonged recession and severe budget cuts in the budgets of police, sheriffs, and social service programs.

Conclusion

Corrections realignment has been very successful for the state prison system: its institutional population has declined by 24,000 prisoners in the first nine months of realignment—a remarkable outcome. This decline in numbers has enabled CDCR to meet the initial targets set by the federal courts, and it appears the state may be on track to meet the progression of court targets in the foreseeable future—if the state also continues to send several thousand prisoners to prison facilities in other states. (CDCR is seeking court approval to raise the target population levels.)

Realignment's effect on jails, however, is complex and stressful. Many county jails were full, or nearly so, before realignment, which is now moving 30,000 inmates to jails, a 42 percent increase. Most sheriffs are compelled by this pressure to release some inmates early, or to manage offenders outside of jail using electronic surveillance or probation-like check-in and other conditions. Increasing reliance on outside-of-jail management means many sheriffs are likely to release statistically riskier offenders.

How corrections realignment will work out is far from certain. Probably it will be confusing. Certainly it already involves a tangle of day to day details that are difficult to follow. We list below some of the indicators of success or failure that should be kept in mind.

- *Crime and rehabilitation.* Realignment has its risks. It is almost certain to put people on the streets sooner who have been convicted of crimes, and who have a greater than normal statistical likelihood of committing future crimes. There is evidence that property crime in at least some cities has increased recently even as it has continued to decline elsewhere. As time passes, it will be important to examine the experiences of all California cities and rural areas, using more complete datasets and more sophisticated analysis.

Realignment also has potential upsides. Many counties have expressed strong interest in funding programs to help offenders increase their chances of pursuing a noncriminal life after serving their lockup time. These include learning an employable skill or pursuing a GED while in jail, and drug treatment, housing assistance, employment assistance, and mental health services while involved in PRCS or other supervision after release. If these measures are effective, they could reduce the number of people returning to jail, the courts, and prison, as well as the occurrence of crime. Success along these lines will of course vary from county to county, both because counties are handling realignment differently and because conditions vary from place to place. Careful evaluation of these outcomes may provide important insights into alternative methods of dealing with crime that actually work (or do not). This is, after all, a large experiment, and we have much to learn from it.

- *Sentencing.* There have always been differences in the sentences handed out by judges in various counties for any specific crime, especially with respect to felony probation. Realignment considerably increases the likelihood of variation. An offender may serve three years in jail in one county, and six months in jail plus probation in another—for the same crime. He may get help with drug treatment, education, employment, health care, and housing in one county, and none in another. These variations are inherent in the underlying concept of realignment: local preferences should carry more weight. However, at some point, this variation may exceed some threshold of popular acceptability.
- *Medical and mental health care.* Federal courts sanctioned California's state prisons for providing inadequate medical and mental health care. And then the prisons were placed under federal receivership and ordered to reduce overcrowded conditions. The prisons have made progress in dealing with these issues, and are likely to continue to do so. However, as local authorities assume

responsibility for more and more offenders, the issues of crowding and health care that troubled state prisons are likely to shift to the local level.

- *Money and trust.* The state and its local governments have a long history of distrust, acrimony, and antagonistic lawsuits. Given this tension, corrections realignment has proceeded as constructively and agreeably as possible. As realignment is fully implemented in coming years, it is likely that decisions and experiences will continue to test the levels of both trust and money between state and local governments.

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