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CRIMINAL JUSTICE: REALIGNMENT: A BOLD NEW ERA IN CALIFORNIA CORRECTIONS

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Key Points:

- **The Realignment for Public Safety, AB 109, will begin implementation on October 1, 2011**
- **Realignment has been introduced to save costs but also to improve the system**
- **The public generally supports the goals of realignment**
- **Serious questions remain about adequacy of funding, and local capacity**
- **Making the most of this opportunity will require: an inclusive, transparent and evidence-based planning process, thinking beyond jail expansion, recognizing the specific needs of women offenders, and engaging the community**
- **All parts of the criminal justice community and crucial community agencies must explore innovative programs and policies for realignment to succeed**

The 2011 Realignment for Public Safety

Realignment is a shift of governmental responsibilities from state government to local government and dedicates a share of state revenues to support local efforts. In April 2011 Governor Jerry Brown signed AB 109, which realigns a number of state programs and responsibilities. The legislature then built many components of realignment into the Fiscal 2011-2012 state budget.ⁱ

Public safety is a major component of the 2011 realignment. AB 109 requires that from October 2011, counties will be responsible for newly convicted offenders who are deemed to be non-violent, non-serious, and non-sex offenders and to place them in jails or on probation in lieu of sentences with the California Department of Corrections and Rehabilitation (CDCR). In addition, counties will take over supervision of state parolees whose last offense was not violent or a sex offense, and low-risk parole violators. Exceptions apply for offenders judged to be “high risk”.

Effective also on October 1, 2011, counties will receive their allocations in the form of a disbursement from the State Comptroller to each of the Boards of Supervisors to pay for the new people under their control.ⁱⁱ At the time of writing, many details of realignment funding and requirements are still uncertain as the legislature debates cleanup legislation. The Governor and Legislature’s basic approach is to give counties maximum flexibility in how they put realignment “on the ground” and the plan includes very little oversight.

The realignment is therefore a significant opportunity for counties to create innovative, efficient and effective systems and marks a bold shift in the way corrections have been undertaken in California. This paper provides a brief overview of the reasons for realignment, its challenges, and key steps for making local plans a success.

COMMUNITY BASED CORRECTIONS TO REDUCE RECIDIVISM

AB 109 states that the Legislature is committed to reducing recidivism. In doing so, it promotes justice reinvestment and ‘community based corrections’ for low-level offenders. These are defined as “evidenced based correctional sanctions and programming other than jail incarceration alone or traditional routine probation supervision.” The law suggests several CBP programs including:

- ‘Flash’ incarceration
- Intensive community supervision
- Home detention
- Electronic monitoring and GPS tracking
- Community service
- Restorative justice
- Work, training and education
- Work-release
- Day-reporting
- Drug treatment and mandatory drug testing
- Mother-infant care
- Residential programs.

The Imperative to Reform California Corrections

Reasons for pursuing the current realignment at this point are:

Cutting State Spending: the severe state budget crisis requires reductions in general fund expenditures across several areas. The Department of Finance and others assert that local government can manage offenders at less cost than the State and so the state will save money overall by sending less money to counties than it would otherwise have paid to oversee the same offenders.ⁱⁱⁱ

Reducing Prison Overcrowding: In May 2011 the Supreme Court upheld a Federal Court order that the state must reduce the prison population by over 40,000 inmates. Transferring offenders to local supervision helps meet that goal.^{iv}

Improving the System: Many observers believe that California’s prison and parole systems are “broken”. It is also believed that urgently needed innovation to fix the system is more likely to happen at the county level where officials have more flexibility.^v Communities are also better placed to support successful prisoner reentry than the state, for example with transitional housing, jobs, and medical and mental health services.^{vi} Growing acknowledgement of the local role in reentry has led over 12 counties to form reentry planning groups with CDCR, local agencies and non-profit groups.^{vii}

Finally, public opinion polls suggest general public support for the goals of realignment, including that non-violent, non-sex and non-serious offenders can and should be managed in community programs and that the prison population be reduced.^{viii}

The Impact of the Changes

When the realignment comes into effect next month, prisoners currently held in state prisons will neither be transferred to local control nor released early into county supervision. All current state parolees will remain on state parole and parole revocations will be undertaken by the parole board until June 2013, at which case local courts will be responsible.

What will start to occur is that more new offenders of non-serious and non-violent crimes will start to be sent to local jails and diversionary programs, as will individuals who have had their parole revoked. CDCR reports around 14,000 technical parole violators in the state system at present. CDCR estimates that in 2011-2012 just under 20,000 offenders will shift to local control (around 6,500 for new offenses and 13,000 for parole violations).

Most parolees will also shift to local control for post-release community supervision. Around 104,000 parolees are presently living in communities and supervised by CDCR and around 65,000 current prisoners come within AB 109. However, because of Counties will eventually absorb around 30,000.^{ix} These changes will occur gradually and the impact will accrue as new people join the system each month (although others will also leave).

Local officials have expressed fears and questions about realignment. Many worry that the current level of state funding to counties is insufficient to manage the high and moderate risk offenders that will remain under local jurisdiction. Serious questions remain, for example, about how to fund support services and medical care costs that CDCR is presently paying for former parolees. Future funding is also a concern given the state budget deficit and the lack of a guaranteed funding stream in AB 109. Counties might be left with responsibility for more, and more high-needs, correctional clients without the requisite financing.

County capacity to manage the new load is a second concern. Many local jails are already at their designed capacity and at least 20 counties operate under court-ordered capacity limits. Likewise many probation departments are understaffed and under budgeted now and must manage many of the clients on “banked caseloads” –meaning these offenders are technically on probation but almost never see a probation officer. Moreover, counties have widely differing definitions of caseload size, supervision standards, and rehabilitation programs. Counties vary tremendously in their approaches to classification, risk and needs assessment technologies. They also vary in their ability to provide adequate due process and equal protection requirements to offenders and the local level.

As a result, local officials express fears they will become targets for prisoner rights litigation and we have no reliable estimates of county budgetary needs to meet the legal requirements for medical care, mental health treatment, education, religious programming, and disabled services that the courts and federal and state laws mandate.

Last, but not least, some have alluded to a threat to public safety that realignment will create because more offenders will be on the streets. Unlike the other concerns, this fear is not supported by the evidence. The current caseloads of CDCR who will be transferred to counties are not highly dangerous people. Further, there is very little evidence that accelerated release from incarceration leads to higher levels of recidivism, and in some cases it may lead to lower recidivism.^x

Opportunities and Ingredients for Success

The words of famed Al Capp cartoon character Pogo, “We are facing an insurmountable opportunity,” capture the challenges and opportunities of realignment. Some essentials for maximizing the opportunities of realignment include:

1. Comprehensive Local Planning

Local officials have several months to design plans for the local realignment and submit them to CDCR. CDCR is not required to approve the plans, but nevertheless the plans and the planning

process are crucial to the success of the realignment. Some matters that should be taken into account:

- **Be inclusive:** Successful realignment will require a multi-agency and inter-disciplinary approach. All parts of the criminal justice system must be fully engaged in planning and implementation. Where appropriate, invite top level representatives of public health, health care, welfare, behavioral health, housing and employment agencies to planning forums. Also include representatives of victim services, faith-based organizations, ex-offender groups, and community-based service providers.
- **Be Transparent:** The local planning process must be open and transparent and invite feedback. Ensure the media and stakeholders are kept up to date about the planning process and the content of the plans.
- **Rely on an Evidence-Base:** Plans should be based on the best available objective empirical data about the characteristics of the offenders who will be supervised at the local level. Don't make plans according to current fads not supported by research, or anecdotes or stereotypes about clients.
- **Consider both Programs and Systems:** Planners should couple innovative programs with systemic reforms to make case-processing more efficient and ultimately to save costs. Systemic reforms include: identifying log-jams and unnecessary delays to free up needed space, ensuring mechanisms for accountability and quality control, and identifying where local decision-makers can exercise discretion. For example, whether to incarcerate all persons with bench warrants or probation or parole violators.^{xi}

2. Don't Just Rearrange the Deck Chairs on the Titanic

Budget savings and reductions in recidivism both rely on counties being innovative in how they deal with offenders arriving under the realignment. It will not be enough to simply shift them from prison to jail or conventional probation programs. Counties that choose to expand their jail capacity will encounter large capital budget outlays, extended periods for design and construction of new facilities, and little public support for more local spending on corrections as opposed to education, sustainable new job creation, health care and other vital community needs. Local practices in corrections will be closely scrutinized in the current tight money era.

THE PLANNING PROCESS

Under AB 109, existing Community Corrections Partnerships (Penal Code §1230) in each county will recommend a realignment plan to the Local Board of Supervisors. The law also establishes a new CCP Executive Committee to develop and present the plan, comprising:

- The chief probation officer of the county
- A chief of police
- The sheriff
- A county supervisor or the chief administrative officer for the county
- The head of the county department of social services.

The local plan is deemed accepted unless it is rejected by a four-fifths vote. Neither CDCR nor any other state agency must approve local plans.

3. Special Needs of Women Offenders

Women offenders are likely to be a significant proportion of offenders transferred to local control under the realignment. California incarcerates nearly 20,000 women in state prisons and local jails,^{xii} and typically these offenders have committed less serious crimes than their male counterparts and have lower recidivism rates. Women offenders respond best to gender-responsive correctional programming, although sadly they are often overlooked because of their smaller numbers.^{xiii} As localities plan for realignment, counties should seek consultation of evidence-based programs that are best suited for the needs of this very vulnerable population.

4. Prepare the Community as a Partner

Realignment affects our communities and implementers of the realignment need to make concerted efforts to engage the community in the realignment plans. They should educate the public, listen to concerns and respond effectively to those concerns. Criminal justice officials should be unified in their position on the realignment and not stoke fears about, for example, spikes in crime.

Groups whom local implementers should reach out to include: local media, business groups and labor unions, philanthropists and community organizations, faith communities, victim service advocates, civil rights groups and education leaders. Many of these groups will provide the needed services and resources to assist the reentry of formerly incarcerated offenders and to assist those being supervised in the community. For effective correctional sanctions succeed, many members of the locality must step up and accept their responsibility and roles to help offenders to turn their lives around and to promote safer communities for everyone.

The Future of Reform

Realignment presents many opportunities for improving our corrections system, public safety and the lives of offenders. Ultimately, however, the problems in the criminal justice system cannot be solved by reforming corrections alone. California continues to have one of the highest incarceration rates in the world, and urgent change is needed in the criminal law, police practices, prosecution practices and the sentencing of offenders to reduce prison populations and the economic and social costs of incarceration.

ⁱ Legislative Analyst, *2011 Realignment: Addressing Issues to Promote Its Long-Term Success* (Sacramento: Legislative Analyst's Office (LAO), Aug. 2011), available online at http://www.lao.ca.gov/reports/2011/stadm/realignment/realignment_081911.aspx.

ⁱⁱ Complex funding formulae determine how much money each county receives and how those funds are to be divided up among various components of local criminal justice systems.

ⁱⁱⁱ One analysis that finds substantial fiscal savings if low risk offenders now sent to state prison were managed in local programs is Linh Vuong, Christopher Hartney, Barry Krisberg, and Susan Marchionna, (2010) *The Extravagance of Imprisonment Revisited*, *Judicature* 94(2): 70-81.

^{iv} *Brown v. Plata*, 563 U. S. ____ (2011). See also *A Status Report: Reducing Prison Overcrowding in California*, Legislative Analyst's Office (LAO), (Aug. 2011), available online at http://www.lao.ca.gov/reports/2011/crim/overcrowding_080511.pdf.

^v These studies include former Governor George Deukmejian's Independent Review Panel on CCDR (2004), a National Council on Crime and Delinquency (NCCD) Task Force on Prison Crowding (2006), a CDCR Expert Panel on Adult Offender Recidivism Reduction, (2007), and several reports produced by the Little Hoover Commission, the Senate Office of Research and the Legislative Analyst's Office.

^{vi} For more information about successful reentry see e.g. Joan Petersilia, *When Prisoners Come Home: Parole and Prisoner Reentry*, (New York: Oxford University Press, 2003); and Jeremy Travis, *But They All Come Back: Facing the Challenge of Prisoner Reentry* (Washington D.C.: The Urban Institute Press, 2005).

^{vii} Barry Krisberg and Abby VanSickle, *Reducing Gang Violence Through Reentry Services*, Municipal Action Guide, The California Cities Gang Prevention Network (March 2011), available online at <http://www.ccgpn.org/Publications/MAC%20Reentry.pdf>.

^{viii} See e.g. Mark DiCamillo and Mervin Field, *Release #2376: Voters Consider Supreme Court's Ruling that California Reduce Its Prison Population Serious. Support for Shifting Inmates to County Jails, But Don't Want Taxes Added*. The Field Poll, (San Francisco: The Field Corporation, Thursday, June 16, 2011), available online at <http://www.field.com/fieldpollonline/subscribers/Rls2376.pdf>; Mark Baldassare, Dean Bonner, Sonja Petek, and Jui Shrestha, *PPIC Statewide Survey: Californians and their Government* (San Francisco: Public Policy Institute of California, May 2011) available online at <http://www.ppic.org/main/publication.asp?i=981>; Christopher Hartney and Susan Marchionna, *Attitudes of US Voters toward Nonserious Offenders and Alternatives to Incarceration* (Oakland: NCCD, June 2009) available online at http://nccd-crc.issuelab.org/research/listing/attitudes_of_us_voters_toward_nonserious_offenders_and_alternatives_to_incarceration.

^{ix} James Austin, *Review of Options to Right Size California's Correctional System*, on file with authors.

^x Caroline Guzman, Barry Krisberg and Chris Tsukida, *Accelerated Release: A Literature Review*, Focus: Views from the National Council on Crime and Delinquency (Oakland: NCCD, Jan. 2008), available at www.nccd-crc.org/nccd/pubs/2008_focus_acceleratedRelease.pdf.

^{xi} Several studies have suggested that very short periods of confinement or intensive community supervision reduce recidivism as well or better than longer and more costly dosages of criminal justice punishments. See e.g. Mark Kleiman, *When Brute Force Fails: How to Have Less Crime and Less Punishment* (New Jersey: Princeton University Press, 2009).

^{xii} Angela Wolf, Barbara Bloom and Barry Krisberg. *The Incarceration of Women in California*, U.S.F.L. Rev. 43: 139-170 (2008).

^{xiii} Barbara Bloom, Barbara Owen and Stephanie Covington, *Gender-Responsive Strategies: Research, Practice and Guiding Principles for Women Offenders*, (Washington D.C.: National Institute of Corrections, 2002), available at <http://static.nicic.gov/Library/018017.pdf>