

# Voices From the Field: California Victims' Rights in a Post-Realignment World



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### I. Introduction

Victims are nearly always the most innocent parties in the criminal justice system, yet they are often the most overlooked. For years, they had no rights at all. The United States Constitution has no provisions about victim interests. Private prosecutors fell out of common use in the 1800s, effectively eliminating a victim's ability to control what charges, if any, are filed in their case,<sup>1</sup> and until the 1980s, victims were rarely even informed of the outcome of their cases. The crime itself would suddenly disrupt their lives, they would report it, but then they would be left to heal and rebuild on their own.

California's recent Public Safety Realignment Act of 2011 (Realignment) fell into this same pattern: the victims were left out in the cold. They did not have a designated representative in the major policy negotiations when Realignment was being designed.<sup>2</sup> They are not required to have a voting seat on the local Community Corrections Partnership (CCP).<sup>3</sup> Their rights to notification, restitution, and a place of primacy in custody determinations were completely unaccounted for in the law's original form, and there is no clear sign that they are soon to be reengaged. In short, in a rush to protect the constitutional rights of offenders, the rights and needs of victims have been cast aside.

This paper seeks to bring victims back into the conversation. The Stanford Criminal Justice Center received several grants to study the impact of Realignment on California counties. These studies focus specifically on how Realignment has affected individual county agencies and what can be done to alleviate any new challenges that have arisen. Initially, victim service providers were not among the list of actors to be interviewed in the studies. However, upon further reflection, it seemed imprudent to exclude them, particularly when so many other entities have, so the authors of this paper decided to investigate the effects of Realignment on victim rights and services in California.

The results of our study are simultaneously discouraging and hopeful. As it stands now, several of victims' most important rights in the California Constitution are being ignored. However, the actions required to fix the situation are feasible, and in some places, early steps are being implemented. If victims are invited to the table and afforded the respect due to constitutional stakeholders, the

problems they currently face may be remedied. If not, there is a significant risk of future litigation under Marsy's Law challenging the effects of Realignment, as well as a risk of diminishing California's current leadership in the field of victim rights.

### II. Victims and Realignment

#### A. Substantive Victims' Rights in California

To fully appreciate the impact of Realignment on victims' rights and services in California, it is important to understand the rights that victims hold in California.

California has long been a national leader in the field of victim rights. In 1965, California became the first state to adopt a victim compensation program, providing state funds to address the immediate needs of victims of certain types of crimes.<sup>4</sup> Then, with the passage of Proposition 8, the Victim's Bill of Rights, in 1982, California was the first state in the nation to grant victims substantive constitutional rights to participate in the criminal justice process.<sup>5</sup> This amendment created a right to restitution from the offender, to have public safety considered first when determining bail, and to expect that offenders "will be appropriately detained in custody, tried by the courts, and sufficiently punished so that the public safety is protected."<sup>6</sup> Finally, in 2008, the California Victims' Bill of Rights was further expanded when the voters approved "Marsy's Law" by ballot initiative. Marsy's Law created seventeen distinct and articulable rights for victims, including the right to confer with the prosecution, to receive notice of *any* proceedings related to the case, and to be heard at sentencing, giving victims greater access to the system than in any other state.

Of course, the law on the books doesn't necessarily equate to law in action, and Marsy's Law is no exception. Victim rights activists have expressed concern about the law's full implementation since its inception.<sup>7</sup> When asked about victim restitution, one district attorney office laughed and said that he did not think that the system had ever worked.<sup>8</sup> Both before and after Realignment, he reported that his office has always told victims that they will never see a dime of restitution, so there's no point in bothering with it; the offenders typically do not have jobs that pay well enough for them to meet the ordered restitution, and collection was sporadic at best, particularly for misdemeanor offenses.<sup>9</sup> In addition, several county-level advocates

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reported that even before Realignment, resource constraints prevented them from affirmatively engaging many victims in the court processes or maintaining that engagement over time.<sup>10</sup> Finally, no remedies are set forth in Marsy's Law to ensure that victims' rights are upheld, and any obvious remedies would encroach on the rights of defendants.<sup>11</sup> Nonetheless, despite these challenges, the general consensus seemed to be that Marsy's Law worked reasonably well from 2008 to 2011, particularly when compared with its function since Realignment.<sup>12</sup> The process was not always perfectly implemented, but most interviewees reported that they had a fairly good sense of who was supposed to do what. By seriously reducing the role of the California Department of Corrections and Rehabilitation (CDCR) in the justice system and, correspondingly, its ability to facilitate the logistics of notification and restitution, Realignment created a responsibility vacuum in the delivery of victim services that has yet to be filled.

### **B. The Fundamentals of Realignment**

The Public Safety Realignment Act, created by Assembly Bill 109 (AB 109) effectuated the most drastic criminal sentencing and prisoner management reform in decades.<sup>13</sup> It was designed to alleviate overcrowding in California's state prison system, and because victims were not on the policymakers' minds at the time of its design, their needs were overlooked in the construction of the new legislation.

Realignment took effect on October 1, 2011. It substantively altered three major issues within the criminal justice system: where prisoners serve time for certain offenses, who is responsible for supervising them after their release, and the time served by offenders who have violated the terms of their supervised release.<sup>14</sup> Individuals incarcerated for nonserious, nonviolent, nonsexual crimes ("triple nons") now serve their time in the county jail, regardless of the length of their sentence.<sup>15</sup> When offenders are released on parole, they can be discharged after six months (rather than a year) if no violations have occurred, and, moving forward, any offenders who serve their time in county jail (i.e., the triple-non offenders) will be supervised by county probation rather than state parole.<sup>16</sup> Finally, if an offender's parole is revoked for a technical violation, he now serves his revocation sentence in the county jail instead of state prison.<sup>17</sup> The revocation sentence was reduced to a maximum of six months, rather than a year, and jailed parolees can earn "good time credit" twice as quickly as they could before.<sup>18</sup> Because county jails are suddenly responsible for housing so many additional inmates, each sheriff now has the authority to release inmates at his own discretion, without consulting the judiciary, to accommodate overcrowding issues within the jail.

Realignment's most immediate effect was the arrival of thousands of convicted felons into counties that were ill-equipped to deal with them, so the process of designing and implementing the program was heavily focused on offender and law enforcement needs. During the planning

stages of Realignment, the state facilitated meetings and negotiations among the county sheriffs and probation officers, the state parole agents, judges, county public defenders, and district attorneys, such that nearly every actor interacting with offenders was able to contribute to the conversation. For purposes of this paper, the important word is "nearly."

### **C. Where Were the Victims?**

Victim advocates were largely excluded from these negotiations, despite their best efforts to have their voice heard. Nearly every state-level victim advocate interviewed for this paper reported "begging" for a seat at the table, but they were rebuffed or ignored.<sup>19</sup> Christine Ward of the Crime Victims Action Alliance (CVAA), a nonprofit organization, reports that she was told that the Office of Victim and Survivor Rights and Services was representing the needs of victims in the "big picture" negotiation meetings, but when she asked them about their involvement directly, they answered that they were just as shut out as she was.<sup>20</sup> Ward reports that victims were invited to "random, tangential meetings" but kept out of the "comprehensive, big picture" discussions.<sup>21</sup>

Many victim advocates expressed dismay at the relative indifference shown to their concerns, but few were surprised. As Kelly Martin, program manager for victim/witness services in Sacramento County, put it, "Victim concerns are just not a major issue. They get brought up every now and then, but they're never a real priority on the front or back burner."<sup>22</sup> Realignment was all about the offenders: how to get them out of prison, what to do with them once they were home, and how to keep them from offending again.<sup>23</sup> "No one ever sat down and delved into the impact [that Realignment would have] on victims on the ground," according to Megan Riker-Rheinschild of Santa Barbara County, because the impact of the new policies on victims was of secondary or tertiary concern at best.<sup>24</sup>

### **III. Goals and Methodology of This Paper**

Now that state and county actors have had a year and a half to address the most pressing issues stemming from offender and law enforcement needs, it is time to bring victims back into the conversation.

The primary data source for this article is a series of interviews conducted between October and December of 2012. Staff from the Stanford Criminal Justice Center interviewed victim service coordinators from several counties of varying sizes, resources, and demographics (Fresno, Kern, Riverside, Sacramento, Santa Barbara, San Francisco, San Joaquin, and Solano Counties). The counties were specifically selected for their diverse characteristics so that they could provide a variety of perspectives. The Center also interviewed the Assistant Secretary of the Office of Victim and Survivor Rights and Services for the CDCR, the executive director of the CVAA,<sup>25</sup> and the chairwoman of Crime Victims United.<sup>26</sup> The article also incorporates information from interviews with representatives from the district

attorney's offices, parole officers, probation officers, judges, and prosecutors throughout the State. Finally, the authors reviewed the text of AB 109, the multiple iterations of California's Victims' Bill of Rights, and the literature surrounding those laws to substantiate the information interviewees reported.

The interviews were structured around the rights set forth in Marsy's Law. The seventeen rights were consolidated into five basic rights: to be notified, present, heard, considered, and treated with respect at various stages of the justice process. Each interview inquired about how well each of those rights were working before Realignment went into effect, and then how Realignment has affected them over the last year. Interviewees were also asked about the extent to which each office was involved in the design and implementation of Realignment policies in their respective counties, and from their perspectives, how Realignment could be adapted to better serve the rights and needs of victims.

#### **IV. Problems Caused by Realignment**

When asked how Realignment has affected their office, nearly every victim service advocate pointed to the same two problems: restitution (a judicial decree requiring the offender to pay the victim back for any and all losses suffered as a result of the crime) and notification (e.g., to be informed before any pretrial disposition in the case). These two core rights of Marsy's Law have been severely disrupted by the restructuring caused by Realignment, and they are the two biggest issues that victim advocates would like to see resolved in the coming year.

##### **A. Problem #1: Restitution**

Advocates from counties across the state agree, "The biggest impact that AB 109 has had on victim rights is restitution!"<sup>27</sup> Under Realignment, offenders spend long periods of incarceration in county jail custody, rather than going to the state prison system, which was equipped to deal with long incarceration. Over many years, CDCR had built up the infrastructure to put prisoners to work during their incarceration and automatically garnish their wages to pay any restitution order that was in place.<sup>28</sup>

County jails, on the other hand, are "not setup in any way shape or form to do like what CDCR did in terms of restitution collection . . . There's not job training, or even the space to do that."<sup>29</sup> Even where work programs do exist, many sheriffs do not have the authority to garnish the wages to pay restitution orders.<sup>30</sup> Furthermore, as Judge Lawrence Brown of Sacramento County pointed out, for individuals who have never been to prison before, "unless you split [an offender's jail] sentence, then there's no mechanism to track their paying of restitution,"<sup>31</sup> because individuals serving their sentence as "straight time" have no supervision of any kind once they are released.<sup>32</sup> Counties must also keep track of individuals being released from custody early because of overcrowding, prisoners realigned back from state prisons to postrelease community

supervision, prolonged periods of GPS monitoring, and many other different states of "custody"; at each of these different phases, it is unclear who is responsible for collecting restitution, let alone who is responsible for ensuring that it is appropriately distributed.<sup>33</sup>

As one advocate described it, "Restitution is just this huge ball of spaghetti that you just go, 'I don't know—how do we even start to unravel this?'"<sup>34</sup>

##### **B. Problem #2: Notification**

Realignment has also seriously diminished crime victims' access to the notice that Marsy's Law requires, mostly because it is not at all clear when notification is required or who is responsible for providing it. Marsy's Law requires that, upon request, the state keep the victim informed of various steps in the judicial and correctional process. Notice is required, for example, when a suspect is arrested, if the case is resolved pretrial, whenever there is a public hearing regarding the case, when the offender is being considered for release, and when the offender is moved or escapes custody. Knowing whether their offender is in custody or on the streets is fundamental to increasing the victim's sense of safety and reducing their victimization risk.

As discussed above, Realignment created several new types of custodial sentences, and counties have had trouble determining which of those sentences require notice to the victim under Marsy's Law. Many offenders serving time on GPS monitoring or an alternative sentencing program are technically still in custody, but very few counties knew if victims received notice that their offender was out in the community. Counties were also unsure if victims were entitled to notice when their offender was realigned back to the community or released early due to overcrowding. According to the Corrections Standards Authority, which gathers county and local jail population numbers, during the second quarter of 2012, more than 13,000 inmates were released statewide because of lack of space in county jails.<sup>35</sup> It is not clear if these inmates are on electronic monitoring, house arrest, or in other community alternatives. Marsy's Law does not address any of these "custodial" options directly, as they did not exist when it was drafted, but from the perspective of the victims, they very much fall within the spirit of the law's notice requirement. Counties have struggled to reconcile these new statuses with a law that in no way foresaw their development.

Even when the requirement of notification is clear, many counties do not have an automated and integrated system in place to provide it.<sup>36</sup> Without such a process, victim advocates are sometimes forced to track each offender individually and call the victim when there is a change in offender status.<sup>37</sup> Maria Bee of San Francisco reports that she has advocates calling the jail one to four times per day to check on the status of different offenders.<sup>38</sup> Some counties, such as Kern and Riverside, have established a protocol by which the sheriff's office will notify either probation or victim services when they are about to release someone.<sup>39</sup> Sometimes probation will have the

required information to contact the victim, but in other cases, unless a victim service advocate follows up with probation, the victim will never receive that information.<sup>40</sup> This process creates a substantial drain on manpower and resources, and the process is incredibly subject to human error. As a result, victims are not receiving the notice to which they are entitled simply because of disorganization in the system.

### **C. A Continuing Worry: Realignment's Impact on Safety**

Public safety was a major concern when Realignment went into effect. Harriet Salarno, chairwoman of Crime Victims United, elaborated on this issue in her interview. She states that the crime rate has risen since AB 109, resulting in greater victimization across the state.<sup>41</sup> The Crime Victims Action Alliance voiced similar concerns about victim safety. Christine Ward reports that victims are afraid of retaliation for their participation in the justice process, because they know that the offenders could be back on the streets sooner than they could before Realignment, and parole no longer serves as an effective deterrent because a violation only removes the offender from the community very briefly and “really only serves to make the offender mad.”<sup>42</sup>

However, not all county-level advocates shared this sentiment. Lachelle Crivello of Riverside County said that although her office received many concerned calls from victims when Realignment was initially passed, these calls largely stemmed from confusion among the public regarding which offenders would actually be released back to county custody and how much supervision they would receive on arrival. When they were informed that individuals serving time for violent offenses were not being released early from prison, victim concerns lessened. In reality, she does not believe there has been much of an impact on victim safety since AB 109 went into effect.<sup>43</sup> County advocates from San Joaquin and Fresno Counties echoed this sentiment, explaining that victims are often concerned when they hear that their offenders are staying local, but they calm down once the system is explained more clearly to them.

Overall, it remains to be seen whether Realignment will have a positive or negative impact on public safety. One of the driving theories behind Realignment was that officials closer to an offender's community would be able to watch them more closely and offer better rehabilitative services than the more detached, state-level government, with the ultimate goal of reducing recidivism and victimization. However, if more “untreated” felons are granted early release because of jail overcrowding, or if the counties simply lack the resources to provide sufficient supervision and programming to realigned individuals, then these early releases may offend again, resulting in more victims rather than fewer. The Public Policy Institute of California is currently studying the relationship between Realignment and crime rates, and reports that while California's violent crime continues to decline, property crime is on the rise,

but the rise in property crime began several months before California implemented Realignment.<sup>44</sup> Thus, the early evidence on how victims will fare under Realignment is inconclusive at best.

## **V. Suggestions for Improvement**

Despite the problems reported above, most victim service providers interviewed for this study are optimistic about Realignment's potential and believe that it will, over time, reduce the total level of victimization in their communities. Everyone believes that California's prison and parole systems were broken, and that improvements are more likely to happen at the county level where officials have more flexibility and commitment to addressing local problems. “We're still working the kinks out,” Lori Willits of Fresno observed, “but when we do, I think it will actually help victims eventually.”<sup>45</sup> Both state and county actors, however, have suggestions for ways to improve Realignment to alleviate the burden it has created on victims.

### **A. Give Victims a Voting Voice**

Every advocate interviewed for this study believed that the most important step in reforming Realignment is to give victim service providers a vote on the CCP Executive Committee. AB 109 established within each county a new Community Corrections Partnership, which is in charge of developing a plan to allocate the funding that county will receive under AB 109 in a manner that will best serve that individual county's needs. Certain actors<sup>46</sup> within the CCP make up the Executive Committee, and in most counties, only the Executive Committee members are allowed to vote on the final budget allocations. As it stands now, although victims are required to have a seat on the general CCP,<sup>47</sup> they do not have a place on the Executive Committee.<sup>48</sup> Carolyn Wold of Solano County reports that, as a result, “There isn't a lot of interest [within the CCP] on the impact on victims.” Although they get brought up “every now and then,” victims are never a “real priority on either the front or the back burner.”<sup>49</sup> Although other agencies are more than happy to talk the talk, Lupe Perez of Kern County describes the CCP as simply slow to respond to victim needs when the victim services department has no direct “hammer” to make the council recognize its needs.<sup>50</sup>

The recommendation to give victims a voting voice on the CCP ties directly to another major concern for victim advocates: a serious lack of funding. Funding shortages have been an issue since Marsy's Law passed in 2008,<sup>51</sup> but in the post-Realignment world, victim service departments are expected to perform far more extensive functions within the county than before without being allocated the resources necessary to accomplish those tasks. In fact, detailed analysis of the counties' 2011–2012 Realignment plans shows that only two counties have allocated funding specifically to assist with Realignment's impact on victims.<sup>52</sup>

This lack of funding has serious ramifications. Kern County, for example, had the opportunity to implement an automatic system for victim notification, but they were not able to do so because they did not have the funds.<sup>53</sup> Solano County had to cut the number of advocates in its victim service office in half because of funding cuts.<sup>54</sup> Fresno County said that resource constraints have consistently been one of the biggest barriers to meeting victim needs,<sup>55</sup> and San Francisco County reported that one of the most common complaints from victims is that their aggressors have better access to rehabilitative services and assistance than they do.<sup>56</sup> Because victim service departments are underfunded and understaffed, most offices are forced to triage either the victims they serve or the functions they provide.<sup>57</sup> Victims of lesser offenses, those most likely to be affected by Realignment's changes, must reach out to the victim service department on their own if they want help, and this extra effort is often more than a victim is able to make. Thus, the very people who are most affected by AB 109 are receiving fewer services because of the resource constraints that it has caused. The budget concern, while shared by nearly every agency affected by AB 109, is particularly troublesome for victims because they have no meaningful voice on the CCP, and so no viable means of fighting to fix the problem.

#### **B. Clearly Establish Who is Responsible for What**

To begin to remedy the situation, the CCP in each county needs to establish who is responsible for executing which victim service. Each and every agency needs to know which changes in custody status require notification under Marsy's Law, and who is responsible for collecting restitution at various stages of the process. For example, Santa Barbara County's CCP has formed a committee with representatives from the victim service program, probation, the judiciary, and the district attorney's office to develop guidelines and procedures for collecting restitution post-AB 109.<sup>58</sup> New legislation, effective January 1, 2013, should make this task easier; the new law provides that "the county board of supervisors may designate an agency within the county to collect victim restitution."<sup>59</sup> However, there are a few important caveats to this law: it *permits* but does not *require* the county board of supervisors to clarify this responsibility, and if the designated agency is the sheriff, such that restitution could be collected within the jail, then the sheriff must agree to accept the responsibility.<sup>60</sup> Victim advocates were skeptical of similar language in SB 1210 (discussed in Section IV.F. below) because the law provided neither additional funding to discharge this responsibility nor any other incentive for the county to act upon it. Similar concerns are at play here. Without a reason to direct resources to victim needs, the counties may prefer to let the issue remain unresolved, rather than place a new burden on already over-burdened agencies dealing with offender issues.

These are but a few of the ways in which clarity, more than anything else, can go a long way toward fulfilling the rights of Marsy's Law under the new regime.

#### **C. Create a County-Wide Notification System**

To facilitate better organization, each county needs an automated system like the one used by CDCR to provide victims with notification at the required times.<sup>61</sup> A plan is currently in place to implement such a system in all counties within the next few years,<sup>62</sup> and in some counties, implementation has already been completed. The counties with this system in place—San Joaquin County, Riverside County, and Fresno County—were the ones with the fewest concerns about notification after Realignment, indicating that it is an effective step toward remedying the notification problem.

#### **D. Consider an Offender's Entire History**

Victim advocates of all levels want to revise the method of evaluating whether an offender should be eligible for Realignment and post-release community supervision. At present, only the offender's current commitment offense, and not his or her entire rap sheet, is on the table when making that determination. This has created situations in which individuals with violent offenses in their past are nonetheless released with minimal county supervision because their current prison offense is relatively minor.<sup>63</sup> Carolyn Wold of Solano County emphasized that a thorough examination of an offender's past is particularly important when the sheriff is making decisions about whom to release because of overcrowding concerns. These decisions are often made quickly and without consulting other agencies, yet they have a substantial and immediate impact on the offender's victims, past and present. Accordingly, many advocates believe that victims would be much better served if an offender's entire record were on the table when making decisions about his custodial and community supervision status.

#### **E. No Straight Sentences for Offenders with Restitution Orders**

To better protect the victim's right to restitution, some victim service providers advocated prohibiting "straight sentences" when an offender has a restitution order in place.<sup>64</sup> As described in Section IV.A., straight sentences create a unique problem for restitution collection because the offender has no ability to work in jail and is under no supervision whatsoever once released. As a result, there is never a time when the offender has both the ability and the incentive to make payments on the order. Split sentences have become much more common since Realignment went into effect, and this relatively simple shift would make the collection of restitution much easier. It is a shift advocated by victim service coordinators and judges alike.

#### **F. Require County Jails to Have Work Programs and Garnish Wages**

Alternatively, giving offenders an opportunity to earn some form of wages while in jail would substantially help with the restitution issues created by Realignment. Some steps have already been taken to make this

possible. Last fall, the California Legislature passed SB 1210, which contained a provision entitling counties to set up a system for garnishing money from the offender's jail books to pay restitution orders.<sup>65</sup> Everyone interviewed in this study thought that this would be a very helpful step, but few were optimistic that their county would allocate the resources necessary to create such a system. SB 1210 did not provide any additional funding for the systems it permits counties to establish; instead, the funds are expected to come out of the general AB 109 money received by the county.<sup>66</sup> However, until victims are afforded voting rights on the CCP, few advocates believe that they will be allocated sufficient funding to make the system a reality.

## VI. Conclusion

Victim advocates in many California counties have been playing catch-up and putting out fires since Realignment went into effect over a year ago.<sup>67</sup> Their primary concern is that many counties do not have the infrastructure in place for meaningful implementation of the rights set forth in Marsy's Law, particularly the rights to restitution and notification. These problems and more are exacerbated by the fact that victims do not have an advocate with voting power on the CCP, so their needs are typically a low priority in the allocation of resources.

Advocates have put forth a series of recommendations to address these concerns, many of which boil down to organization and resources. An important first step toward remedying both problems, however, is to make the victim services representative a voting member of the CCP Executive Committee. If the victims of California were given not merely a voice but also a participating role in the allocation of AB 109 funds, other county actors would be forced to engage with their needs rather than shunting them to the side in the new, offender-focused regime.

A recent report produced for the California District Attorneys Association discussing Marsy's Law and Realignment, noted that many of the "sea of changes" made to existing law do "indeed conflict with existing law" and are "likely to result in significant litigation challenging various applications of Realignment."<sup>68</sup> Megan Riker-Rheinschild calls the current situation a "lawsuit waiting to happen" because no one has worked out the conflicts between Marsy's Law and Realignment, so victims' rights are simply being ignored.<sup>69</sup> With time, resources, and collaboration, Riker-Rheinschild and others believe that the two laws can be reconciled, but only if counties are willing to engage with the needs of victims and if agencies are willing to work together to meet those needs. If the counties do not resolve the inconsistencies between Marsy's Law and Realignment, there is a very real chance that the courts will take action to resolve these issues for them.

Victims have been shut out for years, and even now, when they actually have substantive rights on the books, those rights are being ignored. Given that the implementation of Realignment is still in flux, policymakers have

a chance to stop that oversight; if offered a seat at the table, victim advocates will ensure that those rights are implemented.

## Notes

- <sup>1</sup> Robert M. Ireland, *Privately Funded Prosecution of Crime in the Nineteenth-Century United States*, 39 Am. J. Legal Hist. 43, 58 (1995).
- <sup>2</sup> Telephone interview with Christine Ward, Executive Director, Crime Victim Action Alliance (Dec. 17, 2012) [hereinafter CVAA Interview]. All interview recordings are on file with authors.
- <sup>3</sup> Cal. Penal Code § 1230.1 (West 2012).
- <sup>4</sup> Davya B. Gewurz & Maria A. Mercurio, *The Victims' Bill of Rights: Are Victims All Dressed Up with No Place to Go?*, 8 St. John's J. Legal Comment. 251, 255 (1992).
- <sup>5</sup> Cal. Const. art. I, § 28 (West 1982).
- <sup>6</sup> *Id.*
- <sup>7</sup> See Heather Warnken, *Real Justice: Victims' Rights Delivered, Report and Recommendations* (2012).
- <sup>8</sup> Interview with Deputy District Attorney (anonymous), Sacramento County District Attorney's Office (Oct. 15, 2012) [hereinafter Sacramento DA Interview].
- <sup>9</sup> *Id.*
- <sup>10</sup> See Telephone interview with Cynthia Florez-DeLyon, Assistant Secretary, Office of Victim and Survivor Rights and Services, California Department of Corrections and Rehabilitation (Oct. 26, 2012) [hereinafter CDCR Interview]; Telephone interview with Lori Willits, Probation Service Manager, Crime Victim Assistance Center, Fresno County (Nov. 15, 2012) [hereinafter Fresno Interview]; Telephone interview with Kellie Martin, Program Manager, Sacramento County Victim/Witness Assistance Program (Dec. 12, 2012) [hereinafter Sacramento V/WAP Interview]; Telephone interview with Gabriela Jaurequi, Victim-Witness Assistance Program, San Joaquin County District Attorney's Office (Nov. 20, 2012) [hereinafter San Joaquin Interview].
- <sup>11</sup> See CVAA Interview, *supra* note 2.
- <sup>12</sup> See Telephone interview with Harriet Salarno, Chairwoman, and Nina Salarno, Executive Director, Crime Victims United (Dec. 17, 2012) [hereinafter CVU Interview]; Telephone interview with Lachelle Crivello, Director of Victim Services, Riverside County District Attorney's Office (Nov. 12, 2012) [hereinafter Riverside Interview]; Telephone interview with Megan Riker-Rheinschild, Victim-Witness Assistance Program Director, Santa Barbara County District Attorney's Office (Oct. 24, 2012) [hereinafter Santa Barbara Interview].
- <sup>13</sup> AB 109 has been modified in AB 116, AB 117, AB 118, ABX1 16, ABX1 17, SB 1021, and SB 1023. For a complete description, see Cal. Dist. Atty's Ass'n, *Prosecutors' Analysis of the 2011 Criminal Justice Realignment 3* (Kathryn B. Storton & Lisa R. Rodriguez eds., 1st ed. 2012).
- <sup>14</sup> Margo Schlanger, *Plata v. Brown and Realignment: Jails, Prisons, Courts, and Politics*, 48 Harv. C.R.-c.L. L. Rev. at 185 (2013), available at [ssrn.com/abstract=2133511](http://ssrn.com/abstract=2133511).
- <sup>15</sup> Cal. Penal Code § 1170(h) (West 2012). Whether a felony qualifies as serious or violent is determined by Cal. Penal Code §§ 667.5(c), 1192.7(c).
- <sup>16</sup> Cal. Penal Code § 3451 (West 2012).
- <sup>17</sup> Cal. Penal Code § 3456 (West 2012).
- <sup>18</sup> *Id.*
- <sup>19</sup> See CVAA Interview, *supra* note 2; see also CVU Interview, *supra* note 12.
- <sup>20</sup> CVAA Interview, *id.*
- <sup>21</sup> *Id.*
- <sup>22</sup> See Sacramento V/WAP Interview.
- <sup>23</sup> See San Joaquin Interview, *supra* note 10 ("A lot of focus [on the CCP] is being placed on these programs that need to be in

- place to ensure that the defendants are prepared when they're being released back to the community and ensure that they aren't going to revictimize again... [The CCP is] trying to figure out what are the best programs, what are the best options for them to ensure that they're going to be successful."); see also Solano Interview.
- <sup>24</sup> See Sacramento V/WAP Interview; Santa Barbara Interview, *supra* note 12.
- <sup>25</sup> A state-wide legislative advocacy organization. This individual also works with the Crime Victim Assistance Organization, providing direct services to victims of violent crimes.
- <sup>26</sup> A state-wide legislative advocacy group.
- <sup>27</sup> See Fresno Interview, *supra* note 10.
- <sup>28</sup> See CDCR Interview, *supra* note 10.
- <sup>29</sup> Fresno Interview, *supra* note 10.
- <sup>30</sup> See CVAA Interview, *supra* note 2 ("CDCR has a solid system in place for collecting restitution from inmates, but now that there are many many individuals who will never see CDCR, there are more victims who will have restitution orders and no system in place to get it."); Fresno Interview, *supra* note 10 ("Even if they did [have the space for work in jail], how are they going to collect that money and how are they going to get it to the victim?"); Telephone interview with Maria Bee, Chief of Victim Services Division, San Francisco District Attorney's Office (Nov. 29, 2012) [hereinafter San Francisco interview]; San Joaquin Interview, *supra* note 10.
- <sup>31</sup> Telephone Interview with Judge Lawrence Brown, Sacramento County Superior Court (Dec. 12, 2012) [hereinafter Sacramento SC Interview].
- <sup>32</sup> See Fresno Interview, *supra* note 10; Santa Barbara Interview, *supra* note 12.
- <sup>33</sup> See Telephone interview with Lupe Perez, Victim's Advocate Supervisor, Kern County Probation Department (Dec. 10, 2012) [hereinafter Kern Interview]; Fresno Interview, *id.*; Sacramento V/WAP Interview; Santa Barbara Interview, *id.*
- <sup>34</sup> See Fresno Interview, *id.*
- <sup>35</sup> Beatriz E. Valenzuela, *Prison Population Decreases Since A.B. 109*, Inland Valley Daily Bulletin, January 19, 2013.
- <sup>36</sup> See, e.g., Kern Interview, *supra* note 33; San Francisco Interview, *supra* note 30; Telephone interview with Carolyn Wold, Family Violence Prevention Officer, Solano County Family Justice Center (Dec. 12, 2012) [hereinafter Solano Interview].
- <sup>37</sup> See San Francisco Interview, *id.*
- <sup>38</sup> *Id.*
- <sup>39</sup> See Kern Interview, *supra* note 33; Riverside Interview, *supra* note 12.
- <sup>40</sup> *Id.*; see also CDCR Interview, *supra* note 10.
- <sup>41</sup> See CVU Interview, *supra* note 12. In Los Angeles County alone, in the 14 months since Realignment was passed, there have been six murders by offenders released early due to the nonviolent nature of their offense. In another county, a prisoner who was released due to overcrowding in the county jail, attacked another victim within 23 days. According to Salarno, these are but a few examples of the dangers posed by having "the worst of the worst" released "without punishment" and walking the streets.
- <sup>42</sup> See CVAA Interview, *supra* note 2.
- <sup>43</sup> See Riverside Interview, *supra* note 12.
- <sup>44</sup> Magnus Lofstrom, *Crime Trends in California*, Public Policy Institute of California, San Francisco, CA, September 2012.
- <sup>45</sup> Fresno Interview, *supra* note 10.
- <sup>46</sup> The Executive Committee is comprised of the probation chief (who chairs the Committee), the sheriff, the district attorney, the public defender, the presiding judge, the police chief, and a public health or social services department head appointed by the County Board of Supervisors.
- <sup>47</sup> Cal. Penal Code § 1230 (West 2012).
- <sup>48</sup> Cal. Penal Code § 1230.1(b) (West 2012).
- <sup>49</sup> Sacramento V/WAP Interview.
- <sup>50</sup> Kern Interview, *supra* note 33.
- <sup>51</sup> See Warnken, *supra* note 7.
- <sup>52</sup> Angela McCray, Kathryn McCann Newhall, & Jessica Greenlick Snyder, *Realigning the Revolving Door: An Analysis of California Counties' AB 109 Implementation Plans*, Stanford Law School, January 2012, available at <http://www.law.stanford.edu/organizations/programs-and-centers/stanford-criminal-justice-center-scjc/california-realignment>.
- <sup>53</sup> See Kern Interview, *supra* note 33.
- <sup>54</sup> See Solano Interview, *supra* note 36.
- <sup>55</sup> See Fresno Interview, *supra* note 10.
- <sup>56</sup> See San Francisco Interview, *supra* note 30.
- <sup>57</sup> See, e.g., Fresno Interview, *supra* note 10 (describing the establishment of a "pecking order" by which victims will be assisted, because they don't have the resources to handle every case); Solano Interview, *supra* note 36 (explaining that because the primary role of the advocate in their county is to appear in court, they often do not have time to assist the victim in other areas, such as preparing their impact statement or contributing to the presentence report).
- <sup>58</sup> See Santa Barbara Interview, *supra* note 12.
- <sup>59</sup> Cal. Penal Code § 2085.5(d).
- <sup>60</sup> *Id.*
- <sup>61</sup> See Santa Barbara Interview, *supra* note 12; Solano Interview, *supra* note 36.
- <sup>62</sup> See CVAA Interview, *supra* note 2.
- <sup>63</sup> See CVU Interview, *supra* note 12.
- <sup>64</sup> See, e.g., Fresno Interview, *supra* note 10; Santa Barbara Interview, *supra* note 12.
- <sup>65</sup> SB 1210, 2012 Leg., Reg. Sess. (Ca. 2012).
- <sup>66</sup> See CVAA Interview, *supra* note 2.
- <sup>67</sup> Solano Interview, *supra* note 36.
- <sup>68</sup> See Cal. Dist. Atty's Ass'n, *supra* note 13.
- <sup>69</sup> See Santa Barbara Interview, *supra* note 12.