

# **Evaluating the Impacts of California's Criminal Justice Realignment**

**A description of research being conducted by  
Stanford Law School students enrolled in Professor Petersilia's  
"Advanced Criminal Law: A Policy Practicum" (Fall 2011)**

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## Understanding the Characteristics, Risks, and Needs of “Realigned” Felons in Santa Clara County

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### Overview and Importance of Topic

Under AB 109, Santa Clara County will assume responsibility for both prisoners released into post release community supervision and offenders sentenced to county jail who otherwise would have been sent to state prison. In order for Santa Clara County to be prepared to take responsibility for these new populations, it is vital that the County is aware of the needs and possible security risks that they will have to address. It is also important to document whether the types of people being released and the sentenced under this new system are those envisioned by AB 109. It is crucial to develop a framework for analyzing the impact and success of realignment under AB 109, and this provides a model that can be adopted by other counties.

### Research Questions

#### *First 30 Felons Sentenced*

1. How serious are the offenders who would have been sent to state prison, but are now being sentenced and serving their time in Santa Clara County? How does this compare with the legislative intent of AB 109, and the expectations of the public and county officials?
2. Do these offenders have specific needs (i.e., mental health, substance abuse, etc.) and is Santa Clara County equipped to meet those needs?
3. What kinds of sentences are these individuals receiving and have those sentences been influenced by realignment?

#### *First 50 Prisoners Released*

1. How serious are the offenders who are being released to post release community supervision under AB 109 in Santa Clara County? How does this compare with the legislative intent of AB 109, and the expectations of the public and county officials?
2. Do these offenders have specific needs (i.e., mental health, substance abuse, etc.) and is Santa Clara County equipped to meet those needs?
3. Who amongst the offenders is more likely to recidivate; how does this compare to Santa Clara County’s previous history of probation recidivism; and how can Santa Clara County modify its plans to better meet the needs of these offenders?

## Research Methodology

### *First 30 Felons Sentenced*

Hannah is going through the Santa Clara Public Defender file for each of the first 30 individuals who would have been sent to state prison but are now the responsibility of Santa Clara County under AB 109. She is recording the data from these files (i.e., demographics, sentence type and length, prior criminal history) and coding it into a database for analysis.

### *First 50 Prisoners Released*

Ashley and Veronica have gathered the demographic data and mental, physical, and criminal history from the first 50 offenders released into Santa Clara County post release community supervision under AB 109. Currently this data is being coded into a database for analysis. Veronica will perform a three-month follow-up of this population to determine who recidivates. We will look for patterns and predictions amongst the population.

## What We Hope To Learn

- Many of these individuals have long criminal histories. For some, their past crimes are not necessarily serious, but the length of the history indicates that they will pose a high risk of recidivism. For others, their controlling crime may not be serious or violent, but they may have a history of serious, violent, or sex-related offenses.
- Many of the offenders have substance abuse needs and other mental or physical health needs that require programming or special services. We predict that unless services to this population are adequate, they will have a higher risk of recidivating.
- We predict that lack of adequate housing and vocational skills will minimize these offender's chances of success. We also predict that we will discover areas in Santa Clara County's spending plan that can better target certain populations to more efficiently spend their money and reduce recidivism.

## Next Steps & Timetable

### *First 30 Felons Sentenced*

- Finish collecting data from the Public Defender's Office (mainly sentencing information for previously incomplete files) by Friday the 18<sup>th</sup>.
- Code the data into a database and analyze

### *First 50 Prisoners Released*

- Continue to code the data into a database by November 28<sup>th</sup>.
- Run analysis on the database, creating charts and graphs by December 5<sup>th</sup>.
- Gather three-month follow-up data by January 15<sup>th</sup>.
- Examine the factors related to success and failure, using a variety of outcome measures.

# Flash Incarceration in AB 109: the Intersection of Legal and Design Challenges in California's Criminal Realignment

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## Overview and Importance of Topic

CA Penal Code § 3454 authorizes county supervising agencies – generally probation departments – to “flash incarcerate” individuals on post release community supervision. § 3454 carries no procedural requirements for the use of flash incarceration, leaving the determination of procedural protections to California’s 58 counties. Currently, all published county realignment plans include provisions for the use of flash incarceration. Although the US Supreme Court has set forth the due process rights attendant to parolees threatened with a deprivation of liberty, not all counties have set consistent policies with these plans. Furthermore, § 3454 allows the use of flash incarceration as a correctional supervision tool in whatever circumstances local polices and supervising agencies authorize. Flash incarceration may be ineffective and undermine confidence in correctional supervision when it is divorced from the programmatic, judge-led correctional regimes exemplified in Project HOPE. A better understanding of the constitutional and practical issues confronting county use of flash incarceration is needed now, while policies are being set and counties are focused on the design issues integral to successful postrelease supervision.

## Research Questions

1. What are the legal requirements – largely due process rights – for flash incarceration programs?
2. What does the literature on best practices say about the use of flash incarceration as a form of correctional supervision?
3. How do county plans accord with or deviate from (1) and (2), and are there cost-neutral ways of obtaining closer match between county plans and the findings of (1) and (2)?

## Research Methodology

Legal and social science research will constitute the research for the first part of my paper. Investigation of the county plans for flash incarceration use will be accomplished through interviews with Santa Clara County officials (Judge Steven Manley, Deputy Chief Probation Officer Karen Fletcher, Deputy Public Defender Kelley Kulich), field probation agents in Santa Clara County, and assessments of county plans.

## Preliminary Findings

The legal requirements for depriving individuals of liberty when they are subject to supervision by the criminal justice system are well-established: due process requires notice of the alleged violation and a hearing before an impartial arbiter. *See Morrissey v. Brewer*, 408 U.S. 471

(1972); *Gagnon v. Scarpelli*, 411 U. S. 778 (1973). Most counties have ensured that probationers and parolees receive notice of the allegations against them, and some have gone so far as to offer an administrative hearing where the individual wishes to contest the allegations. It is not clear whether the counties without an offer of a hearing on their flash incarceration forms have alternative methods of informing parolees and probationers of their rights or have the structure to accommodate such requests.

The literature on best practices discusses flash incarceration in the context of larger efforts at providing integrated services. That is, flash incarceration has been effective as a swift sanction where individuals are in regular contact with their probation officer, supervising judge, and adequate programs have been made available. It is harder to legitimate the use of flash incarceration and to comport with due process requirements where probation departments use of flash incarceration without participation of a judge or official hearing officer.

### **Next Steps & Timetable**

- Nov. 18 – Dec. 18: Continue interviewing county officials, reviewing county plans.
- Dec. 18 – Jan. 10: Map plans onto literature, gather information on additional counties.
- Jan. 10 – Jan. 20: Follow-up with counties regarding findings, seek reaction.
- Jan. 20 – Finish project, including county intentions (if any) to adjust their plans.

# The Effect of Realignment on Persons With Mentally Illness

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## Overview and Importance of Topic

The litigation from which AB 109 arose challenged the inadequate treatment of mentally ill offenders in state prisons. With the recent Supreme

Court decision, however, overcrowding has become the issue of the day. Little mention -- if any -- has been made of how AB 109 addresses or improves the treatment of the mentally ill. Though they were the impetus behind this legislation, the mentally ill have largely been left out of the realignment conversation. AB 109 may thus mark yet another failed attempt by the State to appropriately address the treatment of the mentally ill in state custody.

## Research Questions

Does AB 109 align to previous state efforts to provide effective treatment for mentally ill individuals in state custody? In what ways?

Does AB 109 align with the impetus behind the *Brown v. Plata* litigation – namely, providing mentally ill prisoners with adequate medical and psychiatric care?

What are the unintended consequences of AB 109 on mentally ill offenders?

## Research Methodology

Initially, the bulk of my research was based on readings that reviewed past state legislation, as well as the text of AB 109 itself. My research has become more qualitative in nature, now mainly consisting of interviews with practitioners who have some tie to mental health and corrections.

## What I Think I Will Find

Mentally ill offenders will be the unintended losers under AB 109, at both the state and county levels.

While California state prisons are under court order requirements to provide mental health services to mentally ill inmates, AB 109 will change the composition of the prison population. This change may create a more serious, hardened prison population, which will increase the risk of victimization for the mentally ill.

At the county level, California jails are ill equipped to respond effectively to the needs of

mentally ill offenders. Local correctional systems do not engage in the long-term strategic planning needed to best identify and serve the mentally ill offender at the local level.

### **Next Steps & Timetable**

- Determining the profile of mentally ill individuals who are going to jail, rather than staying in prison under AB 109
- Creating a case study that compares Santa Clara County with Los Angeles County in their attempts to address the mentally ill offender population. Santa Clara County is unique in their efforts to collaborate between community mental health providers and local law enforcement to identify and treat mentally ill individuals, thereby keeping them out of the criminal justice system. I suspect that the opposite is true in the Los Angeles County jail, though – as the State’s largest mental hospital – the need is certainly there.
- I plan to complete this research by January 2012.



## **Realignment's Impact on the Public Defender and District Attorney: A Tale of Five Counties**

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### **Overview and Importance of Topic**

Our topic is important for at least two reasons. First, like any law, AB109 was introduced, and ultimately structured, to facilitate a number of complicated policy goals. But because of the enormous flexibility and discretion vested in the courtroom workgroup, these goals may not be achieved. And because of the broad sweep of the law, a number of unintended results are also possible. It will be valuable to hear from lawyers on the ground how they expect the law to pan out, and later on, how it ultimately changes the legal landscape.

Second, studying AB109's effect on the courtroom workgroup is of independent intellectual significance. The interplay between district attorney, public defender, and judge—with all of its power dynamics and nuances—is a fascinating issue. AB109 may affect this dynamic in important ways, potentially altering prosecutors' leverage over criminal defendants. This alone is an issue worth studying.

### **Research Questions**

1. Do public defense attorneys and assistant district attorneys predict AB 109 will affect their relationship? If so, how?
2. Will counties use their new discretion to hand down blended sentences?
3. With prison sentences out of the question for many offenses, will prosecutors charge more aggressively or seek more upgrades?

### **Research Methodology**

We are conducting interviews with one or more public defense attorneys and assistant district attorneys in Santa Clara, Los Angeles, Fresno, San Francisco, and Ventura counties, who are experts on AB 109. We selected these counties based on three factors – 1) how prosecutors elect to charge wobbler offenses, 2) how prosecutors charge drug crimes before and after Prop 36 took effect, and 3) if, and how often, prosecutors use their discretion when charging a third strike offense.

### **What I Think I Will Learn**

Rehabilitation looks very different in different counties. For example, attorneys in Santa Clara and one in Fresno believe that AB 109 will increase rehabilitative services for inmates, whereas an interviewee in Los Angeles believes it will have no effect on rehabilitation because of a lack

of resources. Similarly, an attorney in Santa Clara believes AB 109 will have no effect on jury trial rate, whereas one in Los Angeles predicts it will increase for misdemeanants, and one in Fresno believes the rate will decrease for 1170H defendants.

All of the public defense attorneys we spoke with are concerned that assistant district attorneys will charge enhancements in order to take a defendant out of 1170H consideration, whereas an assistant district attorney in Santa Clara said that would absolutely not happen.

### **Next Steps & Timetable**

- Interview attorneys in the remaining counties
- Conduct a follow-up study in the spring to determine whether the attorneys' predictions are realized

# Unintended Beneficiaries: White Collar Offenders and Realignment

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## Overview and Importance of Topic

While myriad national and state-level perspectives informed the development of California's prison alignment, a point of consensus during the legislative process was that offenders should not "win" under the new paradigm. At the same time, anecdotal evidence indicates that counties, in responding to the new budgetary realities of housing more offenders at the local level, will be making tough decisions on who to house in their limited number of jail beds. While identity theft, mortgage fraud scandals, and headline news stories on characters such as Bernie Madoff have enraged the American public, state-level white collar offenders may benefit from this new realignment reality by presenting county officials with the least risky profiles for early release or electronic monitoring.

## Research Questions

1. Will white collar offenders benefit from California's prison realignment?
2. Are counties more likely to offer reduced sentences and/or supervised release regimes to white collar offenders after realignment than before?

## Research Methodology

For both research questions, I am using a combination of (1) interviews with county officials and attorneys and (2) analysis of prison population data.

## What I Think I Will Learn

- Counties, strapped for cash and/or with limited jail space, will be more likely to offer white collar offenders shorter sentences, electronic monitoring, and other types of supervised release
- Lower-level white collar offenders have recidivism rates similar to offenses such as robbery
- Outside of specific crimes (i.e. mortgage fraud), white collar defendants will have greater possibilities for lighter punishment.

## Next Steps & Timetable

- Continue interviews with local DAs and defense attorneys
- Draw up simulation cases for analysis by prosecutors, attorneys, and judges
- Gain access to updated prison population data (more detailed information on what code sections inmates were charged under)
- Exit interviews with Mark Pomerantz and David Mills (January 11-14)
- Final analysis and project completion (January 19-21)

# Can Santa Clara County Meet the Housing Needs of Offenders Post-AB 109?

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## Overview and Importance of Topic

Assessing whether Santa Clara County is prepared to meet the housing needs of parolees who will be entering the system post-AB 109 is critical because of the link between access to housing and likelihood of recidivism. As all counties prepare to accommodate AB 109, they will be able to apply the methodology we develop for examining the suitability and availability of housing in Santa Clara County to their own counties.

## Research Questions

1. Where are parolees in Santa Clara County living?
  - Parolee map, time comparison chart, offender comparison chart, demographics (income, poverty rates, racial)
2. What are the housing needs of parolees and are they being met in Santa Clara County?
  - Reviewing the literature on needs of ex-offenders generally
  - Community services & transportation maps
  - Housing characteristics maps
  - General housing policies of SCC

## Research Methodology

Available data: working from a database of all current active parolees in Santa Clara County. This data set includes current address, offense type, and date of release of almost 4,000 parolees.

1. Using the database and GIS mapping software, we will look at where current parolees are living in relation to poverty levels, income levels, racial demographics, crime rates and other social demographic data available through the census and Santa Clara County.
2. To determine the housing needs of parolees, we will first review the literature on the housing needs of ex-offenders generally. Using GIS software, quantitative analysis of our data, and analysis of Santa Clara County housing policies, we will determine whether those needs are being met.

### **Preliminary Findings**

- We predict that parolees in Santa Clara County will be clustered in areas of concentrated disadvantage which include areas of low median income, high poverty rates, and high crime rates.
- We predict that Santa Clara County does not meet the long-term housing needs of parolees.

### **Next Steps**

- Continue collecting data sets for research questions 1 & 2
- Continue reviewing literature regarding needs of ex-offenders
- Continue researching existing housing policies of Santa Clara county
- Write up our conclusions based on maps, literature and housing policies; recommend policy suggestions to Santa Clara County.

## Comparison of County AB 109 Implementation Plans

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### Overview and Importance of Topic

The 2011 Public Safety Realignment Act is one of the biggest changes to criminal justice policy in California's history. This Act gives counties almost complete discretion about how to spend the money associated with the legislation and what to do with the realigned populations for which they will now be responsible. While there have been a number of surface-level comparisons of the plans, we are not aware of another project attempting to comprehensively analyze the choices the counties made in their plans and budgets. We hope that our project will demonstrate patterns and variance among the plans, and that it will enable counties to compare their choices to those of their peers. In addition, we hope that our project will foster communication and an open dialogue about best practices for dealing with the realigned populations.

### Research Questions

1. What choices did the counties say they were making in their plans to implement AB 109?
2. How did the counties plan to spend their money in implementing AB 109?
3. What factors (current jail population, income level, crime rate, punitiveness, population, existing programs) might explain the counties' choices?

### Research Methodology

1. a. We made a list of approximately 85 potential items that the counties could have mentioned, divided into subcategories (alternative sanctions, rehabilitation & reentry, probation, etc.), and we coded which items each county mentioned in its plans, making comments on each subcategory.  
b. We ranked each county as high, medium, or low on law enforcement, and high, medium, or low on treatment and services.
2. We broke each county's budget down by funding streams and funding choices.
3. We used existing data sets to examine these factors.

## What I Think I Will Learn

Amongst the plans we have analyzed to date we have found fairly significant variation. While some counties have paid equal attention to address issues related to law enforcement needs and providing services to offenders, others have been more skewed towards one or the other. In addition, most plans discuss in some detail the use of alternative sanctions to address capacity issues expected to arise as a result of realignment, and plan to use electronic monitoring and flash incarceration. The majority of counties for which we have budget data (28 plans) allocated the most money to the Sheriff's department, with 8 counties allocating more than 50% of their AB 109 funds to the Sheriff. Within the sheriffs' departments, most of the funds were projected to be spent on salaries for new employees. Notable, however, is Kings County which allocated 72% of its funding (\$2M) to increase jail capacity. We predict that even counties that have strong service-focused plans will allocate the majority of their funding to salaries in the sheriff's and probation departments to address staffing issues resulting from higher levels of offenders in custody and on probation caseloads. While some counties have intentions to invest in services such as drug & alcohol counseling, workforce development and post-custody housing, most have concluded that AB 109 funding is insufficient to accommodate the population they are expected to serve. Therefore, many have plans to pursue funding options from other State sources.

## Next Steps & Timetable

- Develop three sets of five questions each to make indices for arraying the plans along the following themes: 1) surveillance/custody, 2) treatment and services, 3) data driven planning.
- Obtain and analyze budget data for a significant portion of the counties for which we currently have no data.
- Use qualitative analysis software to analyze use of key words.
- We will complete the first phase of our project by the end of January, but one or more of our team may continue the analysis in the winter quarter.

# The Role of Community and Faith-Based Groups in Providing Pro-Social Support to Ex-Offenders in Santa Clara County

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## Overview and Importance of Topic

AB 109 block criminal justice grants provide counties with the funds and flexibility to try new approaches to reducing recidivism. While many counties have dedicated most of their funds to enhancing their capacities for incarceration, some have made a philosophical and financial commitment to reducing recidivism through services and programs delivered during and after incarceration (notably Santa Clara, Santa Cruz, and San Francisco). Lacking the internal capacity to provide all the necessary services, counties turn to community and faith-based organizations to implement evidence-based rehabilitation programs as part of their realignment plans, particularly in providing the pro-social supports that ex-offenders need to fully reintegrate into the community.

## Research Questions

1. What ideal and practical roles can community and faith-based groups play in providing pro-social supports for ex-offenders (e.g. mentoring), and how do these groups' capacities compare to public service providers (i.e., the county)?
2. How can Santa Clara county structure partnerships with community-based organizations, and how can the county hold these organizations accountable to deliver "evidence-based results?"
3. How do ex-offenders envision their needs to transition into the community, and how do former offenders become involved as either mentees or mentors?

## Research Methodology

This qualitative research relies primarily on interviews with stakeholders in Santa Clara County (governmental officials, CBO leaders, ex-offenders), in conjunction with a literature review designed to identify best practices.

## What I Think I Will Learn

While ex-offenders and county officials recognize the importance of pro-social supports for long-term recovery, none rank these services high on the list of reentry priorities, particularly in light of the more immediate obstacles (housing, job training) that newly released prisoners face. For ex-offenders, this may be partially related to inability to recognize the depth of their needs (e.g., many do not list drug and alcohol services as important needs, despite eighty percent of Santa Clara's inmate population having drug or alcohol abuse problems). County officials, meanwhile, face tight budget constraints and an uncertain picture of what services community groups are able to provide, given that the opportunity for more formal partnerships has rarely been so present before. Nonetheless, county officials remain open to including pro-



social supports such as mentoring as part of a broader package that is “purchased” from community-based service providers.

This is as it should be. Literature suggests mentoring works as part of a broad-based reentry effort that also satisfies more immediate needs, such as housing. As one county official suggested, however, ex-offenders need someone to show them “how to live on the outside,” although one of the challenges will be how to measure success in an evidentiary way, especially given the difficulty of disaggregating mentoring from other services.

Faith-based organizations create a slightly different issue, as they provide natural pro-social networks for ex-offenders, but provide services in a less systematic and more personal way, making it hard to forge official, finance-backed partnerships. However, ex-offenders can benefit from such groups having a “seat at the table” and a relationship with the county probation department, as they are often a conduit to greater resources. Moreover, the faith-based community is useful in investing the non-incarcerated population in prisoner re-entry, and creates a more pro-social environment for ex-offenders by enhancing community support and competency.

### **Next Steps & Timetable**

- Through Dec. 15: Continue interviews with various stakeholders, particularly CBO leaders and ex-offenders, while maintaining relationship with county officers for follow-up.
- Dec. 15-Jan. 1: Closely analyze data gleaned from interviews against county plan and officials’ words and attitudes to see where County is succeeding in its implementation, and what gaps remain.
- Early January: Return to county officials to get feedback on preliminary suggestions and seek clarification.
- Early-Mid January: Draft and complete final research project.