

Stanford
Law School

Stanford Criminal
Justice Center

What's Next?

Priority Issues for the Next Phase of
Public Safety Realignment

*A Report by the Stanford Executive Session
on Public Safety Realignment*

Spring
2014



The Stanford Executive Session on Public Safety Realignment

The Stanford Criminal Justice Center (SCJC) at Stanford Law School convened a group of criminal justice leaders representing a variety of perspectives to take part in the Stanford Executive Session on Public Safety Realignment.^{1,2} The Executive Session is chaired by Matthew Cate in partnership with Joan Petersilia and Robert Weisberg, co-faculty directors of SCJC. A primary objective of the Executive Session is to reach consensus regarding how the state and counties might take full advantage of the new opportunities presented by Realignment and identify priority issues that are critical to continued improvements in California's criminal justice system.

Executive Session Members

Sheriff Bill Brown, Santa Barbara County Sheriff's Department

Jim Bueermann, President, Police Foundation

Matthew Cate (Chair), Executive Director, California State Association of Counties

Chief Jerry Dyer, Fresno Police Department

District Attorney George Gascón, San Francisco District Attorney's Office

Garry Herceg, Director, County of Santa Clara, Office of Pretrial Services

Sheriff Sandra Hutchens, Orange County Sheriff's Department

District Attorney Jackie Lacey, Los Angeles County District Attorney's Office

Joan Petersilia, Stanford Criminal Justice Center

Chief Jerry Powers, Los Angeles County Probation Department

Chief Kim Raney, Covina Police Department

Robert Weisberg, Stanford Criminal Justice Center

This report was authored by Sarah Lawrence, Research Director, Front-End Realignment Project, Stanford Criminal Justice Center.

Executive Session Meetings

Three full-day Executive Session meetings were held on June 10, 2013, October 28, 2013 and February 10, 2014 at Stanford University. The days' discussions focused on a variety of topics related to Public Safety Realignment including jail management, pretrial systems, information and data sharing, probation and parole supervision, split sentencing, crime rates, and local law enforcement. In addition to the members of the Executive Session, the following substantive experts participated in one of the meetings.

Expert Participants

Joel Bishop, Mesa Pretrial Services Agency, Mesa County Colorado

Michael Callagy, San Mateo County Manager's Office

Diane Cummins, California Department of Finance

Judge Mark Boessenecker, Superior Court of Napa County

Steven Farugie, Kern County Day Reporting Center

Amy Jarvis, California Department of Finance

Chief Mack Jenkins, San Diego County Probation Department

Robin Lipetzky, Office of the Public Defender, Contra Costa County

Magnus Lofstrom, Public Policy Institute of California

Assistant Sheriff Terri McDonald, Los Angeles County Sheriff's Department

Chief Jim McDonnell, Long Beach Police Department

Judge Brett Morgan, Superior Court of San Joaquin County

Judge Truman Morrison, Superior Court of the District of Columbia

Tim Murray, Pretrial Justice Institute

Monica Nino, Chief Executive Office, Stanislaus County

Linda Penner, Board of State and Community Corrections

Albert Ramirez, Golden State Bail Agents Association

Maritza Rodriguez, Division of Adult Parole, CDCR

Jim Waterman, Kern County Mental Health Department

Chief Greg Williamson, Bakersfield Police Department

Introduction

Over the two and a half years since Public Safety Realignment began, we've witnessed changes in California's criminal justice system that are unprecedented both in depth and scope. The reallocation of responsibility across the major components of California's criminal justice system has been nothing short of remarkable, as thousands of individuals have been shifted from the state's jurisdiction to counties' jurisdictions. While much has changed since October 2011, it will take more than just a few years to change the momentum and the culture resulting from decades of criminal justice laws and policies that relied heavily on state incarceration and supervision of offenders. California's criminal justice system is still very much a system in a state of flux. Many are working to understand the consequences thus far of Realignment, both intended and unintended. That said, enough time has passed such that we can engage in thoughtful reflection about what has been going well since it began, where challenges still exist, and, more importantly, what can be done to further improve California's criminal justice system moving forward.

"We should move beyond the 137.5% cap. What is the best way for the different elements of the criminal justice system to foster public safety?"

The primary motivation behind this seismic shift in criminal justice is well known, namely, overcrowded state prisons and the court mandates to address conditions deemed unconstitutional. Court-driven and legislatively-imposed time constraints meant that dramatic changes had to be made in a relatively short amount of time. And the fiscal realities of California's budgets served as a further constraint on the nature of necessary reforms. As such, California had no choice but to make historic-level changes to the criminal justice system and we understand that these inherent constraints were key factors in what the reform efforts looked like. In other words, something had to change and we applaud the initiative shown in launching this extraordinary reform. That said, our work has made it clear to us that problems have arisen that must be addressed in the very near future if Realignment is to succeed.

The priority issues presented below surfaced over the course of three convenings of the Stanford Executive Session on Public Safety Realignment. We believe these timely issues are integral to the successful implementation of Realignment and that state and local leaders can and should take immediate action.

1. **Use of split sentencing:** To address the problem of some high-risk offenders not being supervised or treated following local incarceration for realigned crimes, the state must ensure better use of the newly-established sentencing option, split sentencing.

2. **Risk-based pretrial:** To take a step towards mitigating the obvious crowding problems in county jails, state and local governments must strengthen the pretrial detention system by integrating risk-based decision making throughout the process.
3. **Information and data sharing:** To address new problems that have arisen in communication between the various levels and functional areas of the criminal justice system, the state should promote improved information gathering and data sharing.
4. **Targeted law enforcement:** To accommodate fewer available jail beds and declining resources for local law enforcement, police departments must increasingly deploy resources in strategic and targeted ways, such as focusing on career criminals and violent criminals.

Markers of Success

To be clear, the members of the Executive Session believe that in some areas the results of Realignment are better than expected thus far and we wish to highlight some areas related to Realignment that are proving to be successful. First and foremost is the increased level of communication and collaboration within counties. We have heard about and personally experienced numerous examples of criminal justice stakeholders who have historically not worked together, or even been at odds with one another, now working in close partnership to improve public safety at a local level. In addition, Realignment is proving to be fertile ground for experimentation and innovation.

Collaboration: With the Community Corrections Partnerships (CCPs) serving as the primary venue, although not the only venue, stakeholders representing all aspects of the criminal justice system are holding up local collaboration as one of the biggest successes of Realignment to date. Probation departments are partnering with police departments; mental health service providers are working with sheriffs' departments; many courts are increasingly understanding the ripple effects that their decisions have on other criminal justice actors; and community-based organizations are more fully engaged in reintegrating residents returning to their communities after a period of incarceration.

Innovation: As a result of these strengthened partnerships, Realignment is providing the space for 58 coalitions to think about how to do things better in their localities. Built upon the principle of increased local control, Realignment is allowing counties to be innovators. Public Safety Realignment has increased discretion at the local level, in part to allow community-based corrections programs to be tailored to best address local risks and needs and best leverage existing resources and local assets. That counties' Realignment plans vary tremendously, in terms of how their funding is allocated and the issues that they have deemed to be priority issues, is evidence of this increase in local discretion.

While these highlights are cause for hope, much work is still to be done.

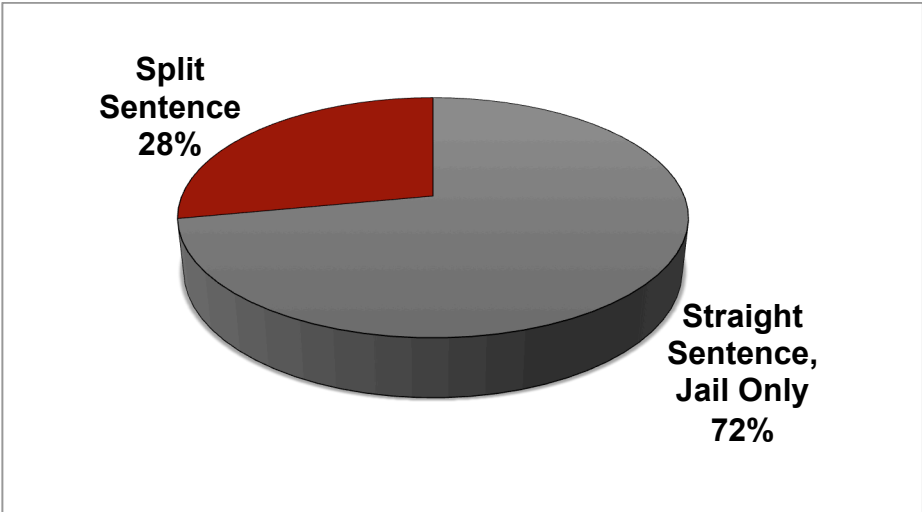
"We have a once-in-a-generation opportunity to change the way we do business. We need to take the opportunity to change the problems we've had and haven't addressed for the last two to three decades."

Priority Issue #1: Use of Split Sentencing

Background: For individuals who have been sentenced to jail, Public Safety Realignment provides criminal justice officials with an expanded set of options that can influence how long a person is held in jail custody. One of the more high-profile components of Realignment has been the establishment of split sentences, in which county jail felony sentences can include a mandatory period of supervision by probation after part of a sentence has been served in jail custody.

Current State of Affairs: At a state level, over the first 24 months of Realignment, only 28% of county felony sentences to local prison terms have been split, which equates to approximately 16,600 sentences compared to 43,500 straight jail time sentences. This means that those 43,500 offenders, many of whom are high-risk offenders, are leaving jail without any supervision and without any mandated treatment. The use of split sentences has varied tremendously across counties since Realignment began, ranging from a high of 92% of local prison sentences in Contra Costa County being split, to an average of 8% of split sentences for the lowest ten counties with 50 or more 1170(h) sentences. In Los Angeles County, only 3.3% of local prison sentences were split sentences over the two years since Realignment began, while in San Joaquin, 73% of local prison sentences were split.

Cumulative Local Prison Terms, October 2011 – September 2013



Source: Chief Probation Officers of California, Realignment Dashboard

Key Factors: Opinions about split sentencing are wide ranging, both across counties and various criminal justice actors. In the view of some public safety leaders, the limited use of split sentencing in a few larger counties may be tied to lack of jail space. Overcrowded jails may result in offenders serving less time because a sheriff is compelled to release them before they have served their full sentence. We are aware of instances in which offenders who are facing jail time prefer straight custody time over a split sentence, so as to avoid a period of supervision and the potential return to custody for a violation. Conversely, some prosecutors and judges prefer straight probation rather than a split sentence, as it comes with the leverage of custody time to help ensure offenders obey the terms and conditions of probation. In addition, we have heard examples of judges who dislike split sentencing because of the operational impacts on courts.

✓ **Consensus: Split sentencing is an underutilized public safety tool.**

To address the problem of some high-risk offenders not being supervised or treated following local incarceration for realigned crimes, we believe the state must ensure better use of the newly-established sentencing option, split sentencing.

“People are walking out without any kind of tail and there is no way to compel them to behave.”

This gap in supervision and treatment must be addressed immediately. Our members share a growing concern among officials around the state that individuals who are at high risk of recidivating and causing public safety harm are not being supervised upon release from jail custody. We believe a more thoughtful, evidence-based use of split sentencing across the state is one of the issues for which action is critical in the short term.

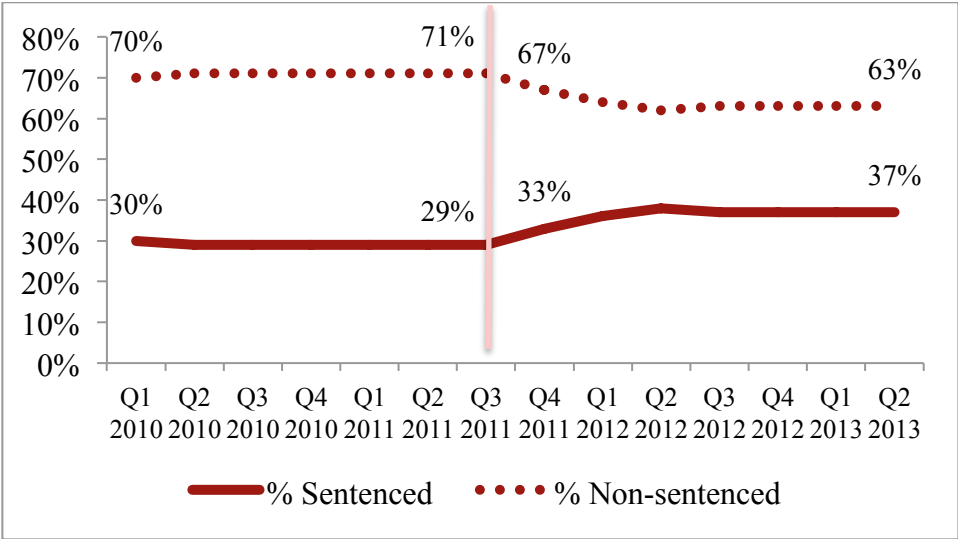
Whether by formal legal means or by some consensus among officials, the system requires clarification of the criteria for when and how split sentences are to be used. The Governor’s Office, the legislature, and the courts should work together to make further improvements to this relatively new sentencing tool, including a review of what factors should be considered in imposing a term of supervision and whether a sentencing presumption should be used. We simply cannot continue to allow dangerous offenders to be unsupervised and untreated in our communities.

Priority Issue #2: Risk-Based Pretrial

Background: Many county jails were overcrowded before Realignment, and the shift of responsibility for offenders from the state to counties has exacerbated the problem. Now more than ever, jail bed space is a resource to be used wisely and sheriffs from across California have identified overcrowding - as exacerbated by Realignment - as one of the biggest challenges moving forward. Increased pressure on an already crowded jail system has resulted in counties taking a hard look at the offenders who are serving time in their jails. Individuals who have not been convicted of a crime and are of pretrial status account for a significant share of California’s jail inmates. How can we ensure that the people who are being released from jail are less dangerous than the people who are being kept in jail?

Current State of Affairs: Prior to Realignment the average daily population for California’s jails was 71,293 individuals and within two years it had grown to 82,019, an increase of 10,726 inmates. The share of individuals in jail who were not sentenced was remarkably stable in the years before Realignment at around 70% but that began to change immediately after Realignment began as the share of jail inmates who were of pretrial status dropped to 63% as of June 2013. Tremendous county variation lies behind the state average ranging from 37% in Inyo County being non-sentenced to 82% in Stanislaus County. Despite this decline, over 51,000 non-sentenced individuals are occupying valuable jail beds.

Non-Sentenced v. Sentenced Jail Population, Q1 2010 – Q2 2013



Source: Board of State and Community Corrections, Jail Profile Survey

Key Factors: The state has made significant investments to assist some counties in expanding their capacity, which is to be commended. However, expanding the number of jail beds is not a sufficient long-term solution to jail overcrowding and making good decisions about individuals in pretrial status is critical. In fact, regarding funding for expanding local correctional facilities in the Governor’s Budget 2014-15, counties that use risk assessment tools as part of pretrial release would be given priority. Little Hoover, in their May 2013 letter to Governor Brown and the Legislature on bail and pretrial services, recommends that California’s counties be required to use validated risk and needs assessment. Decades of research and experience have taught us that criminal justice decisions grounded in risk assessment make for better public safety outcomes. For individuals in pretrial status, the decision to detain a person is based on the consideration of two risks: 1) whether an individual will cause public safety harm, and 2) whether an individual will fail to appear in court.

✓ **Consensus: Pretrial detention systems will be strengthened by integrating risk-based decision making throughout the process.**

Counties’ pretrial systems should increasingly be driven by risk-based determinations. For example, locally-validated, pretrial risk assessment tools can aid counties in evaluating a defendant’s risk for failing to appear in court and their risk of causing public safety harm and significant evidence exists that pretrial risk assessment tools can predict the probability of these risks.³ Release decisions and bail schedules should be functions of risk rather than solely the current charges an individual is facing. Pretrial service agencies can be vehicles through which risk-based decisions are infused into the pretrial system by performing standardized screening of all defendants, conducting background investigations, presenting the court with risk assessment evaluations, and conducting follow-up reviews for defendants who do not meet the conditions of their release. We believe there is an opportunity for the state to play a leadership role in developing principles and providing guidance on best-practices related to pretrial systems that are grounded in risk-based decision making, which results in better public safety outcomes.

“California has among the highest rates of pretrial detention in the country, but what are we getting in terms of public safety?”

Priority Issue #3: Information and Data Sharing

Background: California’s criminal justice system is comprised of a series of interactive components. The systemic change brought on by Realignment further enhances that attribute and it would be a mistake to continue to conceptualize criminal justice challenges as being in silos. We have noted the widespread reports of improved collaboration at the county level. However, collaboration and information sharing are related but distinct issues. New partnerships are forcing conversations about what information can be shared between criminal justice partners but a solid understanding of information sharing between criminal justice partners appears to be limited. What information can be shared? How can it be shared? Even if information can be shared, should it be?

Current State of Affairs: Limitations in information sharing across counties is an area of concern. We support the efforts of the Board of State and Community Corrections to facilitate increased data sharing and improve overall data quality. In addition, we applaud the state’s efforts in taking the lead to improve and facilitate counties sharing information through efforts such as Attorney General Kamala Harris’ Smart Justice Initiative, which appears promising and we look forward to learning more as the initiative moves forward. In its February 2014 report, “Sensible Sentencing for a Safer California,” the Little Hoover Commission recommends the establishment of a Criminal Justice Information Center that would “collect and analyze data, review California sentencing structure and make recommendations for reforms to the Governor and Legislature.” While these initiatives are likely to make progress in improving the quality of data, enhancing the ability to share data, and educating criminal justice actors, additional efforts working toward these goals are critical to continued improvements in Realignment.

Key Factors: We are aware of instances in which county agencies are failing to share information that may result in better public safety outcomes, in part, because of misinformation about what can be shared legally. In fact, a report by W. David Ball and Robert Weisberg shows that county agencies are legally able to share more information than what the common perception seems to be.⁴ Any reliable and comprehensive understanding of the effects of Public Safety Realignment must be based on high-quality data. Centrally-compiled data is critical to improving Realignment-related practices, policies, and laws moving forward. Measures that are based on standardized definitions will allow for a more accurate assessment of Realignment’s effects.

✓ **Consensus: The state has a role to play in promoting and improving information gathering and data sharing.**

The future direction of California’s criminal justice system should be grounded in research and evidence-based practices, guided by facts and free from the undue influence of “myths,” allow for innovation and trial-and-error at the county level, and resourced in such a way that yields the most cost effective public safety benefits. We cannot accomplish these goals without effective information sharing across state, county, and municipal systems.

We believe that the state must begin to work with cities and counties to educate criminal justice actors on what information can be shared legally, better understand the practical obstacles to information sharing, devise strategies to overcome those obstacles, and establish consistent definitions, standard metrics, and data reporting mechanisms.

A Note on Correctional Control in California

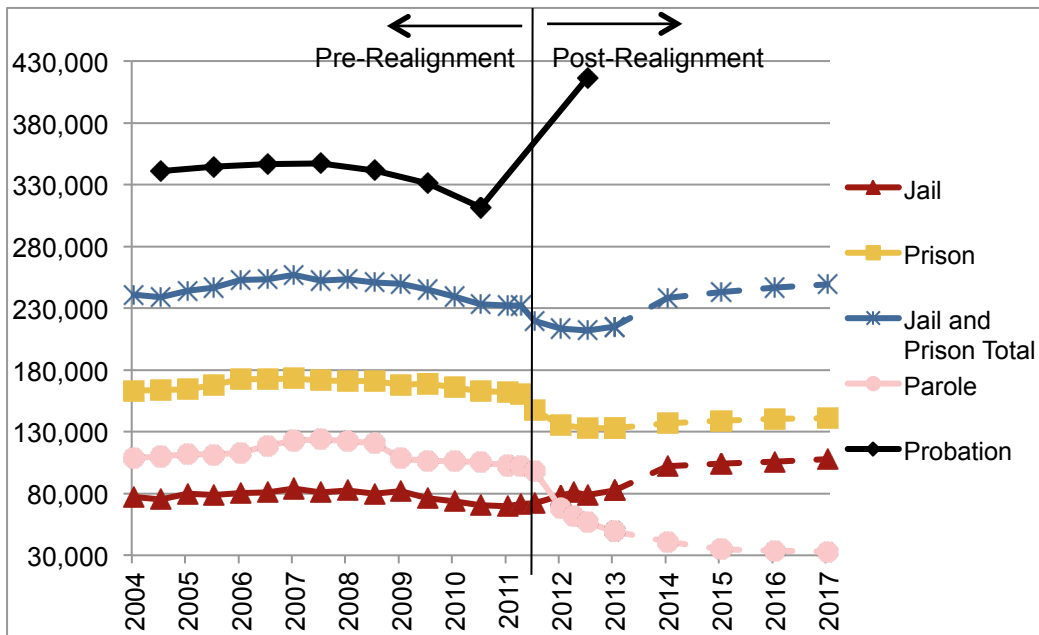
One of the key goals of Public Safety Realignment is to shift lower-level felons from being under the state’s jurisdiction to the counties’ jurisdiction and by most accounts this has been achieved. In 2010 41% of adult offenders in California were under state “correctional control,” meaning they were serving time in a state prison or under state parole supervision and 59% were under county correctional control, meaning they were serving time in county jail or under county probation supervision. By the end of 2012 those percentages were 27% under state correctional control and 73% under county correctional control.⁵ Said another way, at the end of 2012 nearly three out of four offenders in California were the responsibility of the counties and one out of four was the responsibility of the state.

A Note on Correctional Control in California (continued)

The Stanford Criminal Justice Center published a report, “Reallocation of Responsibility: Changes to the Correctional System in California Post-Realignment,” that presented additional findings about the use of incarceration in California and below are selected highlights from that report:

- Realignment has had a modest “decarceration” effect. In 2010 adults in prison or jail account for 36% of the total correctional population, and in 2012 that had dropped to 31%. In other words, AB 109 has resulted in some offenders spending less time in a correctional facility.
- However, decarceration does not equate to less correctional control, as Realignment has essentially shifted more offenders to community supervision. More adults were under correctional control in California at the end of 2012 than at the end of 2010 before Realignment began (650,279 people at the end of 2010 versus 684,563 people at the end of 2012).
- Looking ahead, if California does not make additional significant changes in law or policy, CDCR projects that the state prison population is actually expected to increase to just over 141,000 by June 2017, up from an estimated 136,600 in June 2014. The jail population is projected to increase dramatically in the next few years, to approximately 108,000 people by 2017, up from 102,000 in June 2014.

Trends and Projections in California’s Jail, Prison, Probation, and Parole Populations, 2004-2017



Source: Reproduced from “Reallocation of Responsibility” by Lisa Quan, Sara Abarbanel and Debbie Mukamal

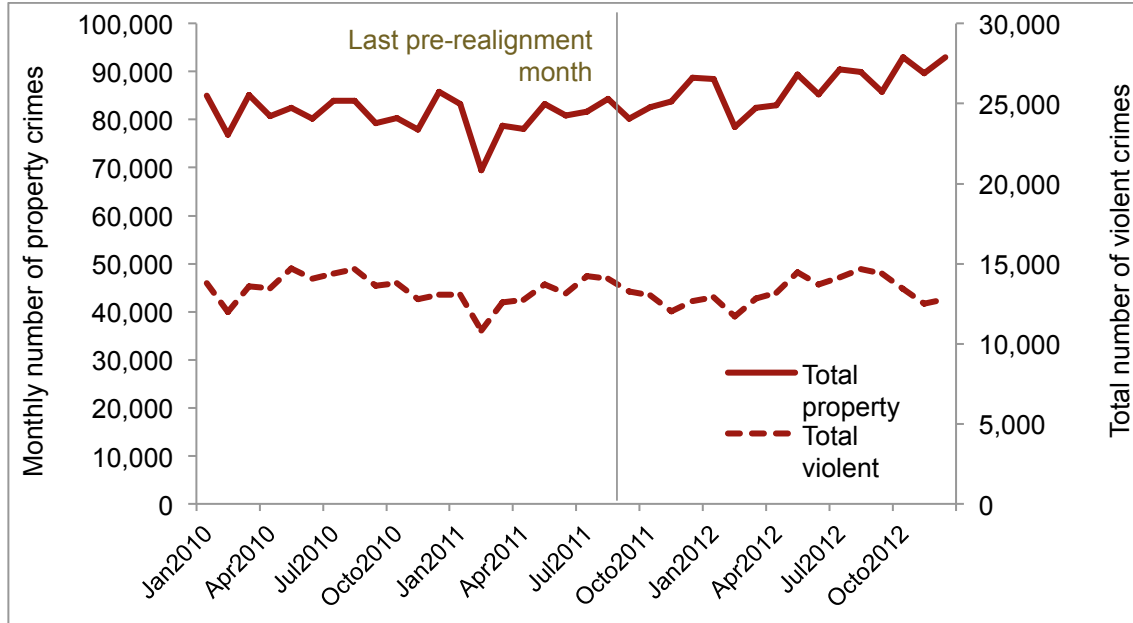
Priority Issue #4: Increasingly Targeted Law Enforcement

Background: One of the more frequently expressed concerns prior to Realignment was the anticipated negative impact it would have on public safety. Would crime go up as a result of Realignment? How would it impact local police departments? After two and a half years we now have some evidence about the extent to which Realignment has impacted crime rates and a sense of how police departments have responded.

"Realignment has really forced us to get laser-focused on who we arrest."

Current State of Affairs: In December 2013, the Public Policy Institute of California published a report, "Public Safety Realignment and Crime Rates in California," which assessed the extent to which Realignment contributed to changes in crime rates.⁶ One of the key findings is that property crime in California, motor vehicle thefts in particular, increased noticeably after Realignment, yet violent crime remained about the same. At the same time many California police departments have faced decreasing budgets and fewer sworn officers are on the streets. While these challenges are not the result of Realignment, the additional number of offenders on the street as a result of Realignment, which PPIC estimates to be approximately 18,000 offenders, further exacerbates these challenges.

California crime rates pre- and post-Realignment



Source: Reproduced from "Public Safety Realignment and Crime Rates in California" by Magnus Lofstrom and Steven Raphael, Figure 2.

Key Factors: As discussed above, empty jail beds are a commodity in many California counties and recognition on the part of police departments that bed space is limited is taking hold. This in combination with fewer police resources results in police chiefs now talk about making “quality arrests over quantity” and about the importance of being strategic and targeted about who gets arrested. Despite this understanding from law enforcement leaders, police officers on the street have historically been assessed, in part, by the number of arrests made. New thinking about what makes a police department effective, who should be targeted, and how they should be targeted can come more slowly with line staff and this reframing can take time.

- ✓ **Consensus: Local law enforcement needs to increasingly deploy resources in strategic and targeted ways, such as focusing on career criminals and violent criminals.**

Realignment has forced police departments to think more strategically about who to arrest and, consequently, about who should spend time in jail or prison. If incarceration should be reserved largely for career criminals, then conversations about what makes a person a career criminal are necessary. If incarceration should be reserved largely for violent criminals and gang members, then an understanding about research and best practices in violence reduction and effective anti-gang strategies is critical. As mentioned earlier, one of the greatest benefits to Realignment thus far has been improved communication and collaboration between criminal justice actors. This has proven especially true between police departments and probation departments, which are responsible for supervising far more probationers in the community now compared to pre-Realignment. Examples of new or enhanced collaborations include integrated radio systems, information sharing about who is under supervision and being returned to the community following a period of incarceration, joint compliance teams, and county-wide protocols on compliance visits.

Conclusion

Since Public Safety Realignment implementation began in October 2011, California's criminal justice system has experienced remarkable change along a variety of dimensions. And it will be some time before we understand the entirety of the consequences of Realignment, both intended and unintended. We are only two and a half years into reforms of a criminal justice system that was decades in the making. We are only just beginning to understand the ripple effects Realignment is having on the day-to-day functioning of California's criminal justice system. We should view these early stages of major criminal justice reform as key opportunities to make continued improvements. We need to continue to learn from our mistakes and strive for a criminal justice system that is balanced, equitable, cost-effective, and just. It is our hope that focusing on the priority areas of consensus that emerged from our Executive Sessions will help us move closer to such a system.

“Overall, I think it’s been better than I would have guessed but there’s a long ways to go to get our local act together.”

Stanford Criminal Justice Center Realignment-Related Publications

Joan Petersilia. "California Prison Downsizing and Its Impact on Local Criminal Justice Systems." *Harvard Law and Policy Review* (forthcoming, Summer 2014).

W. David Ball and Robert Weisberg. "The New Normal? Prosecutorial Charging in California After Public Safety Realignment" (January 2014).

Lisa Quan, Sara Abarbanel, and Debbie Mukamal. "Reallocation of Responsibility: Changes to the Correctional System in California Post-Realignment." Stanford Criminal Justice Center (January 2014).

Joan Petersilia. "Voices from the Field: How California Stakeholders View Public Safety Realignment." Stanford Criminal Justice Center (November 2013).

Jeffrey Lin and Joan Petersilia. "Follow the Money: How California Counties Are Spending Their Public Safety Realignment Funds" (November 2013).

Robert Weisberg and Lisa T. Quan. "Assessing Judicial Sentencing Preferences After Public Safety Realignment: A Survey of California Judges." Stanford Criminal Justice Center (November 2013).

Sarah Lawrence. "Managing Jail Populations to Enhance Public Safety: Assessing and Managing Risk in the Post-Realignment Era." Stanford Criminal Justice Center (June 2013).

Jessica Spencer and Joan Petersilia. "Voices From the Field: California Victims' Rights in a Post- Realignment World." *Federal Sentencing Reporter* 25 (2013).

Joan Petersilia and Jessica Greenlick Snyder. "Looking Past The Hype: 10 Questions Everyone Should Ask About California's Prison Realignment." *California Journal of Politics and Policy* 5, no. 2 (2013).

Sara Abarbanel, Angela McCray, Kathryn McCann Newhall, and Jessica Snyder. "Realigning the Revolving Door: An Analysis of California Counties' AB 109 2011-2012 Implementation Plans." Stanford Criminal Justice Center (2013).

These and other papers are available at Stanford Law School's Criminal Justice Center website: <http://www.law.stanford.edu/organizations/programs-and-centers/stanfordcriminal-justice-center-scjcc/california-Realignment>

¹ The project was made possible by the generous support of the Public Welfare Foundation.

² The Stanford Criminal Justice Center has a series of published reports related to Realignment that were completed independently of the work of the Executive Session. These documents are available on the Center's website at: <https://www.law.stanford.edu/organizations/programs-and-centers/stanford-criminal-justice-center-scj/california-realignment>

³ As summarized in Pretrial Justice Institute, *Rational and Transparent Bail Decision Making: Moving from a Cash-Based to a Risk-Based Process* (March 2012).

⁴ "Criminal Justice Information Sharing: A Legal Primer for Criminal Justice Practitioners in California" (updated as of September 5, 2012) available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2141523

⁵ For an in-depth analysis of changes in correctional control in California, see "Reallocation of Responsibility: Changes to the Correctional System in California Post-Realignment" by Lisa Quan, Sara Abarbanel, and Debbie Mukamal available at: <http://www.law.stanford.edu/sites/default/files/child-page/183091/doc/slspublic/CC%20Bulletin%20Jan%2014.pdf>

⁶ The full PPIC report is available at: http://www.ppic.org/content/pubs/report/R_1213MLR.pdf