



THE CALIFORNIA CRIMINAL JUSTICE DATA GAP

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TABLE OF CONTENTS

Executive Summary.....2

Introduction.....4

Statewide Criminal Justice Data Policy,
Infrastructure, and Access8

California Criminal Court Data 12

Local Data: No Infrastructure, Poor Quality Data 14

Conclusion20

Endnotes.....21

EXECUTIVE SUMMARY

“By making mountains of valuable [criminal justice] data available to the public in a comprehensive way, we can build stronger bridges of understanding and trust between the [criminal justice system] and the citizens it serves... In addition to providing greater transparency, this information enables policymakers to craft informed, data-driven public policy.”

–Assemblywoman Jacqui Irwin, author of Open Justice Data Act of 2016

CALIFORNIA has long been at the forefront of criminal justice innovation. Moreover, the state has embraced transparency, supporting an array of efforts to support access to and dissemination of criminal justice data. Amid the continuing evolution of California’s criminal justice system, these data—and public access thereto—have never been more important for assessing how these changes are being implemented and what benefits they are producing. And yet, in stark contrast to California’s culture and history, its criminal justice data are not readily available to the public. What infrastructure exists is not fully set up to promote transparency, nor to understand and evaluate the effects of various reforms and policies, making it difficult for researchers, policymakers, and the public to assess whether laws are having their intended effects and to identify what is working or not.

This report explores the quality and availability of criminal justice data housed by state and local criminal justice agencies across the state. Ultimately, this report highlights three major types of data gaps and explains how these failings affect researchers’ and practitioners’ work in criminal justice systems in the state and inhibit critical transparency in the largest criminal justice system in America.

KEY FINDINGS

- **CADOJ's data responsibilities are underresourced and thus unduly subordinated to the Department's other responsibilities.**
 - DOJ estimates that up to 60% of arrest records are missing disposition information. Individuals with violent criminal histories may be inadvertently allowed to access firearms, while individuals whose charges have been dismissed are unduly criminalized when these charges appear pending.
 - Unclear and burdensome research request processes preclude local criminal justice agencies and policy research organizations from accessing information, limiting their ability to evaluate policies and to make data informed decisions.
- **CDCR has no formal, publicly available research request process.**
 - Practitioners and researchers report inconsistent information regarding data access and prohibitions on publishing any data that may reflect poorly on the Department.
- **Although court records are presumptively open to the public, rules governing “bulk distribution” of electronic records effectively preclude access for researchers and policymakers.**
 - Policymakers, researchers, and the general public lack basic information about cash bail and pretrial detention to inform decisions about bail policy.
- **Local jurisdictions have widely varying data infrastructure, with some using robust electronic case management systems and others still using paper case files.**
 - The absence of data standards means that different agencies track different information and in different ways. Basic information such as arrests cannot be accurately compared across jurisdictions.
 - Differing interpretations of data sharing laws create disparities in data use and transparency.

INTRODUCTION

“By making mountains of valuable [criminal justice] data available to the public in a comprehensive way, we can build stronger bridges of understanding and trust between the [criminal justice system] and the citizens it serves... In addition to providing greater transparency, this information enables policymakers to craft informed, data-driven public policy.”

–Assemblywoman Jacqui Irwin, author of Open Justice Data Act of 2016

CALIFORNIA has long been at the forefront of criminal justice innovation. In 1976, the state was one of the first to shift from indeterminate to determinate sentencing. Throughout the 1990s and early 2000s, California was in the vanguard for tough-on-crime legislation, passing a range of laws designed to fight crime by increasing criminal penalties, including one of the earliest and most punitive “Three Strikes” laws in the entire nation. But then the state shifted course. Growing prison populations led jurisdictions across the country to reconsider some of these tough-on-crime laws and sentence enhancements leading to longer sentences and higher prison populations. In 2011 the United States Supreme Court approved a lower court ruling that the conditions for California’s prisoners constituted cruel and unusual punishment, which caused California to pass the first of a series of laws designed to reduce the number of people under correctional supervision, Assembly Bill (AB) 109, Public Safety Realignment. A series of legislative and ballot initiatives have followed that limit the felonies that count toward second and third strikes under the Three Strikes law (Proposition 36), reclassify a range of offenses as eligible for reduced criminal penalties (e.g., Proposition 47 and Senate Bill 1437), and provide for increased opportunities for parole for

those determinately sentenced for nonviolent offenses (Proposition 57). At the same time, California has sought to increase transparency in its criminal justice system by launching the Department of Justice’s Open Justice portal in 2015 and passing the Open Justice Data Act in 2016. Amid the continuing evolution of California’s criminal justice system, these data—and public access thereto—have never been more important for assessing how these changes are being implemented and what benefits they are producing.

The Open Justice Data Act represents one of the most robust efforts to embrace transparency in the country. Likewise, California has a longstanding statutory scheme to support the sharing of Criminal Offender Record Information (CORI) for research and policymaking purposes. ***And yet, in stark contrast to California’s culture and history, its criminal justice data are not readily available to the public.*** There is also significant confusion among practitioners and local policy makers about what data can be shared and with whom. This confusion creates daunting barriers to criminal justice data sharing and, in turn, needed criminal justice research. In addition, differing legal interpretations regarding whether court records fall within the CORI statutory

scheme create ambiguity regarding access to criminal court records from California Superior Courts, despite court records being presumptively open to the public.ⁱ In particular, California Rules of Court are regularly interpreted to limit—and often prevent—the sharing of court records, without any exceptions for bona fide research efforts. This means that researchers and the public are already fighting an uphill battle to access criminal justice data before they even start.

Challenges to criminal justice data access in California are exacerbated—and indeed, often caused—by the state’s lack of criminal justice data infrastructure.

What infrastructure exists is not fully set up to promote transparency, nor to understand and evaluate the effects of various reforms and policies, making it difficult for researchers, policymakers, and the public to assess whether laws are having their intended effects and to identify what is working or not.

This means we lack answers to some very basic questions like: Who is getting access to pretrial diversion programs? What percentage of defendants are in jail for failing to pay low bail amounts? Which parole-eligible individuals are released and which are denied? What are the racial and socio-economic disparities across all of these outcomes? Having data on these kinds of metrics makes it much easier to know where to channel resources and reform efforts.

Data like these can tell us what works, and when, and where systems may go wrong for too many who are disenfranchised. Data can tell us where there may be opportunities to make the system more efficient, effective, and fair. And making the data publicly available can be the catalyst that enables policymakers and practitioners to come together around evidence-based reforms that bring positive change throughout the state.

The first step toward remedy is identifying the problem: what gaps currently exist in California’s data infrastructure? Through interviews with more than two dozen criminal justice researchers and practitioners, this report explores the quality and availability of criminal justice data housed by state and local criminal justice agencies across the state.¹ Ultimately, this report highlights three major types of data gaps and explains how these limitations affect researchers’ and practitioners’ work in criminal justice systems in the state and inhibit critical transparency in the largest criminal justice system in America.

The report begins with a discussion of data housed by the state’s two primary criminal justice agencies, the California Department of Justice (CADOJ) and the Department of Corrections and Rehabilitation (CDCR). This is followed by a section on California criminal courts’ data, and then by an overview of criminal justice data collection and dissemination among local (city and county) criminal justice agencies. But first we offer a brief statutory

¹ Some respondents were willing to speak openly about their experiences and associated successes and challenges; others requested confidentiality to be able to speak openly about challenges.

background, which is important for understanding what is legally required by agencies throughout the state.

BACKGROUND: CALIFORNIA'S LONGSTANDING COMMITMENT TO CRIMINAL JUSTICE COLLECTION AND DISSEMINATION

California has long been a leader in the area of criminal justice data transparency and has a robust, well-established statutory scheme related to the collection and dissemination of criminal justice data. Since 1955, the California Department of Justice has had the statutory duty to collect criminal justice data from various persons and agencies, including,

[E]very city marshal, chief of police, railroad and steamship police, sheriff, coroner, district attorney, city attorney and city prosecutor having criminal jurisdiction, probation officer, county board of parole commissioners, work furlough administrator, the Department of Justice, Health and Welfare Agency, Department of Corrections, Department of Youth Authority, Youthful Offender Parole Board, Board of Prison Terms, State Department of Health, Department of Benefit Payments, State Fire Marshal, Liquor Control Administrator, constituent agencies of the State Department of Investment, and every other person or agency dealing with crimes or criminals or with delinquency or delinquents...ⁱⁱ

The Attorney General is also responsible for overseeing California's Criminal Index and Identification (CII) system and appointing an advisory

committee "to assist in the ongoing management of the system with respect to operating policies, criminal records content, and records retention."ⁱⁱⁱ The committee is chaired by a designee of the Attorney General, and consists of representatives from law enforcement, the judiciary, prosecutors' offices, corrections offices, the public, and others.^{iv}

CRIMINAL OFFENDER RECORD INFORMATION (CORI)

Nearly 50 years ago, the California Legislature put in place critical new statutory obligations ensuring that the public and researchers would have meaningful access to accurate criminal justice data to inform policy and practice.

In 1973, the California Legislature enacted the framework governing Criminal Offender Record Information, or CORI.^v Back then, it recognized the pressing need for "greatly improved," "accurate," "reasonably complete," and "speedy" access to data both for criminal justice agencies and for policy-researching bodies.² The information governed by this scheme was to come from "criminal justice agencies," which are defined as "those agencies at all levels of government which perform as their principal functions...activities . . . [r]elate[d] to the apprehension, prosecution, adjudication, incarceration, or correction of criminal offenders" or "[r]elate[d] to the collection, storage, dissemination or usage of criminal offender record information."^{vi} By definition, such agencies include courts, law enforcement, prosecutors, corrections agencies, and

2 *Cal Penal Code* § 13100. The Legislature found and declared, for example, "[t]hat the criminal justice agencies in [California] require, for the performance of their official duties, accurate and reasonably complete criminal offender record information"; "[t]hat the Legislature and other governmental policymaking or policy-researching bodies, and criminal justice agency management units require greatly improved aggregate information for the performance of their duties"; and "[t]hat, in order to achieve the[se] improvements, the recording, reporting, storage, analysis, and dissemination of criminal offender record information in [California] must be made more uniform and efficient, and better controlled and coordinated." *Id.* § 13100.

others. Importantly, the statutory regime explicitly recognized the need for access to data for policy-making and research purposes.

What CORI Is: CORI is broad in scope, covering everything from arrest to court disposition, incarceration, and release. Numerous California statutes govern the handling of CORI by state and local criminal justice agencies.^{vii} Section 13102 defines CORI as records and data compiled by any criminal justice agency “for purposes of identifying criminal offenders and of maintaining as to each such offender a summary of arrests, pretrial proceedings, the nature and disposition of criminal charges, sentencing, incarceration, rehabilitation, and release.”³

Who Has Access to CORI: While protecting the identity of individuals, California legislators wisely ensured the CORI data could be made available to researchers. California law specifies which agencies—governmental and otherwise—are entitled to receive CORI, explicitly stating:

Notwithstanding subdivision (g) of Section 11105 and subdivision (a) of Section 13305, every public agency or bona fide research body immediately concerned with . . . the quality of criminal justice . . . may be provided with such criminal offender record information as is required for the performance of its duties, provided that any material identifying individuals is not transferred, revealed, or used for other

than research or statistical activities and reports or publications derived therefrom do not identify specific individuals, and provided that such agency or body pays the cost of the processing of such data as determined by the Attorney General.^{viii}

Recognizing the vital nature of public access to California’s criminal justice data, California took critical new steps to ensure criminal justice data are transparent and accessible when the Legislature passed the Open Justice Data Act of 2016. This legislation added important new provisions to the CORI statutory scheme and now requires the CADOJ to make certain criminal statistics available to the public through an online web portal,^{ix} which the DOJ has described as a “first-of-its-kind criminal justice transparency initiative.”^x At the time, then-Attorney General (now U.S. Senator) Kamala Harris explained:

Data is key to being smart on crime and crafting public policy that reflects the reality of policing in our communities and improves public safety. We must continue the national dialogue about criminal justice reform and promote the American ideal that we are all equal under the law.^{xi}

On her part, the author of the bill, Assemblywoman Jacqui Irwin, stated “by making mountains of valuable [criminal justice] data available to the public in a comprehensive way, we can build stronger bridges of understanding and trust between the [criminal justice system] and the citizens it

3 CORI See Cal. Penal Code §§ 13100-13326, “[p]ersonal identification,” “[t]he fact, date, and arrest charge [and] whether the individual was subsequently released,” “[t]he fact, date, and results of any pretrial proceedings,” “[t]he fact, date, and results of any trial or proceeding, including any sentence or penalty,” “[t]he fact, date, and results of any release proceedings,” “[t]he fact, date, and results of any proceeding revoking probation or parole,” and so on. *Id.* § 13102(a)-(i); see also *Id.* § 13125 (listing standard CORI data elements for recording).

serves” and that “in addition to providing greater transparency, this information enables policymakers to craft informed, data-driven public policy.”^{xii}

CALIFORNIA PUBLIC RECORDS ACT (CPRA) AND CRIMINAL JUSTICE DATA

Certain criminal justice data are also publicly available under the California Public Records Act (CPRA). The CPRA provides that “every person has a right to inspect any public record... [¶] [e]xcept with respect to public records exempt from disclosure by express provisions of law...”^{xiii}

The Legislature has spoken here. It mandated that state and local law enforcement “shall make public the following information,” more commonly referred to as “arrest records”:^{xiv}

[t]he full name and occupation of every individual arrested by the agency, the individual’s physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds[.]^{xv}

Despite this explicit and longstanding commitment to collecting criminal justice data and ensuring access to those data, criminal justice researchers and practitioners have long expressed concerns about the quality, availability, and accessibility of criminal justice data in the state. Both challenges are discussed in greater detail below.

STATEWIDE CRIMINAL JUSTICE DATA POLICY, INFRASTRUCTURE, AND ACCESS

The two primary State of California agencies with responsibility for collecting and disseminating criminal justice data are the California Department of Justice, or CADOJ, and the California Department of Corrections and Rehabilitation, or CDCR. As noted above, CADOJ in particular has a well-established statutory responsibility for both collecting and sharing these data. This responsibility notwithstanding, many criminal justice researchers and practitioners express concern about the implementation of these mandates and about the comprehensiveness, and accuracy of the data that are collected. Interviews with some former CADOJ employees corroborate those concerns. Such imperfections are detrimental to other state and local agencies, to outside researchers, and to many individuals who have ever been labeled

as offenders. For example, more than half of arrest records are missing disposition information, thus hampering law enforcement agencies from accurately identifying individuals who have been convicted of serious and violent offenses. On the other extreme, individuals who have been cleared of criminal charges often do not have dismissals and/or acquittals recorded, leading to potentially dire implications for employment, etc. At the same time, limitations on the circumstances in which researchers and county practitioners can access these—admittedly imperfect—data creates an information vacuum, with no clear mechanism to assess the implications of the various policies that have dramatically changed the state’s criminal justice landscape.

CADOJ DATA QUALITY

Former CADOJ staff, including those directly involved in the Department's Open Justice initiative and website, note that both this initiative and the CADOJ's larger data-related obligations have long been underresourced and, as a consequence, have been unduly subordinated to CADOJ's other responsibilities. Justin Erlich and Sundeep Patem, who worked on the Open Justice Initiative under Attorney General Kamala Harris, agreed that the Department has neither the IT staffing expertise nor the general fiscal resources to support the criminal justice data infrastructure needed. Mr. Patem notes that this shortage is exacerbated by the natural tension between career civil servant staff and cycling elected officials. As different attorneys general come in, they tend to shift resources to respond to their own priorities, making it difficult to balance ongoing department operations and new undertakings.

Amid this underresourcing, DOJ has been unable to devote sufficient attention to data standards and efficiency in data-collection processes. Instead of having a centralized system where agencies enter record-level information under standardized terms, DOJ relies on agencies to send information in whatever form they can produce it, using their own local nomenclature. Some agencies even send paper records, which DOJ staff then transcribe into their system. This process of data collection is antiquated and burdensome for all involved and results in large gaps in the state's CORI data, as well as inconsistency in the data that are available.

In a recent memo submitted to Assemblymember Rob Bonta's Office, San Francisco District Attorney George Gascon detailed his concerns about the quality and integrity of CADOJ's criminal history records, noting the critical gaps in these data:

It is commonly known that the state's criminal history records suffer from pervasive data gaps that undermine their accuracy and reliability, including missing and/or delayed arrest and case dispositions, missing information regarding failures to appear, and missing or incomplete sentencing information. For example, CADOJ estimates that 60% of arrest records are missing disposition information.^{xvi}

As DA Gascon notes, these data gaps create myriad challenges for those agencies tasked with the administration of justice. Among the most pressing issues he notes are the inability of the Bureau of Firearms to prevent individuals whose criminal records prohibit them from possessing guns from purchasing firearms, challenges in accurately completing pretrial risk assessments, possible criminalization of individuals whose cases appear pending despite having been dismissed or acquitted, and the systematic underreporting of misdemeanor arrests on Records of Arrest and Prosecution (or RAP sheets).

Criminal justice researchers echoed these concerns, including researchers working directly with local criminal justice agencies and those conducting independent research out of academic institutions or other research organizations. For instance, Dr. Bryan Sykes, a criminologist and demographer at the University of California, Irvine, stated frankly, "The DOJ CORI data are a nightmare," adding that after a lengthy data request process, he finally received his requested data in the form of 767 unique datasets, with a wide variety of different fields, structures, attributes, etc.

CADOJ DATA ACCESS

Despite concerns about the quality and comprehensiveness of CADOJ's CORI data, as the primary source of statewide data on criminal justice system processes, these data are nonetheless of great value to organizations responsible for the administration of justice, including practitioners and researchers. Researchers report mixed experiences accessing these data, with some researchers reporting robust research partnerships with CADOJ and others running into significant challenges. For example, Dr. Mia Bird, a Research Fellow at the Public Policy Institute for California (PPIC) notes that PPIC forged a successful research partnership with CADOJ, CDCR, and the Board of State and Community Corrections (BSCC) to collect CORI data for PPIC's Multi-County Study (MCS), which looks at the impact of realignment and other criminal justice reforms across 11 California counties. "Our experience collecting data from DOJ has been good. We started the [MCS] project as a collaboration with the BSCC and also worked with DOJ and CDCR to get their buy in."

Dr. Sykes, by contrast, expressed a number of concerns about access to CORI data, pointing out that while he was ultimately able to obtain the data he requested, many of the requirements create barriers that prohibit the level of access he believes the state should encourage. In particular, the background check requirement means that "people who are qualified to handle the data may not be allowed to access it," something that should be a concern to all criminal justice researchers given the number of Americans with criminal records. In addition, the tight security protocols for where data will be stored and how they will be accessed is a barrier for all but the most sophisticated and well-resourced organizations.

Despite this, several researchers who believe they can meet requirements related to criminal background checks and data security do report challenges accessing CORI data from DOJ. Several researchers working on broader "data repository" projects have expressed concerns about unclear limitations on what data DOJ will and will not share and why. For example, one group of researchers who are working on a multi-state criminal justice data repository project were told that their data request did not "fall into the parameters of DOJ's data request process." Measures for Justice (MFJ),⁴ which collects criminal process data from arrest through post-conviction, was told that it would have to significantly narrow the scope of their request because "[DOJ] want[s] to release as little CORI info as possible."

Although MFJ was able to narrow its request and obtain DOJ approval, staff noted that nothing in state law or DOJ policy prohibits the larger request and pointed out that limiting research in this way greatly reduces what California practitioners and policy makers will learn from the analysis. The former group of researchers has had less success thus far; DOJ representatives did meet with them to discuss a potential collaboration, but the conversation has since stalled and the project has had to "de-prioritize California and focus on states where [they] are making progress."

If research organizations have experienced some hurdles in obtaining CORI data from DOJ, researchers who work for public agencies have experienced even greater challenges. One such researcher described a scenario in which she was denied DOJ data for research projects that may inform operational decisions because government agencies do not qualify as bona fide bodies. However, once the office

⁴ Two staff from MFJ are co-authors of this paper.

contracted with an academic institution, the principal investigator was able to successfully submit a request for the same data for the same project.

Counties that are trying to establish inter-agency data sharing efforts to promote local public safety also point to challenges regarding the ambiguity regarding the application of data sharing laws. For example, one large California county reports working for several years to set up systems and processes for sharing data across public safety and health departments in order to evaluate their efforts and prioritize data-driven decision. However, as the lead agency notes, the main problem for local practitioners is a lack of clear guidance about what justice and health data can be shared, for what purposes, and by whom. “We are still working on developing what systems we can create. We’re trying to understand what can we create in order to share data just at the local level. Sometimes we’re discussing state derived data for research, which is regulated by DOJ, so we are trying to understand how to appropriately use state data for research. We have been having conversations with DOJ on sharing data for research and we are exploring sharing data for service delivery to improve health and safety outcomes.”

Mr. Patem, who worked on the Open Justice Initiative described above, argues that, while the Department’s resourcing limitations also affect access issues, the larger issue is one of organizational culture. As he notes, Attorney General Harris was the first Attorney General in decades to have a pro-transparency mindset. The CADOJ she stepped into had been working for years under leadership that “only put out the minimum required by law.” Mr. Patem describes this as a “deeply held cultural” belief within DOJ: increasing transparency often only increases burdens on agencies—“It makes no sense to buy [that]

trouble.” Mr. Patem also notes this cultural element is crucial to discussions about criminal justice data and resources at CADOJ. “It’s not a technology issue... This is a people problem.”

Since coming into office in 2017, Attorney General Xavier Becerra has expressed a commitment to improving CADOJ’s data quality and access, as well as to working with researchers to support research efforts of mutual interest. CADOJ’s Director of Research, Dr. Randie Chance, echoed this commitment, noting that her department is working to establish more partnerships with researchers and to improve processes for collecting criminal process data from the counties to ensure that the state does have the data it needs.

CDCR DATA QUALITY AND ACCESS

Researchers have experienced greater challenges with data from CDCR than with CADOJ. Multiple researchers, including those working in criminal justice agencies and those working for academic institutions or other nonprofit research organizations, identified the key issues as (1) the absence of any formal data request process and (2) CDCR’s practice of prohibiting researchers from publishing findings whenever it believes that publication will cast a negative light on the department⁵. One well-known criminologist, who preferred not to be identified, called CDCR a “willful road blocker,” noting that even when access is offered, the limits on research publication make the access useless.

Dr. Sykes recalled multiple experiences when he or students he has advised received CDCR data only to have the Department prevent them from publishing their findings after seeing them. For example, when Dr. Sykes conducted a series of prison population projections in the wake of the

⁵ Following the publication of this report, CDCR announced the creation of a research request process. This is a very positive first step. To ensure transparency and accountability, CDCR should also establish and publicize clear criteria for approval or rejection of research requests.

Supreme Court decision that led to realignment, CDCR forbade him from publishing anything that included mortality rates of incarcerated individuals, concerned with the optics of acknowledging the number of people who die in prison.

Here, too, researchers working for criminal justice agencies expressed similar concerns. When Maria McKee, Principal Analyst for the San Francisco District Attorney's Office requested CDCR data to validate a risk-assessment tool the office hoped to use to inform prosecutorial decision-making, CDCR responded that it was against department policy to provide data for "tool development." When the SF DA's office followed up to obtain a copy of this policy, CDCR declined to produce it and, several years later, the SF DA's office still has not received requested clarification as to what CDCR data can be used and for what purposes. As Ms. McKee pointed out, "It shouldn't matter who is in charge, there should be rules and regulations in place, and publicly available."

Several practitioners also expressed frustration that the combined limitations on data access from CADOJ and CDCR create an additional burden on local

criminal justice agencies. Because researchers and policy makers are unable to access basic data from these state agencies, many turn to local agencies for information instead. As one probation chief pointed out, "I know that all criminal justice agencies in California get a lot of [public record requests] and I think that's because of the limited access to data publicly. There are basic things that academic institutions and social justice organizations want to know and, every time they want any information, they need to go through PRAs because of the lack of public data or data access from the State."

Interviewees for this report validate this concern, with several noting that, after delays or denials from CADOJ and/or CDCR, they turned to local data collection instead. "Initially, given that the local data has been aggregated within these state agencies, it didn't make sense for us to go to local agencies, but when it became clear that we were not getting a response from DOJ or CDCR, we decided to reach out to some local jurisdictions. They tend to have much clearer processes for providing data."

CALIFORNIA CRIMINAL COURT DATA

Data from California criminal courts are critical for tracking key elements of the criminal process, including charge filings, bail determinations, pretrial release status, and more. These data are particularly important amid the current debate over bail reform. In 2018, as the Legislature was debating legislation to eliminate cash bail and fundamentally alter the pretrial detention and release process (Senate Bill (SB) 10), a number of legislators noted that limited data on pretrial detention meant that they did not have thorough information upon which to base their votes, and both SB 10 and pending follow-

up legislation explicitly require courts to collect a range of data elements to ensure the Legislature could assess implementation. Amid a statewide referendum that will allow voters to uphold or veto SB 10, however, the lack of data continues to be a concern. Below, we provide more information about the availability of court data.

CALIFORNIA RULES OF COURT

In addition to the CORI and CPRA statutes described above, California court records are subject to the California Rules of Court, a set of "rules for court

administration, practice and procedure” developed by the California Judicial Council under the authority granted by the California Constitution.^{xvii} As part of this charge, the Judicial Council strives to balance transparency with confidentiality, so that court records are both presumptively open to the public^{xviii} and protective of individuals in sensitive situations. Unsurprisingly, balancing these two considerations can lead to disagreement and ambiguity regarding access to this information. One of the core areas of uncertainty is whether or not court records are subject to the CORI statutes discussed above and, as a result, whether or not researchers are allowed access to them.

For example, in a 1994 case, *Westbrook v. County of Los Angeles*, the California Court of Appeal, while limiting access to court records by a business that was selling criminal background information, also made it clear that it did consider court records to fit within CORI laws, indicating that these data would be considered accessible to researchers and policymakers. At the same time, however, a series of rules governing “bulk distribution” of electronic court records has generally restricted research access to these data by setting limits on what information can be provided electronically. In particular, these Rules of Court limit bulk distribution of a court’s records to “only its electronic records of a calendar, register of actions, and index.”^{xix} Limitations on what can be included in electronic calendars, registers of actions, and indices further reduce research access to Court records, despite the research access guaranteed in CORI laws and the presumption of open access to court records.

RESEARCH ACCESS TO CALIFORNIA COURT RECORDS

The bulk distribution and electronic records restrictions described above mean that access to court records for research purposes is even more limited than access to DOJ or CDCR data. As

researchers and practitioners agree, these restrictions severely constrain the ability of public agencies and bona fide research bodies to “obtain criminal offender record information as is required for the performance of its duties,” as described in California statutes.^{xx} One probation chief expressed concern that her department has been trying to get court data for more than two years so that they can improve some of their risk assessment tools. Adding to her frustration is the fact that the reasons why her department cannot access the information have changed over time and, while the court initially cited resource limitations, they now cite direction from the Judicial Council not to share data based on legal prohibitions. Regardless of the reasoning, she notes that it does not seem possible to get the data, despite the clear value for department operations and community safety.

Retired Contra Costa Superior Court Judge Harlan Grossman recalled that Contra Costa County’s Racial Justice Task Force (RJTF) was similarly unable to obtain court data to analyze and improve local criminal justice processes. The RJTF, of which Judge Grossman was a member, was established by the County Board of Supervisors in 2016 to examine racial disparities in the local criminal justice system and make recommendations for changes. As part of this process, the RJTF requested superior court data to identify junctures in criminal processing where racial disparities occurred, only to find that they were unable to obtain this information. Although the RJTF did receive aggregate data from the court, Judge Grossman notes that the Task Force was significantly limited in its ability to home in on and address racial disparities.

The implications of California’s restrictions on court data have become particularly apparent in light of current debates about the state’s policies and practices regarding bail and pretrial detention. As the Legislature debated SB 10 in the summer of 2018, policy makers, practitioners, and others expressed frustration with the limited information about

California's current bail decision-making processes or pretrial detention populations. Anne Irwin, the Executive Director of Smart Justice California, an organization that promotes criminal justice reform, notes that as the Legislature debated and revised the legislation, people on both sides of the bill lacked the data necessary to make an informed decision about it.

Will SB 10 increase or decrease pretrial incarceration in California? No one could answer that question because the requisite data doesn't exist. It's insane that we contemplated a complete statewide overhaul of pretrial detention without knowing whether the new structure would increase or decrease incarceration.

Half the people weighing in insisted that SB 10 would result in big pretrial incarceration increases. The other half just as adamantly insisted that SB10 would result in big pretrial incarceration decreases. But no one could point to the data that informed their impassioned predictions. (emphasis added)

A recent memorandum on Evaluating SB 10 from four researchers at UCLA's Ralph Bunche Center for African American Studies to the University of California Bail Consortium reaffirms this concern, noting that, "Without the collection of high-quality data, and independent monitoring of equity metrics during implementation, it is unclear to what extent the new law will ensure that implicit biases are not maintained or exacerbated." The memo proceeds to delineate a number of data elements for courts to track, which it notes must be made available for independent evaluation.^{xxi}

LOCAL DATA: NO INFRASTRUCTURE, POOR QUALITY DATA

Because of gaps in statewide criminal justice data and challenges to accessing the data that are available, local criminal justice agencies are now the primary source of criminal justice data in California. And yet most of the statewide changes to criminal justice policy that have been implemented in the past decade have required the local agencies that implement those policies to do little-to-no data collection or reporting, nor have they been accompanied by investments in IT infrastructure or data standards.^{xxii} As a consequence, California's local criminal justice data infrastructure is inconsistent at best and, in some jurisdictions, almost non-existent. Challenges with data collection are exacerbated by the absence of statewide data definitions and other standards, which means that even where data are collected, they are often inconsistent and difficult to compare.

IT INFRASTRUCTURE

Across the state, researchers and practitioners point to poor local IT infrastructure as the biggest barrier to high quality local criminal justice data. Many agencies have no electronic case management systems (CMS), leaving them reliant on paper case files, excel spreadsheets, and other homegrown processes that do not lend themselves to research, evaluation, or data-driven decision-making. In addition to dozens of agencies having no electronic CMSs, dozens more use archaic systems that cannot be updated in response to changes in criminal justice law and policy, have limited ability to conduct data extracts and analysis, and otherwise lack the capacity to provide meaningful data.

In a 2014 PPIC report assessing the capacity of state and local criminal justice agencies to collect the data required to evaluate realignment efforts, the authors identified technological challenges as a major barrier. Even counties that do have data systems experience a range of challenges in tailoring these systems and extracting data as needed.

Many county information technology (IT) systems will require improvements to enable the kind of data collection, data linkage, and data extraction we have described. Counties may face one or more of the following technical challenges: (1) they may be using programming languages that are no longer supported or operating on systems that were built by companies that have gone out of business; (2) they may be using systems that were purchased “off the shelf,” and hence reliant on vendors and additional funds for system upgrades; or (3) they may be using locally developed systems that may not be integrated across agencies.^{xxiii}

One independent researcher who contracts with local agencies to evaluate criminal justice programs pointed to the high degree of variation in data systems and data quality across the state. “I have worked with some agencies that have extremely robust, customizable, web-based data systems that can be used for reporting, evaluation, program management—you name it. But, these are definitely the minority, and I have also worked with a lot of agencies where we had to go in and create tracking logs and review paper case files in order to really evaluate any of their programs.” Danielle Dupuy, the Assistant Director of the Bunche Center for African American Studies at UCLA and Co-Director of the Center’s Million Dollar Hoods project, spoke of challenges she has seen collecting data from law enforcement agencies across the state.

For some agencies it’s very easy to just put [data] out, but the burden of collection is difficult for some law enforcement agencies. It would be lovely if there could be resources invested in criminal justice data, including data systems and staff with the right expertise, who are trained in and knowledgeable about data system management, but that is often not the case. Some of the IT people are burdened by the task [of extracting data for analysis] and clearly don’t know how to do it. People will tell us that this is not part of their job description, etc. based on resources available. I don’t fault them for that.

This variation in data systems exists both across and within county lines. For example, several district attorneys interviewed for this assessment pointed out that their offices have robust data systems, as well as both research and IT staff who help them review their data on an ongoing basis to inform future office decisions. Other DAs bemoaned the underfunded data infrastructure in their offices, with one DA reporting having a case management system that is so old no one in her office knows how to use it; **several others, who still use only paper case files, reported envying even those offices with outdated case management systems.**

A probation chief who has long promoted better data and transparency reports similar discrepancies among probation departments in different counties, noting that challenges with data infrastructure limit practitioner buy-in for various data initiatives despite a commitment to evidence-based practices and data-informed policy. “I know that CPOC is very committed to data collection and data sharing, but there are a lot of data bills that CPOC opposes because too many departments can’t afford to implement them. We don’t all have capacity to do that work.” Moreover, the Chief notes, even CPOC’s own efforts to collect data from probation

departments are limited by their members' data capacity. "The number one problem is that there is no funding for anything data or research-related. Probation departments have to fund this work themselves and different departments have different resources to do that work. Unfortunately, that means that even CPOC can't get the data they want."

DATA STANDARDIZATION

Challenges with IT infrastructure also exacerbate another challenge with local data collection: the absence of standardized definitions for data elements. This issue became particularly apparent in the wake of AB 109, when **counties needed a common way to define recidivism and the BSCC and CADOJ undertook separate processes to develop definitions, resulting in two different "official" state of California definitions of recidivism.**

Beyond high-profile outcome measures, however, local criminal justice data in California also lack standardization for basic elements, the most obvious being the formatting of statutory codes for arrests, charge filings, and convictions. Ms. Dupuy pointed out that even something as basic as measuring arrest trends is compromised by the lack of standardization. "After we get the data, aside from the format it comes in, variables are ambiguous as are observations within each variable. Most of the time there is no definition list or codebook; some agencies have them, some do not...I also really wish they had a dropdown for penal code instead of open fields. It is so hard to correctly identify arrest charges because people type in by hand and they do so differently every time, which compromises the accuracy of the analysis."

Dr. Bird noted that she encountered similar challenges trying to merge and standardize data for probation departments and sheriffs' offices across 12 counties. Despite tracking similar information overall, different agencies record and code the information differently leading to challenges in standardization and the loss of some nuance through the process.

Probation departments and sheriffs' offices collect very similar things, but not exactly the same, and everyone doesn't code everything the same way. Every sheriff has a slightly different set of data elements and a different way of coding those elements. [In order to do the analysis] for the MCS, we met with every agency individually and then came up with an overarching standardization scheme that could, as best as possible, be used in every county. Doing that meant that we lost some richness in some places, because some agencies have really high levels of specificity that we couldn't measure everywhere.

LOCAL DATA ACCESS

Like state agencies, local criminal justice agencies that want to use data to inform their policies and practices face uncertainty regarding who can use what data, for what purposes, and in what context. As described above, jurisdictions that want to share data either with other criminal justice agencies and/or with researchers and evaluators get conflicting counsel as to whether or not they can do so. For example, a number of the criminal justice practitioners interviewed for this report said that they had been advised by their legal counsel that PC § 13202 allows them to share data for research purposes and noted that they do so regularly in order to evaluate their own initiatives and to contribute to larger research efforts. Similarly, many of the

researchers interviewed described robust and longstanding partnerships with local criminal justice agencies to support both local policy analyses and other research endeavors.

By contrast, other agencies note that their legal counsel has advised that PC § 13202 applies only to CADOJ data and that they are prohibited from sharing this information. For example, one prosecuting agency reported:

Our data is controlled by Article 6, commencing with Section 13300, of the California Penal Code, referred to as “Local Summary Criminal History Information.” There are several provisions in 13300 that provide for our data to be released for research purposes, but they all require that the identity of the subject not be disclosed... Section 13303, which is a part of Article 6, makes it a misdemeanor to furnish the records to anyone not authorized by law to receive the information. As such, we do not have the authority to release local criminal history to [researchers].

In addition to differing interpretations of PC § 13202, local agencies also report different understandings of what information can be shared pursuant to the California Public Records Act, or CPRA. This is particularly true for arrest records. Although these records are explicitly included in CPRA (see discussion on p. 6), different law enforcement agencies differently interpret various CPRA considerations regarding public access, personal privacy, and privileged official business. The two issues that appear to be particularly ambiguous are 1) how CORI statutes and CPRA interact to inform various disclosure and access considerations, and 2) when the public interest is outweighed by greater disclosure versus greater privacy.

In terms of the former, some agencies interpret CORI statutes and CPRA in tandem to support greater data access and facilitate research project. As one district attorney’s office noted:

As relates to the records containing “data elements,” that information may only feasibly be obtained from our local criminal history database. Under California law, it is a crime to release any records from such database unless there is an exception under the CPRA. California Penal Code section 13202 provides one such exception. The statute provides in part: “every public agency or bona fide research body immediately concerned with the . . . the quality of criminal justice . . . may be provided with such criminal offender record information as is required for the performance of its duties, provided that any material identifying individuals is not transferred, revealed, or used for other than research or statistical activities and reports or publications derived therefrom do not identify specific individuals.” ...[I]t is our belief that you qualify for this exception.

By contrast, a California sheriff’s office came to the exact opposite conclusion.

The CPRA also provides an exemption for records, the disclosure of which is exempted or prohibited pursuant to federal or state law, and those that may constitute an unwarranted invasion of personal privacy and privileged official business records. (Government Code §§ 6254 (k) and 6276. 12, California Constitution, article I, sections 1 and 28, and Evidence Code § 1040.) This includes including the requested individual level data and information that could be used to identify specific individuals.

Researchers from UCLA's Million Dollar Hoods project, described above, note that they have received widely varying responses to data requests from different local law enforcement agencies even within the same county. While some agencies readily provide detailed data on arrests and other law enforcement processes, others reference a range of case law as prohibiting the sharing of these data or argue that this transparency is not in the public interest. As one police department noted:

No documents will be produced where “the public interest served by not disclosing the record clearly outweighs the public interest by the disclosure of the record” under California Government Code Section 6255.

So, the questions remain: What data can be shared, by whom, and under what circumstances. As this report demonstrates, it depends whom you ask, which raises a more important question: Why is there no certainty here when so much is at stake for the state's criminal justice system?

IMPLICATIONS OF CALIFORNIA'S CRIMINAL JUSTICE DATA GAPS: A CASE STUDY

In 2015, the Hon. Tani Cantil-Sakauye, Chief Justice of the California Supreme Court, asked the Stanford Criminal Justice Center to undertake a study of the sentencing enhancements in the state's penal code. Like many state officials, the Chief Justice was concerned that, even after the 2011 Realignment law, California had to consider a variety of possible reforms to persuade the federal court that to terminate the population-reduction injunction in *Brown v. Plata*.⁶ While the Chief Justice took no position on the policy wisdom or fairness of any particular criminal statutes, she sought information about the degree to which enhancements, and different combinations of base crimes and enhancements, were contributing to crowding pressure in the state's prisons.

SCJC first prepared a comprehensive research memo on the structure of base crimes and enhancements in the Penal Code. It then sought empirical information about the frequency with which felons received particular enhancement sentences. Its premise was that they could thereby calculate the number of years of imprisonment resulting from these enhancements for a particular period of time and then use that measure to estimate what percentage of the prison population at a particular time might be attributable to those provisions.

In theory these data should have been easy to compile. Whenever a person is sentenced for a felony, the trial court produces an Abstract of Judgment summarizing the crime, the enhancements, and the resulting sentences. The data SCJC sought would be the sum of those documents. (And where the documents identify

the defendant by demographic factors, at least the correlation between those factors and the sentences could also be measured.) Seeking this data, SCJC reached out to leaders of the California Department of Justice and the Department of Corrections and Rehabilitation on the assumption that these departments receive these abstracts or summaries of them. In both cases, SCJC was told that the available data was either not reliable enough or not digitized in a sufficiently useful form nor were there any immediate plans to resolve these issues. Next, at the Chief Justice's suggestion, SCJC approached particular Superior Courts, hoping that at least some of them could supply the data or give SCJC access to compile it. This effort was also unsuccessful; presiding judges told SCJC that their data was unreliable in form or that they lacked the resources to organize the data or that they did not want to open their files to researchers or a combination of all three.

Finally, since the relevant documentation was also, by definition, in the hands of district attorneys, SCJC approached the elected DAs in several counties. Only one responded favorably: George Gascon of San Francisco. DA Gascon and his research analyst were thus the only source of data for this research. The resulting study (limited to this one County) will soon be released; however its conclusions will be severely limited by the data available, thus undermining the ability of policymakers to assess a critical policy issue. The efforts described here underscore the challenges of getting California criminal justice relevant data for research—in this case research not only for academic purposes but also to serve public institutional goals.

⁶ *Brown v. Plata* is a federal class action civil rights lawsuit regarding conditions in CDCR. The ruling in this case required CDCR population reductions, leading to 2011 AB 109, Public Safety Realignment.

CONCLUSION

In many ways, California should be a model for criminal justice research. Over the past decade, the state has passed a series of laws that have fundamentally shifted the operations of the criminal justice system. Amid these statewide policy changes, California's 58 counties have significant autonomy regarding implementation, creating a series of natural experiments wherein we have the opportunity to measure and assess the implications of these different approaches. Moreover, the state has a robust network of criminal justice researchers dedicated to the collection of criminal justice data for the purpose of research and policy making, including researchers from academia, independent research organizations, and state and local criminal justice agencies. In addition, California's unique and regularly evolving approach to criminal justice policy and practice has made the state particularly interesting to researchers from around the country. California's statutory commitment to the collection and dissemination of criminal justice data should ensure the collection of these data and ease access thereto for research purposes.

These statutory directives and unique policy context notwithstanding, numerous research efforts have been stymied by gaps in criminal justice data infrastructure, varying interpretation of data sharing laws and regulations, or both. Collectively, these challenges translate to both missed opportunities and concerning roadblocks to transparency. Californian policymakers, practitioners, and citizens can and should know more about how our criminal justice systems are operating. At a minimum, our legislature should begin to address these issues by 1) allocating resources for IT upgrades; 2) establishing data standards for state and local criminal justice agencies; and 3) clarifying what data can be shared, with whom, and in what context. Without these remedies, we will continue to operate in the dark, implementing policy with no meaningful oversight or assessment thereof.

ENDNOTES

- i Cal. Rule of Court 2.550(c); see also *Sander v. State Bar of Cal.*, 58 Cal. 4th 300, 318-19, 322-23 (2013); Copley Press, 6 Cal. App. 4th at 111-12 (citing *Estate of Hearst*, 67 Cal. App. 3d 777, 782 (1977)).
- ii Cal. Penal Code § 13010(a)-(e).
- iii *Id.* § 13100.1(a).
- iv *Id.* § 13100.1(b), 13100.2.
- v See Cal. Penal Code §§ 13100-13326.
- vi Cal. Penal Code § 13101.
- vii See, e.g., Cal. Penal Code §§ 11105, 13202, 13300.
- viii Cal. Penal Code § 13202 (emphasis added)
- ix Cal. Penal Code § 13010(g). See also *Id.* §§ 13012-13014, as describing some required contents of public statistics, including “the personal and social characteristics of criminals and delinquents.”
- x Kamala, H. (2016). CA DOJ: Open Justice Press Release. Retrieved from <https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-releases-new-openjustice-data-showing-racial>
- xi Kamala, H. (2016). CA DOJ: Open Justice Press Release. Retrieved from <https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-releases-new-openjustice-data-showing-racial>
- xii A.B. 2524, Bill Analysis (2016): Assemble Committee on Public Safety Hearing. Retrieved from http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_2501-2550/ab_2524_cfa_20160328_101057_asm_comm.html.
- xiii Cal. Gov’t Code § 6253(a)-(b).
- xiv *Id.* § 6254(f). “[E]xcept to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation[.]”
- xv *Id.* § 6254(f)(1)-(3)
- xvi See Memorandum: *Criminal Justice Data Quality and Integrity*, submitted from District Attorney George Gascon to Assemblymember Rob Bonta, December 14, 2018.
- xvii Cal. Const. Art. VI, § 6, subd. (d)
- xviii Cal. Rules of Court 2.550(c) “Unless confidentiality is required by law, court records are presumed to be open.”
- xix Cal. Rules of Court 2.503(g)
- xx Cal. Penal Code § 13202.
- xxi See Memorandum: *Evaluating SB10*, submitted from Kelly Lytle-Hernandez, PhD, Isaac Bryan, MPP, Danielle Dupuy, MPH, and Terry Allen, MA of the UCLA Ralph J. Bunche Center and the Million Dollar Hoods Project to the University of California Bail Consortium, October 25, 2018.
- xxii S.B 10: *Pretrial Release and Detention* (CA, 2018), does require the Judicial Council to identify and define a minimum set of data to be reported by each court, and establishes an initial set of data requirements for the Judicial Council to build on.
- xxiii Tafoya, S, Grattet, R, Bird, M. (2014). *Corrections Realignment and Data Collection in California*. San Francisco, CA: PPIC.