

Managing Jail Populations to Enhance Public Safety:  
Assessing and Managing Risk in the Post-Realignment Era

*A paper for the Executive Session on Public Safety Realignment*

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# Introduction

Just 20 months after Public Safety Realignment began, the effects of the legislation on California's criminal justice system are unprecedented both in depth and in scope.<sup>1</sup> And they are still taking shape. Arguably, county jail systems have been one of the most significantly altered components of the criminal justice system. The management of county jail systems in California is a challenging, dynamic, and complex undertaking. Realignment is exacerbating some of the challenges and accelerating some of the changes that county jails were facing before October 2011 when Realignment began. The number of individuals in jail has been growing; the status of individuals held in jail custody has been changing; and the length of time individuals stay in jail is getting longer. In short, almost every aspect of California's jail population has been in a state of flux since Realignment was implemented.

An examination of *all* of the contributing factors and criminal justice tools related to jail management is beyond the scope of this effort. The focus here is on a handful of selected topics that 1) are considered to play an important role in the management of jails, 2) have been directly affected by AB 109 or have newly emerged as a result of the new regime, and 3) are thought to be ripe subjects for law and policy debate and reform. We approach these topics by breaking down jail populations into two groups (non-sentenced versus sentenced) and the issue into two stages (assessment of risk and management of risk). The first section presents an overview of who is in jail in California based on the most recently available data. The second section examines how the risk profiles of defendants are assessed during the pretrial phase, and what we know from research to be the most effective approaches to addressing risk. Next, risk management options in the form of detention, bail release, own recognizance release, and pretrial services supervision are discussed. The attention then shifts to the sentenced population in California jails and some of the tools available to criminal justice practitioners to manage jail populations, including, split sentences, electronic monitoring, and early release.

This paper is intended to help lay the foundation for the first meeting of the Stanford Criminal Justice Center's Executive Session on the Front-End Issues of Public Safety Realignment (see sidebar). The first of these four, day-long meetings will focus on issues related to jail management. A group of experts from across California representing a variety of perspectives will be convened to discuss some of the pressing issues related to Realignment's effect on jails.

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<sup>1</sup> For the purpose of this paper Public Safety Realignment refers to AB 109 and AB 117.

### ***Executive Session on Public Safety Realignment: Front-End Issues***

*With support from the Public Welfare Foundation, the Stanford Criminal Justice Center (SCJC) is leading a project to explore in depth the major front-end issues created by Realignment. The key project components are:*

***Convene an Executive Session.*** *The centerpiece of the project is the convening of an Executive Session that is comprised of ten state leaders to inform the development of the project, including identifying the key issues facing the front-end of the system, proposing distinct and substantial topics to be examined over the course of the project, and providing feedback on a final report.*

***Host four, full-day Executive Session meetings.*** *The Executive Sessions will take place at Stanford Law School and will be held over the course of 18 months. Four, full-day Executive Sessions will focus on a series of front-end issues of Public Safety Realignment. In addition to the Executive Session members, each session will include eight to ten subject experts of the topic being featured in that particular session.*

***Develop four background papers.*** *In preparation for each of the Executive Session meetings background papers will be developed to serve as background material on the particular topic being covered in the session. The papers will highlight the major legal and policy issues of the topic and will attempt to capture how the issue is playing out across California's 58 counties through data analysis and collection.*

***Develop a final report.*** *The work of the Executive Session will culminate in a final report that summarizes the major front-end issues created by Realignment, identifies policy recommendations, and highlights best practices among California's counties to address those issues.*

***Disseminate findings and recommendations.*** *The findings and recommendations that result from the project will be shared with relevant stakeholders and professional associations across the state.*

#### **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, City and County of 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*

*Chief Jerry Powers, Los Angeles County Probation Department*

*Chief Kim Raney, Covina Police Department and President, California Police Chiefs Association*

# Non-Sentenced and Sentenced Individuals

Two categories of people are generally in custody in county jails: individuals who have not been sentenced and are awaiting trial (the pretrial population) and individuals who have been convicted of a crime and are serving some or all of their sentence in a county correctional facility. This paper is organized around that distinction in status. For criminal justice decision-makers, responsibility for non-sentenced and sentenced individuals at the county level involves two critical components: assessing risk and managing risk (see Figure 1). For individuals in pretrial status, criminal justice system officials have to consider the question: *Should a person charged with a crime be detained in custody or remain in the community?* The decision of whether to detain a person is based on the consideration of two risks: that an individual will cause public safety harm, and that an individual will fail to appear in court. As will be discussed below, the ways in which those assessments are made, and by whom, vary significantly across counties.

**Figure 1. County-level Risk Assessment and Management Options**

	Risk Assessment	Risk Management and Population Management Tools
Non-sentenced or Pretrial	<ul style="list-style-type: none"> <li>• Likelihood of causing public safety harm</li> <li>• Likelihood of failing to appear in court</li> </ul>	<ul style="list-style-type: none"> <li>• Detain in custody</li> <li>• Release on bail</li> <li>• Release on own recognizance</li> <li>• Release under supervision</li> </ul>
Sentenced	<ul style="list-style-type: none"> <li>• Likelihood of causing public safety harm</li> <li>• Likelihood of violating conditions of release</li> </ul>	<ul style="list-style-type: none"> <li>• Remain in custody</li> <li>• Term of probation</li> <li>• Split sentence (jail custody followed by mandatory supervision)</li> <li>• Release under supervision (e.g., electronic monitoring or day reporting)</li> <li>• Early release</li> </ul>

A second question is considered during the pretrial stage: *What are the best measures to reduce the risk to public safety or the likelihood that someone will fail to appear in court?* Assuming a defendant is subject to monitoring before a court appearance, the monitoring can take many forms in California. This paper will examine county detention, release on bail, release on own recognizance, and pretrial supervised release.

For individuals who have been sentenced 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. This paper will focus on the following mechanisms that have been created by Realignment or have become increasingly important to counties as a result of Realignment: split sentences, community release while under the jurisdiction of a sheriffs’ department (including electronic monitoring), and early release.

### **Highlights of California Public Safety Realignment**

*In 2011 Governor Jerry Brown signed Assembly Bill 109, commonly referred to as “prison realignment,” which shifted to counties the responsibility for monitoring, tracking, and incarcerating lower-level offenders previously bound for state prison. In brief, AB 109 (and AB 117, a companion bill) altered both sentencing and post-prison supervision for the newly statutorily classified “non-serious, non-violent, non-sex” offenders. While the legislation is comprehensive and complex, three major groups are affected by Realignment.*

*First, felony offenders who have never been convicted of a “serious” or “violent” crime or an aggravated white collar crime and are not required to register as sex offenders (colloquially referred to as the “triple-nons”) will now serve their sentences in local custody.*

*Second, released prisoners whose current commitment offense qualifies them as “triple-non” offenders are diverted to the supervision of county probation departments under “Post Release Community Supervision (PRCS).”*

*Third, if persons on parole or PRCS violate the technical conditions of their supervision (rather than committing a new crime), they can no longer be returned to State prison but must be sanctioned in local (county) jail or community alternatives, including house arrest, drug treatment, or flash incarceration.*

## **California’s Jail Population**

Under Public Safety Realignment, tens of thousands of sentenced individuals who previously would have served time in state prison are now serving it in county jails. As of September 2012, one year after Realignment began, 29,000 individuals were given local prison sentences under 1170(h), the section of the California Penal Code that refers to individuals who are serving time in the county through a combination of straight jail time or a split sentence.<sup>2</sup> In the quarter preceding the start of Realignment (July to September 2011) the average daily population (ADP) for California’s jails was 71,293 individuals (see Figure 2).<sup>3</sup> Twelve months later (July to September 2012), jail ADP was 79,229, an increase of approximately 11% or an additional 7,936 inmates.<sup>4</sup> This significant influx of persons into California’s jail system in a relatively short amount of time has increased pressure on jails in many counties where overcrowded conditions existed before Realignment. Of California’s 58 county jail systems, 17 are operating under a court-ordered population cap and an additional 20 have “self-imposed” caps on their jail populations.<sup>5</sup>

<sup>2</sup> This does not include parole revocations and Post Release Community Supervision (PRCS) violators. Chief Probation Officers of California, California Realignment Dashboard available at <http://www.cpoc.org/assets/Realignment/dashboard.swf>.

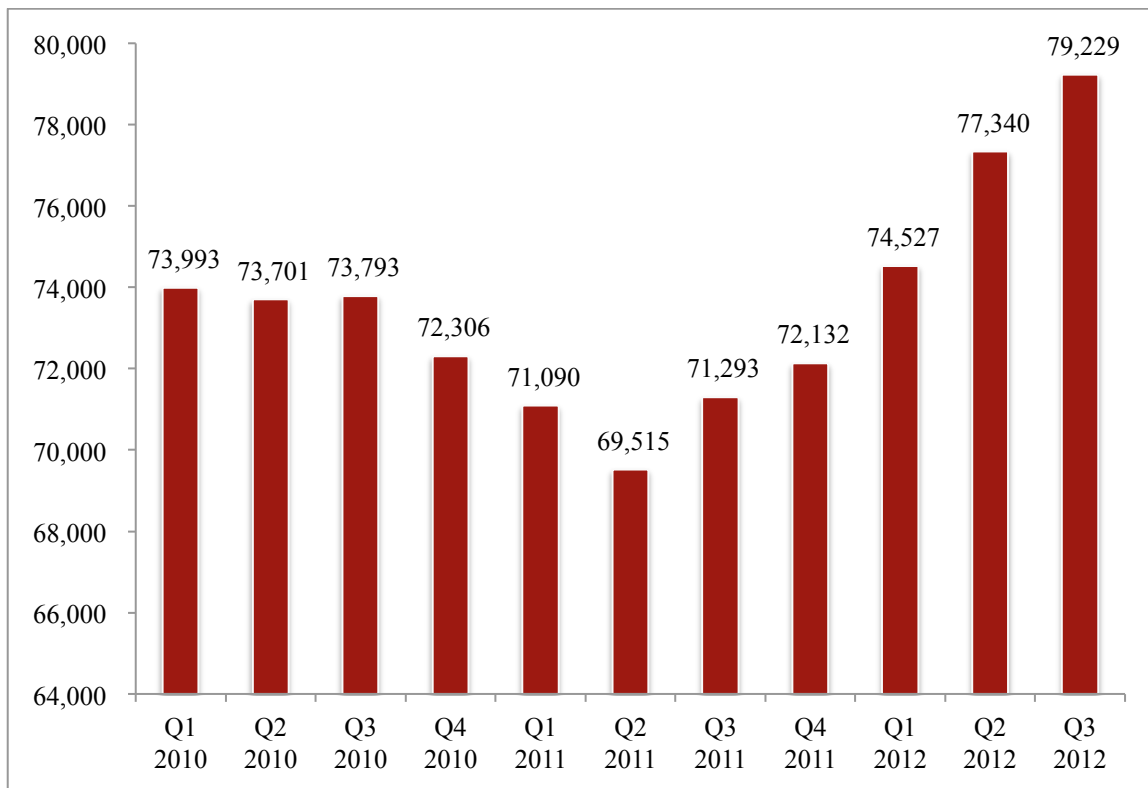
<sup>3</sup> Board of State and Community Corrections, Jail Profile Survey data available at <http://www.bscc.ca.gov/programs-and-services/fso/resources/jail-profile-survey>.

<sup>4</sup> During this same 12-month period, California’s prison population declined by approximately 27,000 prisoners. Based on California Department of Corrections and Rehabilitation monthly population reports for September 30, 2011 (160,774) and September 30, 2012 (133,362).

<sup>5</sup> Magnus Lofstrom, Joan Petersilia, and Steven Raphael, Evaluating the Effects of California’s Corrections Realignment on Public Safety, Public Policy Institute of California (September 2012).

This large and abrupt change in California has affected national statistics. The increase in the national jail population between midyear 2011 and midyear 2012 was 8,923 inmates. According to the U.S. Bureau of Justice Statistics' estimates, 85% of that increase is attributable to California jails.<sup>6</sup>

**Figure 2. Average Daily Jail Population by Quarter**  
1<sup>st</sup> Quarter 2010 to 3<sup>rd</sup> Quarter 2012



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

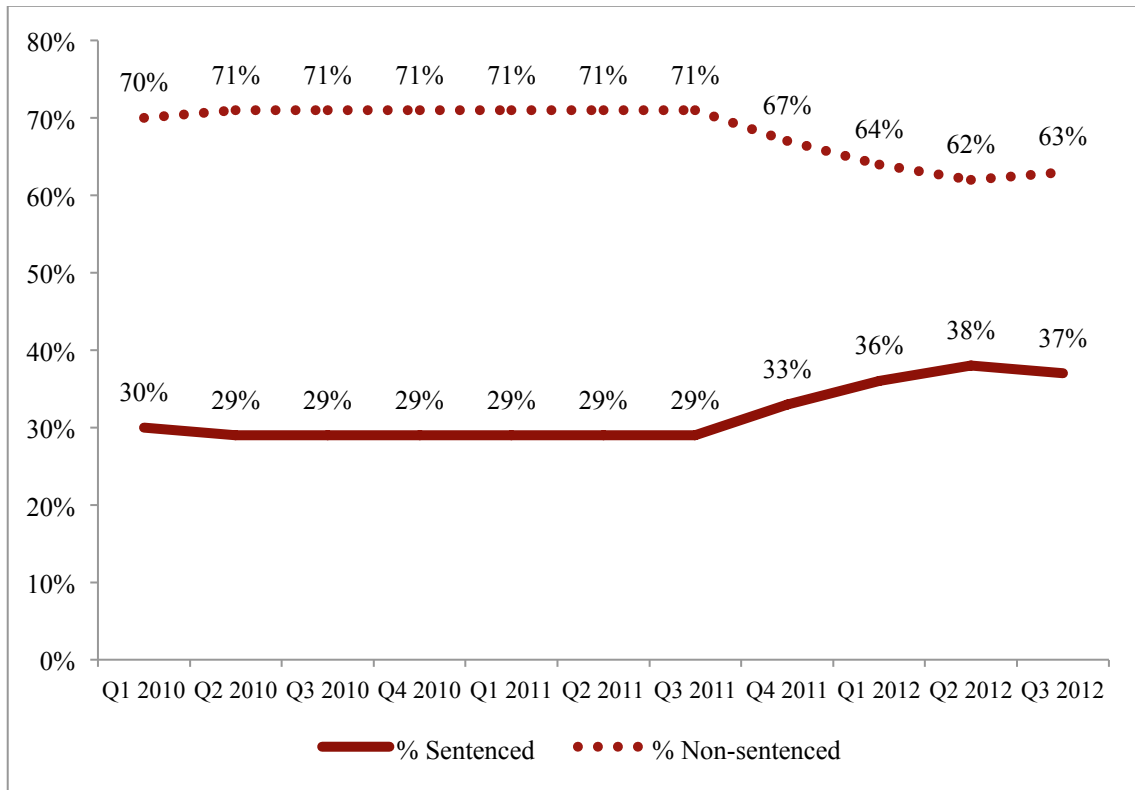
Not only has the size of the jail population been changing, so has the status of individuals who are in custody. From the beginning of 2010 to the start of Public Safety Realignment, the share of individuals in jail in California who were not sentenced was remarkably stable at around 70% and was notably higher than the national average of 60%.<sup>7</sup> As shown in Figure 3, the composition of individuals in jail began to change immediately after Realignment began. The share of jail inmates who had been sentenced to a term in custody grew significantly from 29% in the months immediately before Realignment began in October 2011 to 37% during that same period one year later.<sup>8</sup> Behind the state average of 63% lies tremendous variation across California counties, ranging from a low of 42% of the jail population in Lassen County being non-sentenced to a high of 84% in Merced County (see Appendix A for county-level data on the share of jail populations who are non-sentenced).

<sup>6</sup> Todd Minton, *Jail Inmates at Midyear 2012 Statistical Tables*, NCJ 241264, Bureau of Justice Statistics (May 2013).

<sup>7</sup> *Ibid.*

<sup>8</sup> Board of State and Community Corrections, Jail Profile Survey data available at <http://www.bscc.ca.gov/programs-and-services/fso/resources/jail-profile-survey>.

**Figure 3. Non-Sentenced v. Sentenced Jail Population by Quarter**  
 1<sup>st</sup> Quarter 2010 to 3<sup>rd</sup> Quarter 2012



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

Because jails are typically not well equipped to house people for extended periods, the increase in individuals serving long sentences in jails is a concern of many stakeholder groups. The significance of this new burden on the jails is mixed. According to a survey by the California State Sheriffs’ Association (CSSA), between the start of Realignment and February 2013, 1,153 offenders had been sentenced to more than five years at the county level.<sup>9</sup> However, these 1,153 offenders represented only 2.8% of 1170(h) sentences issued during the first 17 months of Realignment.<sup>10</sup> So while these lengthy jail sentences are doubtless burdensome, they represent a very small fraction of the local prison sentences. “Long-termers” are concentrated in a very small number of counties, with 57% of them being in just three counties (Los Angeles, San Diego, and San Bernardino). Of the 52 counties that participated in the Sheriffs’ survey, 11 counties had no offenders sentenced to five or more years as of February 2013 (see Appendix B for county-level data on long-term offenders).<sup>11</sup> To summarize the changes to county jail populations since the start of Realignment, the number of people who are in jail has increased dramatically, the types of individuals who are in custody are notably different, and the range of effects at the county level is large.

<sup>9</sup> California State Sheriffs’ Association, *Survey of Sheriffs re Long Term Offenders in Jail* (February 2013) available at <http://www.calsheriffs.org/images/SummaryMemoreLongTermSentences021913.pdf>.

<sup>10</sup> Stanford Criminal Justice Center analysis of CSSA data.

<sup>11</sup> *Ibid.*



# Non-Sentenced / Pretrial Population

The pretrial stage of the U.S. criminal justice system has been getting increasing attention from elected officials, criminal justice practitioners, and other interested stakeholders. For example, in 2011, the U.S. Department of Justice hosted a National Symposium on Pretrial Justice where Attorney General Eric Holder called for national reform of pretrial justice. The American Bar Association and the National Association of Counties have both included pretrial issues as areas of focus in recent years.

The pretrial stage begins after booking, with an assessment of whether a defendant will be detained before trial, will be offered bail, or will remain in the community under certain conditions. Below is a discussion of how that risk is assessed in California counties and the extent to which that assessment aligns with best practices. If a defendant is not detained, then several forms of pretrial release are available in California. This paper presents an overview of three of those options: release on bail, release on own recognizance, and release under some form of pretrial supervision.

## Assessing Risk of Defendants

As mentioned above, Realignment has brought increased attention to the ways in which counties assess their pretrial population. Two types of risk are typically considered during the pretrial phase: the risk of an individual causing public safety harm and the risk of an individual failing to appear in court. The pretrial detention decision is ultimately made by judges, whose decisions can be based on information from such sources as prosecutors, defense attorneys, probation departments, and pretrial services agencies.

### Pretrial risk assessment tools

A national movement appears to be underway to focus the pretrial release/custody decision on assessment of risk rather than an individual's ability to pay. This is not only happening at the county court level: state governments are starting to offer guidance to counties on the use of risk assessment during pretrial. For example, in ten states, courts are instructed to consider the use of risk assessment as part of the pretrial release decision, and in three states, risk assessment is required for all defendants.<sup>12</sup> Several professional associations are advocating for the adoption of risk assessment in pretrial release decisions, including the Conference of State Court Administrators,<sup>13</sup> American Bar Association,<sup>14</sup> and International Association of Chiefs of Police.<sup>15</sup>

The primary goal of pretrial risk assessment instruments is to assess risk of defendants' failing to appear in court and their risk of causing public safety harm, and to render these assessments fairly and consistently. A pretrial risk assessment tool typically will classify a defendant into a risk

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<sup>12</sup> See National Conference of State Legislature, "Guidance for Setting Pretrial Conditions" for a list of the states. <http://www.ncsl.org/issues-research/justice/guidance-for-setting-release-conditions.aspx>.

<sup>13</sup> Arthur W. Pepin, *2012-2013 Policy Paper: Evidence-Based Pretrial Release*, Conference of State Court Administrators available at [http://www.colorado.gov/ccjdir/Resources/Resources/Ref/EBPre-TrialRelease\\_2012.pdf](http://www.colorado.gov/ccjdir/Resources/Resources/Ref/EBPre-TrialRelease_2012.pdf).

<sup>14</sup> American Bar Association, *ABA Standards for Criminal Justice: Pretrial Release*, 3d ed. (2007) available at [http://www.americanbar.org/publications/criminal\\_justice\\_section\\_archive/crimjust\\_standards\\_pretrialrelease\\_toc.html](http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_pretrialrelease_toc.html).

<sup>15</sup> International Association of Chiefs of Police, *Law Enforcement's Leadership Role in the Pretrial Release and Detention Process* (February 2011) available at <http://pretrial.org/Perspectives/IACP%20LE%20Leadership%20Role%20in%20Pretrial%202011.pdf>.

category and identify the best conditions for addressing that risk, such as financial conditions, release on own recognizance, and conditional supervised release.

A relatively robust body of research exists on the effectiveness of pretrial risk assessment tools. There is significant evidence that pretrial risk assessment tools can predict the probability that defendants in certain risk categories will cause public safety harm or fail to appear in court.<sup>16</sup> Pretrial risk factors that are found in many validated pretrial risk assessment tools include: prior failure to appear, prior convictions, whether the current charge is a felony, whether the defendant faces any other pending charges, whether an individual is unemployed, and whether an individual has a history of drug abuse.<sup>17</sup> While basing assessments on previous research and experience is a good starting point, local validation is a critical step in ensuring the effectiveness of a risk assessment tool at the local level and should be revisited every five to seven years. A few pretrial risk assessment tools are considered to be the gold standard in pretrial risk assessment and serve as the starting point for many local validation studies, including the Virginia Pretrial Risk Assessment and the Ohio Risk Assessment System: Pretrial Assessment Tool (ORAS-PAT) (see Appendices C and D for sample risk assessment instruments). According to a review of counties' Realignment plans, several counties are planning to use these instruments or a modified, locally-validated version.<sup>18</sup>

## Setting bail

Per the California Constitution, bail is available for California defendants unless they are charged with a capital crime “when the facts are evident or the presumption great,” or a violent or sexual crime is involved and the court finds “clear and convincing evidence” that there is substantial risk or credible threat of great bodily harm to another should the defendant be released (see sidebar). Once a motion for release on bail has been granted, a judge sets the amount of bail. Judges setting bail are to consider the protection of the public, the seriousness of the offense(s) charged, previous criminal record of the defendant, and probability of the defendant appearing for trial.

Bail schedules establish the amount of money a defendant is required to post in order to remain in the community, and across the country their utilization is common practice, as 64% of the largest counties in the U.S. utilize bail schedules.<sup>19</sup> In California, superior court judges are responsible for preparing bail schedules for all bailable felony offenses and for all misdemeanor and infraction offenses except Vehicle Code infractions. Each county may adopt a local rule for setting the bail schedule each year, and statute sets the default rule at a majority vote of the superior court judges.<sup>20</sup> California is one of 40 states where excessive bail is prohibited in the state's Constitution.<sup>21</sup> Bail is not considered excessive merely because the defendant cannot post it.<sup>22</sup>

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<sup>16</sup> As summarized in Pretrial Justice Institute, *Rational and Transparent Bail Decision Making: Moving from a Cash-Based to a Risk-Based Process* (March 2012).

<sup>17</sup> Arthur W. Pepin, *2012-2013 Policy Paper: Evidence-Based Pretrial Release*, Conference of State Court Administrators and Pretrial Justice Institute, *Rational and Transparent Bail Decision Making: Moving from a Cash-Based to a Risk-Based Process* (March 2012).

<sup>18</sup> Angela McCray, Kathryn McCann Newhall and Jessica Greenlick Snyder, *Realigning the Revolving Door? An Analysis of California Counties' AB 109 Implementation Plans* (Stanford Criminal Justice Center, working paper 2012) available at [http://www.law.stanford.edu/program/centers/scjc/#california\\_realignment](http://www.law.stanford.edu/program/centers/scjc/#california_realignment).

<sup>19</sup> Pretrial Justice Institute, *Pretrial Justice in America: A Survey of County Pretrial Release Policies, Practices, and Outcomes* (2009).

<sup>20</sup> California Penal Code section 1269b.

<sup>21</sup> Arthur W. Pepin, *2012-2013 Policy Paper: Evidence-Based Pretrial Release*, Conference of State Court Administrators.

<sup>22</sup> *In re Burnett*, 35 Cal. App. 2<sup>nd</sup> 358, 360-61 (1939).

### ***Release on Bail***

#### ***California Constitution, Article 1 Declaration of Rights, Section 12***

*A person shall be released on bail by sufficient sureties, except for:*

*(a) Capital crimes when the facts are evident or the presumption great;*

*(b) Felony offenses involving acts of violence on another person, or felony sexual assault offenses on another person, when the facts are evident or the presumption great and the court finds based upon clear and convincing evidence that there is a substantial likelihood the person's release would result in great bodily harm to others; or*

*(c) Felony offenses when the facts are evident or the presumption great and the court finds based on clear and convincing evidence that the person has threatened another with great bodily harm and that there is a substantial likelihood that the person would carry out the threat if released.*

*Excessive bail may not be required. In fixing the amount of bail, the court shall take into consideration the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case.*

*A person may be released on his or her own recognizance in the court's discretion.*

As with many elements of California's criminal justice system, significant variation in bail schedules across counties exists. For example, the presumptive bail amount for the possession of a controlled substance is \$10,000 in Los Angeles County and \$20,000 in Orange County; for assault with a deadly weapon other than a firearm the presumptive bail amount is \$10,000 in Santa Clara County, \$25,000 in Orange County, and \$30,000 in Santa Barbara County; and the presumptive bail for stalking is \$50,000 in Santa Clara and \$150,000 in Merced County.<sup>23</sup>

Some consider bail amounts in California to be excessively high and, consequently, they contribute to greater numbers of non-sentenced individuals in jail custody, occupying increasingly valuable jail beds. Reducing bail schedules is a strategy that some believe can play a role in reducing jail overcrowding.

## **Managing Risk During Pretrial**

In California, several mechanisms exist through which risk of public safety harm and failure to appear can be managed during the pretrial stage. Four mechanisms in California to assist with "risk management" will be discussed here: detain in custody, release on bail, release on own recognizance, and release under supervision.

<sup>23</sup> Los Angeles County Felony Bail Schedule, 2013 available at <http://www.lasuperiorcourt.org/criminal/pdf/felony.pdf>; Orange County 2013 Felony and Misdemeanor Uniform Bail Schedule available at <http://www.occourts.org/directory/criminal/felonybailsched.pdf>; Santa Barbara County Felony Bail Schedule available at [http://www.sbcourts.org/general\\_info/bailschedule/FelonyBailSched.pdf](http://www.sbcourts.org/general_info/bailschedule/FelonyBailSched.pdf); Santa Clara County Criminal Bail Schedule 2013 available at [http://www.scsccourt.org/documents/criminal\\_bail.pdf](http://www.scsccourt.org/documents/criminal_bail.pdf); County of Merced Felony Bail Schedule available at [http://www.mercedcourt.org/files/2012\\_felony\\_bail\\_sched.pdf](http://www.mercedcourt.org/files/2012_felony_bail_sched.pdf).

## Pretrial detention

Realignment is forcing counties to take a hard look at who is occupying their jail beds and as indicated above in Figure 3, the most recent data available shows that 63% of jail inmates are non-sentenced. As of September 2012, the average daily population for non-sentenced individuals in county jails was 49,704 (see Appendix E for a county listing of the number of non-sentenced individuals).<sup>24</sup>

The decision about where a person spends time between booking and a court appearance entails a balance between individual rights and public safety risk. Supporters of using detention during pretrial assert that detaining a defendant essentially eliminates the risk of harm to the public and guarantees court appearance. Those who advocate for minimizing the use of detention during the pretrial period assert that there are many consequences of that detention that can harm defendants, including hampering their ability to assist counsel in preparing a defense; thwarting their efforts to sustain employment, maintain a residence, and keep contact with family and community; and limiting access to services and treatment.<sup>25</sup> The release / detention decision is not available for all California defendants, because several categories of defendants are not eligible for pretrial release, including defendants charged with a serious or violent offense, those charged with a felony while on own recognizance release or bail release.

A body of research has examined a variety of outcomes related to the pretrial detain/release decision. Several studies over the last several decades have generally supported the findings that defendants are more likely to plead guilty if they are detained during pretrial, are more likely to be convicted, are more likely to be sentenced to prison, and are more likely to receive longer prison sentences.<sup>26</sup>

## Release on bail

Financially-based bail remains a major element of criminal justice systems in the U.S. As for commercial bail, according to an estimate by the U.S. Department of Justice, there are 14,000 bail agents across the country who secure the release of more than 2 million defendants annually.<sup>27</sup> Despite the presumption of the least restrictive conditions necessary to ensure safety and appearance in so many jurisdictions, financial conditions are still used in the majority of cases.<sup>28</sup>

Under the typical scheme, the defendant (or relative) makes a non-refundable payment to the bondsman of 10 percent of the court-imposed bail amount. The bondsman posts the remainder with the court and is vulnerable to losing it if the defendant flees. While the bondsman has the legal power to seek and seize the defendant to return him to court, the bondsman also secures against risk by demanding some collateral from the defendant or family. If a defendant is released on bail in California, there are essentially no court-imposed conditions of release prior to court appearance. However, bail bond companies have profit incentives to ensure that defendants

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<sup>24</sup> Board of State and Community Corrections, Jail Profile Survey: 2012, 3rd Quarter Survey Results (2012), available at <http://www.bscc.ca.gov/programs-and-services/iso/resources/jail-profile-survey>.

<sup>25</sup> Marian R. Williams, "The Effects of Pretrial Detention on Imprisonment Decisions," *Criminal Justice Review* (Autumn 2003), 28: 299-316.

<sup>26</sup> As summarized in Pretrial Justice Institute, *Rational and Transparent Bail Decision Making: Moving from a Cash-Based to a Risk-Based Process* (March 2012).

<sup>27</sup> BJS, Pretrial Release of Felony Defendants in State Courts, 2007.

<sup>28</sup> Pretrial Justice Institute, *Rational and Transparent Bail Decision Making: Moving from a Cash-Based to a Risk-Based Process* (March 2012).

appear in court. Proponents of bail release also assert that when there are co-signors to a defendant's bail bond, the circle of responsibility during pretrial is widened, which helps decrease failure to appear rates.

## **Release on own recognizance**

Release on own recognizance (OR) is a long-standing pretrial option available to judges in California. Increasing the use of OR release is considered one mechanism that can help alleviate the pressure on jail populations in this post-Realignment era.

In terms of eligibility for OR release, individuals who have been charged only with misdemeanors benefit from a presumption—they are entitled to OR release unless the court finds such a release would “compromise public safety” or “not reasonably assure the appearance of the defendant as required (see sidebar).” Generally, people who have been charged with non-capital crimes are eligible for own recognizance release. People who have been charged with a felony may be released on OR but at the court’s discretion, and only after prosecution has an opportunity to be heard and an open hearing is conducted. There is no presumption of pretrial release for certain offenses, including capital offenses, felonies involving acts of violence, felony sexual assault, and felonies involving threats of great bodily harm. California law is more “generous” than those states that have no presumption in favor of OR at all. But it is less “generous” in other states where the presumption of OR availability includes both broad categories of felonies as well as misdemeanors.<sup>29</sup>

### ***Release on Own Recognizance***

#### ***California Penal Code Section 1270(a)***

*Any person who has been arrested for, or charged with, an offense other than a capital offense may be released on his or her own recognizance by a court or magistrate who could release a defendant from custody upon the defendant giving bail, including a defendant arrested upon an out-of-county warrant. A defendant who is in custody and is arraigned on a complaint alleging an offense which is a misdemeanor, and a defendant who appears before a court or magistrate upon an out-of-county warrant arising out of a case involving only misdemeanors, shall be entitled to an own recognizance release unless the court makes a finding on the record, in accordance with Section 1275, that an own recognizance release will compromise public safety or will not reasonably assure the appearance of the defendant as required. Public safety shall be the primary consideration. If the court makes one of those findings, the court shall then set bail and specify the conditions, if any, where under the defendant shall be released.*

When determining whether a defendant is to be released on OR, several factors are to be considered by judges, including, 1) ties to the community, including employment and other income sources, time at residence, family attachments, and property holdings, 2) past record of

<sup>29</sup> See National Conference of State Legislatures, “Guidance for Setting Pretrial Conditions,” at <http://www.ncsl.org/issues-research/justice/guidance-for-setting-release-conditions.aspx>.

appearance at court hearings, and 3) severity of sentence faced. California counties often rely on investigative staff to recommend whether a defendant should be released on OR.

OR release is currently getting legislative attention in California. Senator Hancock has introduced multiple bills related to OR release in recent years.<sup>30</sup> The current proposal (SB 210) would expand eligibility of OR release to felony defendants who would serve time in county jail after a determination was made that a release would not compromise public safety or would not reasonably assure future court appearance.<sup>31</sup> In addition to risk of compromising public safety and failure to appear, SB 210 would expand the factors to be considered in determining pretrial release and bail to include the nature and circumstances of offense charged, history and characteristics of the defendant, whether the defendant was already on some form of supervised release, and record of past court appearances. The American Bar Association generally promotes the use of OR release and non-financial conditions in allowing pretrial release, as articulated in their standards *American Bar Association Criminal Justice: Pretrial Release, 2007*. The factors outlined in ABA standards to be considered in OR release decisions are similar to those included in Senator Hancock's bill, including the nature and circumstance of the offense, defendant's family ties, employment status, history of drug or alcohol abuse, and whether a defendant was under community supervision.

One goal of supporters of such a bill is that increasing the factors to be considered in the pretrial release decision is in line with a shift toward more risk-based pretrial release system. Using risk as part of the decision-making process, they claim, will likely increase the use of OR release relative to pretrial detention and reduce the number of individuals in county jails who have pretrial status. Opponents of such a bill claim that it will be more expensive for taxpayers, increase risk to public safety, and takes away local control of OR programs.

In California, defendants released on OR sign an agreement promising to appear in court, obey conditions imposed by the court, not leave California without the court's permission, and waive extradition if defendant fails to appear and is apprehended in another state. These conditions are required by statute, but the court can set additional conditions such as not drinking alcohol, authorizing warrantless searches, random drug and alcohol testing, and staying away from named individuals (see Appendices F and G for examples of county-specific OR conditions of release forms).

## **Pretrial release under supervision**

Supervised release during pretrial has been cited as another way in which jail populations can be reduced in a post-Realignment era. Pretrial service agencies can provide community supervision to defendants who are awaiting their court appearance. Common conditions of supervised pretrial release include regular reporting, drug and alcohol testing, and electronic monitoring.<sup>32,33</sup> It is the role of the pretrial supervising agency to inform the court about defendants' compliance with the conditions of release during the pretrial period.

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<sup>30</sup> SB 210 is the follow-up to a similar bill that was introduced by Senator Hancock during the last legislative session, SB 1180. After three readings the bill was referred to inactive file by Senator Hancock.

<sup>31</sup> As of the writing of this report, SB 210 was in the Senate Public Safety and Appropriations Committee.

<sup>32</sup> Pretrial Justice Institute, *Pretrial Services Program Implementation: A Starter Kit*, available at <http://www.pretrial.org/Featured%20Resources%20Documents/PJI-StarterKit.pdf>.

<sup>33</sup> California is one of 21 states where electronic monitoring can be a condition of pretrial release.

Pretrial service agencies can serve many functions during the pretrial phase in addition to supervision. These include conducting interviews to determine whether OR release, or bail reduction or elevation or is suitable, performing standardized screening of all defendants, verifying information collected during interviews, conducting background investigations, assessing needs for services, presenting the court with risk assessment evaluations (which are often based on validated risk assessment tools), conducting follow-up reviews for defendants who do not meet the conditions of their release, and making recommendations to the court.<sup>34</sup>

Nationally, support has been growing in recent years for pretrial services programs from professional associations, including the American Bar Association,<sup>35</sup> the National Association of Counties,<sup>36</sup> the American Jail Association,<sup>37</sup> and the American Probation and Parole Association.<sup>38</sup>

To our knowledge, there is no up-to-date, centrally-compiled inventory of the extent to which California counties offer pretrial services. According to a 2007 tally by the California Association of Pretrial Services, 13 counties had pretrial services programs<sup>39</sup> but several counties have discontinued their programs since that time, including Sacramento County, Fresno County, and Humboldt County.<sup>40</sup> However, several counties have indicated in their County Realignment Plans that they are in the process of developing a pretrial service program.<sup>41</sup>

## Effectiveness of pretrial release mechanisms

Regarding the effectiveness of the different options for pretrial release, there is limited, rigorous research on outcomes of bail release, own recognizance release, and pretrial supervision, especially in relation to the body of research on the effectiveness of risk assessment tools. A few studies with high-quality research design have shown that defendants under pretrial supervision are less likely than defendants released on own recognizance or under financial release to be arrested or fail to appear in court<sup>42</sup> and that the existence of supervision, rather than the type of supervision, can be effective at reducing re-arrest rates and failure to appear rates.<sup>43</sup>

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<sup>34</sup> *Ibid.*

<sup>35</sup> American Bar Association, *ABA Standards for Criminal Justice: Pretrial Release*, 3d ed. (2007).

<sup>36</sup> National Association of Counties, *American County Platforms and Resolutions, 2011 - 2012*, available at <http://www.naco.org/legislation/policies/Documents/American%20County%20Platform%20and%20Resolutions%20over%20page%2011-12.pdf>.

<sup>37</sup> American Jail Association, *Resolution on Pretrial Justice, 2010*, available at <http://www.pretrial.org/OurServices/Advocacy/AdvocacyDocuments/AJA%20Resolution%20on%20Pretrial%20Justice%202011.pdf>.

<sup>38</sup> APPA, *Pretrial Supervision Resolution, 2010*, available at [http://www.appa-net.org/eweb/Dynamicpage.aspx?site=APPA\\_2&webcode=IB\\_Resolution&wps\\_key=3fa8c704-5ebc-4163-9be8-ca48a106a259](http://www.appa-net.org/eweb/Dynamicpage.aspx?site=APPA_2&webcode=IB_Resolution&wps_key=3fa8c704-5ebc-4163-9be8-ca48a106a259).

<sup>39</sup> California Association of Pretrial Services, *Release Standards and Recommended Procedures 2* (2007) available at [http://pretrialservicesca.org/public/css/CAPS\\_Standards\\_022807\\_Approved.pdf](http://pretrialservicesca.org/public/css/CAPS_Standards_022807_Approved.pdf).

<sup>40</sup> Angela McCray, Kathryn McCann Newhall and Jessica Greenlick Snyder, *Realigning the Revolving Door? An Analysis of California Counties' AB 109 Implementation Plans* (Stanford Criminal Justice Center, working paper 2012) available at [http://www.law.stanford.edu/program/centers/scjc/#california\\_realignment](http://www.law.stanford.edu/program/centers/scjc/#california_realignment).

<sup>41</sup> *Ibid.*

<sup>42</sup> James Austin, Barry Krisberg, and Paul Litsky, "The Effectiveness of Supervised Pretrial Release," *Crime & Delinquency*, 31(4), (1985).

<sup>43</sup> John S. Goldkamp and Michael D. White, "Restoring Accountability in Pretrial Release: The Philadelphia Pretrial Release Supervision Experiments," *Journal of Experimental Criminology*, 2(2), (2006), 143-181.

# Sentenced Jail Population

Thus far, this paper has focused on non-sentenced populations, with an eye toward mechanisms available to criminal justice decision makers during the pretrial phase. That examination was in the context of Realignment's effect on county jail systems and the role that the non-sentenced population is playing in that context. Given that same context, the next section focuses on a few mechanisms available to local criminal justice decision makers in managing individuals who have been sentenced to county jail. For individuals who have been sentenced to time in a local jail, there are ways in which those sentences can be served beyond straight jail time. Such mechanisms are both written into law (e.g., split sentences) and deployed as a matter of local policy (e.g., release options under the jurisdiction of a sheriff's department). The list of laws and policies that shape where and for how long sentenced individuals serve their time is long, and only a select number of options are discussed here. Additional policies and practices can play a major role in the management of jail populations and are beyond the scope of this paper including a host of alternatives to incarceration.

As mentioned at the beginning of this report, topics have been selected because they are highly relevant to the management of jails, have become more salient as a result of AB 109, and are thought to be areas ripe for law and policy debate and reform. It is worth noting that the focus is on mechanisms that can impact the size of jail populations and an examination of jail conditions is beyond the scope of this paper.

AB 109 calls on each county to "reinvest its criminal justice resources to support community-based corrections programs and evidence-based practices."<sup>44</sup> A range of alternatives in support of this goal is listed in the legislation including, but not limited to, work release programs, flash incarceration, community service, electronic monitoring, mandatory substance abuse treatment programs, and day reporting.<sup>45</sup> Public Safety Realignment has increased discretion at the county 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.

That said, county-level discretion only goes so far, as California's Constitution guarantees that there be some degree of more formal and publicly visible control of sentencing outcomes under the banner of "truth in sentencing." It states that "sentences that are individually imposed upon convicted criminal wrongdoers based upon the facts and circumstances surrounding their cases shall be carried out in compliance with the courts' sentencing orders, and shall not be substantially diminished by early release policies intended to alleviate overcrowding in custodial facilities."<sup>46</sup> Said another way, while counties have been authorized to employ "new tools", their discretion in handling sentenced individuals locally is constitutionally limited.

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<sup>44</sup> California Penal Code section 17.5(a)(4).

<sup>45</sup> California Penal Code section 17.5(a)(8).

<sup>46</sup> California Constitution, Article 1, section 28.



## Split Sentences

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. As of September 2012, 3,264 individuals were under Mandatory Supervision in California.<sup>47</sup> At a state level, over the first year of Realignment, 24% of county felony sentences to local prison terms have been split, which equates to approximately 7,000 sentences (compared to 22,000 straight jail time sentences).<sup>48</sup> However, the rate of use at a state level is somewhat skewed by fact that the largest California counties are using split sentences at almost half the rate of the remaining counties. In the ten largest counties in California, 20% of local prison sentences were split, compared to 40% in the remaining 48 California counties.<sup>49</sup> The use of split sentences has varied tremendously across counties since Realignment began, ranging from a high of 94% of local prison sentences in San Benito being split to zero split sentences during the first year of Realignment in Sierra and Modoc Counties (see Appendix H for county-level data on the use of split sentences). While there is no centrally compiled data source, anecdotal information suggests that not only are there variations across counties, but within counties the extent to which individual judges issue split sentences also sees significant variation.

While there are likely several factors behind the differences in the use of split sentences, some people assert that the extent to which judges use split sentences is related to the extent to which judges have been involved with Realignment planning and implementation. The inference being that judges who have personally witnessed the effect of their decisions on the county correctional system are more likely to use split sentences. In addition, the levels of trust that judges have in their county probation department may be another factor is the decision whether or not to use split sentences.

## Electronic Monitoring

A review of County Realignment Plans finds that counties are planning to increasingly rely on electronic monitoring as a way to manage jail populations.<sup>50</sup> According to that review, 90% the County Plans reviewed reported that they were planning to use electronic monitoring, more than any other alternative sanction that was tracked. For the purpose of this paper, the discussion of electronic monitoring and its effectiveness is included in the section on sentenced jail populations. However, electronic monitoring is an option for both pretrial and sentenced populations, as AB 109 authorizes counties to offer electronic monitoring programs but only individuals being held in lieu of bail are eligible.<sup>51</sup>

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<sup>47</sup> Chief Probation Officers of California, California Realignment Dashboard available at <http://www.cpoc.org/assets/Realignment/dashboard.swf>.

<sup>48</sup> *Ibid.*

<sup>49</sup> Chief Probation Officers of California, *Split Sentencing in California Under Realignment*, CPOC Issue Brief (Winter 2012).

<sup>50</sup> Angela McCray, Kathryn McCann Newhall and Jessica Greenlick Snyder, *Realigning the Revolving Door? An Analysis of California Counties' AB 109 Implementation Plans* (Stanford Criminal Justice Center, working paper 2012).

<sup>51</sup> California Penal Code 1203.018.

### ***Electronic Monitoring in Lieu of Bail***

#### ***California Penal Code Section 1203.018***

*(a) Notwithstanding any other law, this section shall only apply to inmates being held in lieu of bail and on no other basis. (b) Notwithstanding any other law, the board of supervisors of any county may authorize the correctional administrator, as defined in paragraph (1) of subdivision (k), to offer a program under which inmates being held in lieu of bail in a county jail or other county correctional facility may participate in an electronic monitoring program if the conditions specified in subdivision (c) are met. (c) (1) In order to qualify for participation in an electronic monitoring program pursuant to this section, the inmate must be an inmate with no holds or outstanding warrants to whom one of the following circumstances applies: (A) The inmate has been held in custody for at least 30 calendar days from the date of arraignment pending disposition of only misdemeanor charges. (B) The inmate has been held in custody pending disposition of charges for at least 60 calendar days from the date of arraignment. (C) The inmate is appropriate for the program based on a determination by the correctional administrator that the inmate's participation would be consistent with the public safety interests of the community.*

Electronic monitoring is also used as a release mechanism by sheriffs' departments. The implementation of electronic monitoring programs is typically handled by private companies. The relatively lower cost to taxpayers of electronic monitoring in comparison to in-custody detention is an oft-cited benefit of its supporters. Other benefits cited by supporters are the reduction in the risk of public safety harm and the potential for offenders to better maintain ties with their families, communities, and employers. In contrast, critics of electronic monitoring assert that it can be easily disabled and can result in high rate of false alarms, and that its credibility can be weakened as offenders learn that violations are not always addressed.

And again, the extent to which counties are using electronic monitoring as a population management tool varies significantly. Riverside is using some of its AB 109 funding to expand their electronic monitoring program; Los Angeles County has used the technology very little on their pretrial and sentenced populations; and in Amador County the Probation Department runs the EM program, even for the Sheriff's parole.<sup>52</sup>

The effectiveness of electronic monitoring as a risk management tool is hard to summarize, since it has a variety of uses within the criminal justice system, including as part of a sentence of probation, during pretrial detention, restraining orders in domestic violence, and early release of prisoners. Recent research shows mixed results in its effectiveness in reducing recidivism, a common outcome measure for the technology.<sup>53</sup> One of the few assessments of electronic monitoring in the pretrial context concluded that it appears to be at least as effective as monetary bail in terms of guaranteeing court appearance. That same review, however, cautions that there is not enough

<sup>52</sup> Mark Feldman, *Realignment: The Sheriff's Perspective* (Stanford Criminal Justice Center, working paper, Mar. 4, 2013).

<sup>53</sup> John Roman, Akiva Liberman, Samuel Taxy, and P. Mitchell Downey, *The Costs and Benefits of Electronic Monitoring for Washington, D.C.*, The District of Columbia Crime Policy Institute and The Urban Institute (September 2012).

high-quality empirical research to draw strong conclusions about the use of electronic monitoring in pretrial settings.<sup>54</sup>

In terms of using electronic monitoring with sentenced populations, one review concluded that the use of electronic monitoring as a tool for reducing crime is not supported by the existing research, especially given its continued and widespread use.<sup>55</sup> Another review concluded that, while electronic monitoring does not have a statistically significant effect on recidivism rates, it has shown to be a cost-effective alternative to such other criminal justice options as incarceration.<sup>56</sup>

## Day Reporting

Day reporting centers are often described as “one-stop” centers for programs, services, and supervision. Individuals can receive access to educational programs, employment assistance, and tutoring, among other services. Thirty-three counties are using Realignment funding for day reporting centers.<sup>57</sup> Counties that have plans to begin or expand day reporting include Humboldt, Tuolumne, Sacramento, Butte, Merced, Kern, Lake, Madera, Napa, Orange, and Yuba.<sup>58</sup> Currently there is no research-based consensus on the effectiveness of day reporting, as the wide range of services, differences in structure, and eligible participants make it very difficult to draw any broad-based conclusions.

## Early Release

Crowded jails and population caps were part of California’s county criminal justice systems long before Public Safety Realignment, and one mechanism sheriffs’ departments have traditionally used to adhere to population caps is an early release policy. Predating Realignment, the state’s Jail Profile Survey has required counties to report the number of individuals that they release early because of lack of housing capacity. In the months leading to the start of Realignment (July to September 2011), 3,838 sentenced offenders and 7,395 presentenced defendants were released early each month (see Figure 4).<sup>59</sup> Early release policies have become an increasingly important mechanism for counties struggling with jail overcrowding since the start of Realignment. Between July and September 2012, the most recent period for which data are available, counties reported releasing 6,000 *sentenced* offenders and 8,011 *presentenced* defendants early each month. The number of monthly early releases of *presentenced* individuals has slightly increased since the start of Realignment (up 8%) but number of monthly early releases for *sentenced* individuals has increased by a remarkable 56% in one year.

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<sup>54</sup> Samuel R. Wiseman, *Pretrial Detention and the Right to be Monitored* at 25, forthcoming Yale L.J. (2013), available at [http://papers.ssrn.com.ezproxy.stanford.edu/sol3/papers.cfm?abstract\\_id=2238639](http://papers.ssrn.com.ezproxy.stanford.edu/sol3/papers.cfm?abstract_id=2238639).

<sup>55</sup> Marc Renzema and Evan Mayo-Wilson, “Can electronic monitoring reduce crime for moderate to high-risk offenders?” *Journal of Experimental Criminology* (2005) 1: 215–237.

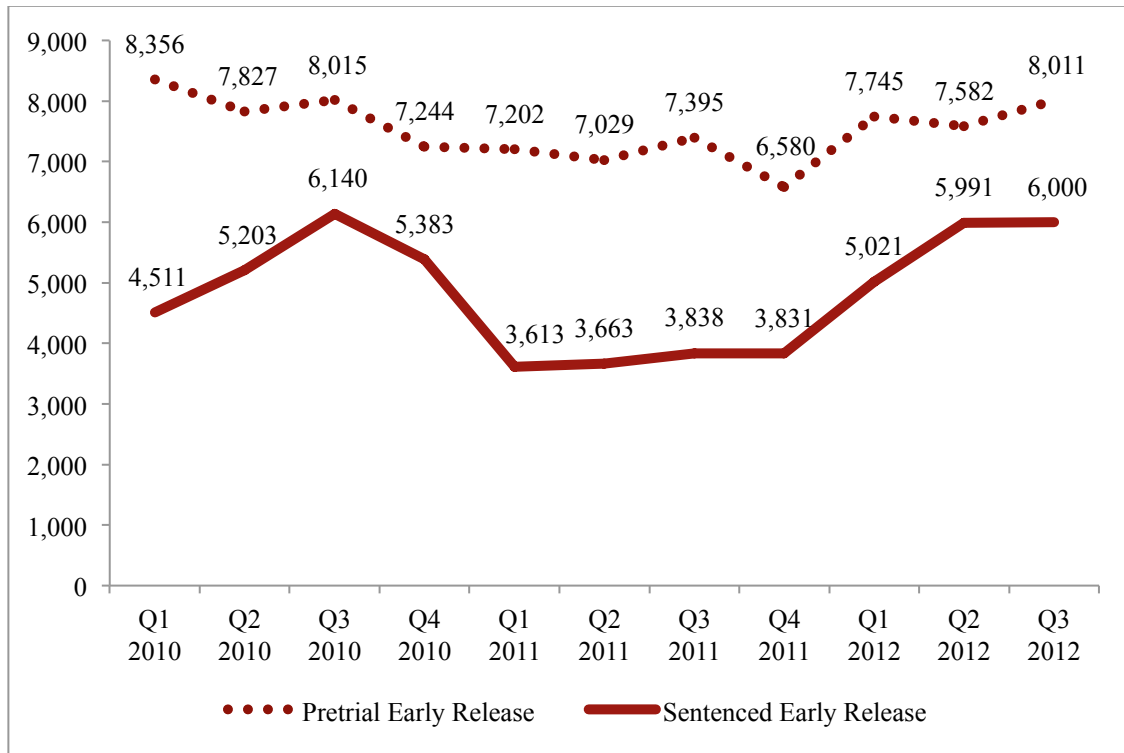
<sup>56</sup> Elizabeth K. Drake, Steve Aos, and Marna G. Miller, “Evidence-Based Public Policy Options to Reduce Crime and Criminal Justice Costs: Implications in Washington State,” *Victims and Offenders*, 4:170–196, 2009.

<sup>57</sup> Joan Petersilia and Jessica Greenlick Snyder, “Looking Past The Hype: 10 Questions Everyone Should Ask About California’s Prison Realignment,” *Calif. J. Politics Policy* 2013; 5(2): 266–306.

<sup>58</sup> ACLU of California, *Public Safety Realignment: California at a Crossroads* (March 2013).

<sup>59</sup> Board of State and Community Corrections, Jail Profile Survey data available at <http://www.bscc.ca.gov/programs-and-services/fso/resources/jail-profile-survey>.

**Figure 4. Monthly Early Releases from Jail Due to Lack of Housing Capacity**  
1<sup>st</sup> Quarter 2010 to 3<sup>rd</sup> Quarter 2012



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

The approach that counties take in determining who should be released first varies greatly from county to county. Early release policies typically outline the order in which individuals in custody will be released early. In Fresno County, the ranking is based on whether an individual is non-sentenced or sentenced, has been convicted or charged with a misdemeanor versus a felony, or is a parole violator.<sup>60</sup> Los Angeles County Sheriff’s Department has plans to use the Correctional Offender Management and Profiling Alternative Sanctions (COMPAS) tool to assess which individuals should be released first as part of early release.<sup>61</sup> When San Bernardino County began releasing inmates early in 2011 they prioritized parole violators and non-violent offenders who had served at least half of their sentence and had less than 30 days remaining on their sentence.<sup>62</sup> In Kings County, pretrial defendants who have bail set below a threshold amount are automatically released when the jail’s population is at capacity.<sup>63</sup>

<sup>60</sup> Fresno County Sheriff’s Office, “Criteria for Inmate Release from Custody Pursuant to Federal Court Order”.  
<sup>61</sup> Song, Jason, *L.A. County computer screening could produce get-out-of-jail card*, L.A. Times (August 31, 2012).  
<sup>62</sup> Winton, *San Bernardino County Begins Releasing Inmates Early*, L.A. Times (December 9, 2011).  
<sup>63</sup> Little Hoover Commission, letter to Governor Brown and the Legislature on Bail and Pretrial Services, May 30, 2013 available at <http://www.lhc.ca.gov/studies/216/Report216.pdf>.

## Increasing Jail Capacity

Jail capacity in California continues to expand. State funding from AB 900 and AB 109, as well as county funding are being used to support this expansion. AB 900 was signed into law in 2007 and authorized \$1.2 billion in state lease-revenue bond financing for county jail construction.<sup>64</sup> Funding is being released in two phases and counties must provide matching funds for some of the project costs. Twenty-two counties have conditional funding either through Phase I, Phase II, or both. As of January 2013, just over \$774 billion has been awarded which is funding 4,882 additional beds from Phase I funding and 5,946 additional beds from Phase II funding.<sup>65</sup> According to one assessment, approximately \$45 million in Realignment funding from 25 of the largest California counties will add an additional 7,000 new jail beds.<sup>66</sup> In addition to state funding, many California counties are using local funds to expand jail capacity.

## Conclusion

Since Public Safety Realignment implementation began in October 2011, California's criminal justice system has experienced remarkable change along a variety of dimensions. This paper examines some of the mechanisms available to criminal justice decision makers in managing county jail populations. Indeed, even in the context of this more narrowly-defined topic, a thorough examination of all of the salient issues is not possible.

The purpose of this paper is to lay a foundation of information for the first meeting of the Stanford Criminal Justice Center's Executive Session on the Front-End Issues of Public Safety Realignment, so meeting participants are starting from a shared knowledge base. To reiterate, the issues discussed above were selected because they are considered to play an important role in the management of jails, have been directly affected by AB 109 or have newly emerged as a result of the new regime, and are thought to be ripe subjects for law and policy debate and reform. Future meetings of the Executive Session will provide opportunities to confront other, pressing topics related to Public Safety Realignment.

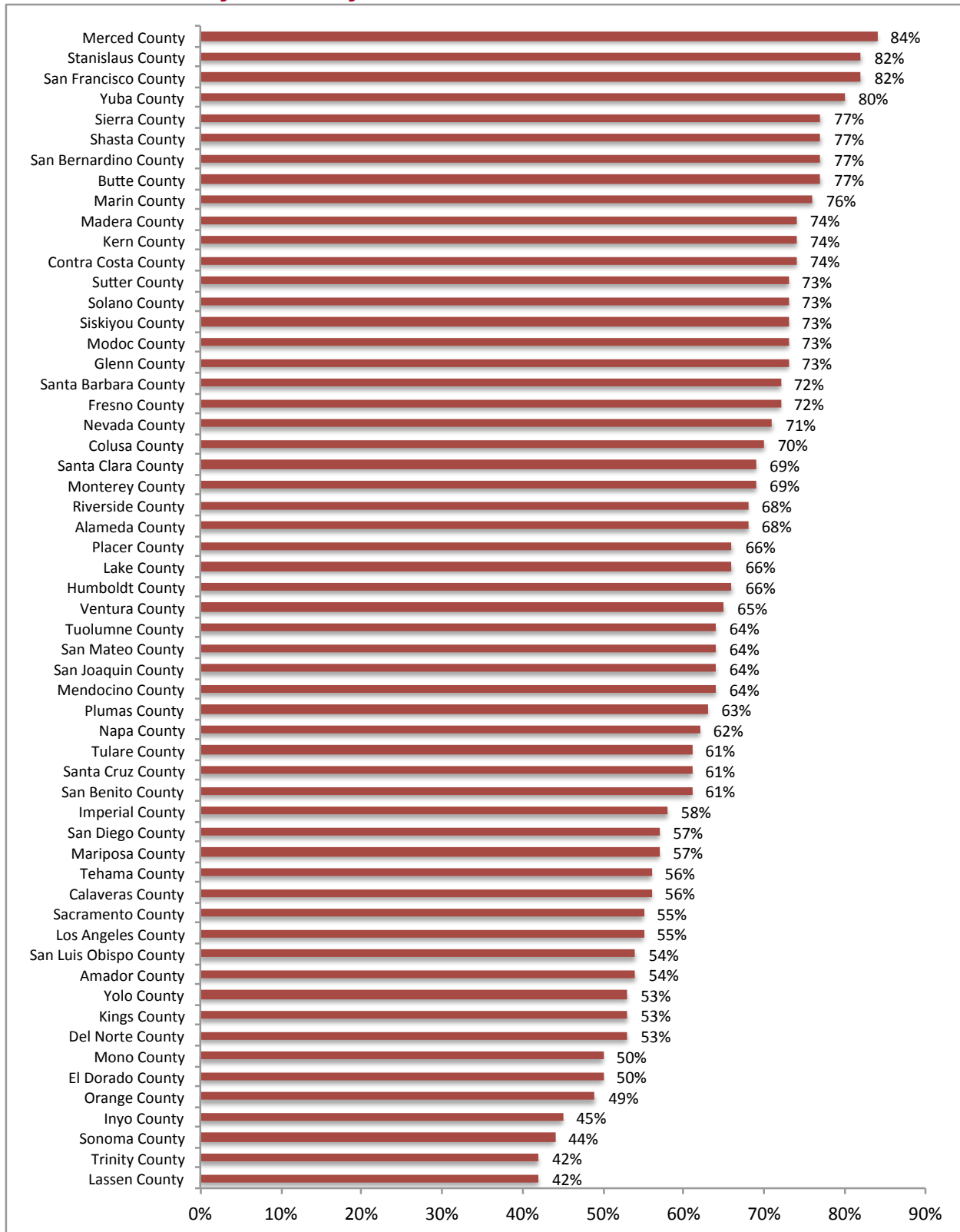
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<sup>64</sup> Board of State and Community Corrections, *AB 900 Jail Construction Financing Program: Project Status Update - Phases I and II* (January 25 2013).

<sup>65</sup> *Ibid.*

<sup>66</sup> ACLU of California, *Public Safety Realignment: California at a Crossroads* (March 2012).

## Appendix A: Share of jail population that is non-sentenced by county, 3<sup>rd</sup> Quarter 2012



## Appendix B: Number of sentenced long-term offenders by county

	Sentenced to 5 to 10 Years	Sentenced to More than 10 Years	Total Long-Termers thru Feb 2013
Alameda	10	0	10
Amador	0	0	0
Butte	23	0	23
Calaveras	1	0	1
Colusa	1	0	1
Contra Costa	0	0	0
Del Norte			0
El Dorado	6	0	6
Fresno	10	1	11
Glenn	0	0	0
Humboldt	0	0	0
Imperial	6	1	7
Inyo	0	0	0
Kern	54	1	55
Kings	0	1	1
Lake	10	1	11
Lassen	0	0	0
Los Angeles	389	20	409
Madera	3	1	4
Marin	0	0	0
Mariposa	0	0	0
Mendocino	3	0	3
Merced	3	0	3
Modoc			0
Mono	1	0	1
Monterey	12	0	12
Napa	6	0	6
Nevada	2	0	2
Orange	24	5	29
Placer	9	0	9
Plumas			0

	Sentenced to 5 to 10 Years	Sentenced to More than 10 Years	Total Long-Termers thru Feb 2013
Riverside	62	1	63
Sacramento	26	2	28
San Benito	6	0	6
San Bernardino	105	0	105
San Diego	145	2	147
San Francisco	0	0	0
San Joaquin	8	0	8
San Luis Obispo	15	1	16
San Mateo	4	0	4
Santa Barbara	13	1	14
Santa Clara	25	0	25
Santa Cruz	13	0	13
Shasta	14	1	15
Sierra	0	0	0
Siskiyou	1	0	1
Solano	22	1	23
Sonoma	5	1	6
Stanislaus	20	0	20
Sutter			0
Tehama	20	0	20
Trinity			0
Tulare	2	0	2
Tuolumne	3	0	3
Ventura	11	2	13
Yolo	15	1	16
Yuba	1	0	1
Total	1109	44	1153

Source: California State Sheriffs' Association, *Survey on Long Term Offenders in Jail* (February 2013.)



# Appendix C: Virginia Pretrial Risk Assessment Tool

Source: Marie VanNostrand, *Assessing Risk Among Pretrial Defendants in Virginia*, Virginia Department of Criminal Justice Services.

Instrument Completion Date \_\_\_\_\_  
First Name \_\_\_\_\_ Last Name \_\_\_\_\_ Race \_\_\_\_\_  
SSN \_\_\_\_\_ Sex \_\_\_\_\_ DOB \_\_\_\_\_  
Arrest Date \_\_\_\_\_ Court Date \_\_\_\_\_  
Charge(s) \_\_\_\_\_  
Bond Type \_\_\_\_\_ Bond Amount \_\_\_\_\_

## Risk Factors

1. Charge Type                      Felony or Misdemeanor
2. Pending Charge(s)              Yes or No
3. Outstanding Warrant(s)        Yes or No
4. Criminal History                Yes or No
5. Two or More Failure to Appear Convictions              Yes or No
6. Two or More Violent Convictions              Yes or No
7. Length at Current Residence              Less than 1 Year or 1 Year or More
8. Employed/ Primary Child Caregiver              Yes or No
9. History of Drug Abuse              Yes or No

## Risk Level

1	2	3	4	5
Low		Average		High

Risk Factor(s) \_\_\_\_\_  
\_\_\_\_\_  
Comments/Recommendations \_\_\_\_\_  
\_\_\_\_\_

# Appendix D: Ohio Risk Assessment System: Pretrial Assessment Tool

Source: Christopher T. Lowenkamp, Edward Latessa, and Richard Lemke, *Ohio Pretrial Risk Assessment Tool Scoring Guide*.

NAME: \_\_\_\_\_ DATE OF OFFENSE: \_\_\_\_\_  
CASE NUMBER: \_\_\_\_\_ DATE OF ASSESSMENT: \_\_\_\_\_  
BOND AMOUNT: \_\_\_\_\_ COURT DATE: \_\_\_\_\_

Verified

	<p>1. What was the age of the defendant at first arrest? If unknown, use first conviction  0 = If the defendant was 33 or older  1 = If the defendant was 32 or younger</p>	
	<p>2. Does the defendant have two or more prior failure to appear warrants filed?  0 = No  1 = Yes      How many of these were willful FTA: _____</p>	
	<p>3. How many failure to appear warrants have been filed in the last 24 months?  0 = None  1 = A single failure to appear in the last 24 months  2 = Two or more failure to appears in the last 24 months</p>	
	<p>4. Did the defendant have three or more prior jail incarcerations?  0 = No  1 = Yes      Number of Prior Prison incarcerations: _____</p>	
	<p>5. Was the defendant employed at the time of arrest?  0 = Defendant is employed full time/disabled/retired/student (31+ hours)  1 = Defendant is employed part time (10-30 hours)  2 = Defendant is unemployed  Defendant on public welfare?: _____  Job start date was within 6 months: _____</p>	
	<p>6. Any illegal drug use in the last 6 months?  0 = No  1 = Yes</p>	
	<p>7. Defendant self reported severe drug related problems?  0 = No (1-3)  1 = Yes (4-5)</p>	
	<p>8. Has the defendant lived at the current residence for 6 months or more?  0 = Yes  1 = No  Is the current residence within the assessor's jurisdiction?</p>	
	Total Score:	

A score of 0-3 = Low Risk  
A score of 4-7 = Medium Risk  
A score of 8-10 = High Risk

## Appendix E: Number of non-sentenced individuals in jail, 3<sup>rd</sup> Quarter 2012

Alameda County	2,315
Amador County	58
Butte County	453
Calaveras County	39
Colusa County	47
Contra Costa County	1,182
Del Norte County	43
El Dorado County	172
Fresno County	1,801
Glenn County	72
Humboldt County	241
Imperial County	312
Inyo County	31
Kern County	1,926
Kings County	264
Lake County	193
Lassen County	48
Los Angeles County	9,651
Madera County	340
Marin County	239
Mariposa County	21
Mendocino County	167
Merced County	669
Modoc County	15
Mono County	17
Monterey County	748
Napa County	154
Nevada County	141
Orange County	3,264

Placer County	399
Plumas County	28
Riverside County	2,647
Sacramento County	2,315
San Benito County	80
San Bernardino County	4,204
San Diego County	2,944
San Francisco County	1,235
San Joaquin County	868
San Luis Obispo County	342
San Mateo County	625
Santa Barbara County	728
Santa Clara County	2,552
Santa Cruz County	263
Shasta County	211
Sierra County	3
Siskiyou County	68
Solano County	681
Sonoma County	463
Stanislaus County	944
Sutter County	198
Tehama County	108
Trinity County	24
Tulare County	1,007
Tuolumne County	83
Ventura County	1,039
Yolo County	232
Yuba County	333

# Appendix F: Tuolumne County Conditions of Release on Own Recognizance

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF TUOLUMNE  
CONDITIONS OF RELEASE ON OWN RECOGNIZANCE

1. Defendant shall not use nor possess any:
  - controlled substances without a prescription from a medical doctor;
  - alcoholic beverages;
  - firearms or any weapon described in Section 12020(a) of the California Penal Code.
  
2. Defendant, including his/her person, residence, vehicle, place of employment and any containers or areas subject to his/her immediate control, shall be subject to search by a Peace Officer as follows for:
  - controlled substances and paraphernalia;
  - stolen property;
  - firearms or illegal weapons.
  - other: \_\_\_\_\_
  
3. Defendant shall be subject to blood, breath, or urine testing at any time by a Peace Officer for the presence of:
  - controlled substances;
  - alcohol.
  
4. Defendant shall attend AA/NA meetings, or some other form of alcohol or drug abuse counseling, at least \_\_\_\_\_ times per week and show proof to the Court at each scheduled court hearing.
  
5. Defendant shall comply with all existing court orders, including any criminal protective orders.
  
6. Other: \_\_\_\_\_

I have read, understand, and agree to the above-referenced conditions of my release.

Dated: \_\_\_\_\_ Defendant: \_\_\_\_\_

CONDITIONS ON RELEASE ON OWN RECOGNIZANCE

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Form Adopted for Mandatory Use - Local Rules of the Superior Court of California

TUO-CR-425

# Appendix G: Riverside County Conditions of Release on Own Recognizance

## AGREEMENT FOR OWN RECOGNIZANCE RELEASE

I AGREE TO ALL OF THE FOLLOWING CONDITIONS OF A RELEASE ON MY OWN RECOGNIZANCE:

1. I will appear in person at all times and places as ordered by this court and as ordered by any court in which the charge is subsequently pending;
2. I will obey all conditions imposed by the Court;
3. I promise not to depart this state without permission of the court;
4. I WAIVE EXTRADITION if I fail to appear as ordered by the court and am apprehended outside of the State of California;
5. The court may revoke the order for my release on my own recognizance, at its discretion, and either return me to custody or require that I give bail or other assurance for my appearance; and
6. I promise to obey the following additional conditions of my release:

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7. I understand that this release is subject to any and all conditions previously imposed by the Pretrial Services Officer.

**I acknowledge that I have been informed and understand that:**

- (1) Noncompliance with any of the above-stated conditions will result in a report of the violation to the court and the issuance of a bench warrant for my arrest (P.C. §§ 978.5, 1043, 1038);
- (2) Any person who is charged with the commission of a misdemeanor who is released on his/her own recognizance and who willfully fails to appear as agreed is guilty of a separate misdemeanor punishable by imprisonment in the County Jail not exceeding 6 months, or by a fine up to \$1,000, or by both;
- (3) Any person who is charged with the commission of a felony who is released on his/her own recognizance and who for willfully fails to appear as agreed is guilty of a separate felony punishable by imprisonment in the state prison not more than 3 years, or by a fine up to \$10,000, or by both;
- (4) I will abide by any additional special conditions imposed, as ordered by the court, and indicated in section 6 above.

Defendant's Signature:

Street Address:

City, State, Zip:

Telephone Number:

Witness to Signature:

Riverside Superior Court RI-CR013 [Rev. 7/12]

California Penal Code §1318-1320

## Appendix H: Share of local prison sentences that are split sentences, Oct. 2011–Sept. 2012

