



Little Hoover Commission

Written Testimony for Hearing on Criminal Justice Sentencing

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Thank you for the opportunity to offer input on criminal justice sentencing in California as you study the issue. The past five years have brought significant changes to California's corrections system, including Public Safety Realignment. The state can, and should, take advantage of the opportunities these recent changes create to advance smart justice strategies that increase public safety and reduce costs.

Part of advancing smart justice will require a new conversation about safety – one that focuses on facts over hyperbole. More than ever, we need to deeply understand the drivers of crime, the best strategies to prevent and stop the cycle of crime, and the most effective investments to create safe communities.

The following provides information about historical challenges caused by California's sentencing schemes, post-Realignment risks and opportunities, and lessons from other states that can help inform California's path to strengthening public safety. I have also included a brief summary of information that we have gathered on public opinion about these matters.

I. Sentencing: A Driver of High Incarceration and Recidivism Rates – and High Costs

Beginning in 1977 with the creation of determinate sentencing, significant changes in California's sentencing laws in the 1980s, 1990s and beyond increased the number of people incarcerated and contributed to severe prison overcrowding.

Determinate sentencing limited judicial discretion in favor of mandatory terms and discounted rehabilitation as an aim of the criminal justice system. In the decades that followed the implementation of determinate sentencing, hundreds of new "tough on crime" regulations passed into law.ⁱ New laws increased the number of felony crimes, the length of incarceration terms, and the number of people incarcerated and on parole. One study found that the average person released from California prison in 2009 had served 51 percent longer than the average person released in 1990.ⁱⁱ

Notably, the recidivism rate for individuals coming out of state prison in California hovered about 70 percent, what many have called the highest rate in the nation. With more than two out of three people returning within three years of release, increasing the number of felonies and the length of most prison terms did not result in reduced repeat offending.ⁱⁱⁱ

Mandatory and lengthy prison term sentencing also resulted in an overemphasis of expenditures on incarceration and fewer resources available for other crime-reduction strategies and non-incarceration-based sanctions.

For example, despite the fact that the majority of people in the justice system serve all or part of their term on probation, historically probation has been an under-resourced and often overlooked component of the justice system. Between 1980 and 2010, the adult probation population increased 118 percent. Over the same period, the prison population increased by more than five times the rate of probation (572 percent).

The disproportionate growth in incarcerated populations has required larger shares of state and county revenues and limited the capacity of state and local correctional agencies to provide programs to reduce recidivism. California's corrections budget grew by more than 1500 percent from 1981 to 2011.^{iv} Meanwhile, the proportion of county probation costs covered by the state declined precipitously, from more than half in the mid-1970s to less than 10 percent in the early 1990s. This divestment reduced probation's capacity to provide effective supervision, contributing to the cycle of crime and incarceration.^v Increased public expenditures on corrections also contributed to a decline in resources for higher education, social services, health, and other programs that support community stability and safety.^{vi}

II. Recent Changes in Sentencing Laws: Reducing State Prisoners, Improving Community Corrections

California's prison population reached its height in 2006 with 173,479 people – twice the number prison facilities were designed to house. Increasing costs and lawsuits spurred attention to other strategies, which led to declines in prison growth.^{vii} Since its height in 2006, California's prison population has dropped by more than 40,000 people.^{viii} Three primary changes in the law contributed to this drop: the Performance Incentives Act of 2009 (SB 678), the implementation of non-revocable parole in 2010, and 2011's Public Safety Realignment (AB 109).

As the Commission knows, Public Safety Realignment, the most sweeping of the three changes, shifts the management of people convicted of specified non-serious, non-sex, nonviolent offenses from state prison and parole to county jails and probation. The prior year, the creation of non-revocable parole (NRP)^{ix} aimed to reduce the flow of low-level parolees cycling back into state prison for technical parole violations at great cost to taxpayers. Prior to NRP, California had some of the most sweeping parole regulations in the country, placing everyone on parole regardless of circumstance.^x

A central policy change that has provided California with a major opportunity to reverse the decades of divestment from community corrections is the Performance Incentives Act of 2009 (SB 678). This legislation is an example of a trend emerging in other states: the use of incentives to reduce probationer recidivism rates and state prison commitments and costs.

Prior to SB 678, the California Department of Corrections and Rehabilitation estimated that 40 percent of new prison admissions annually were people who had violated their terms of county probation. Authored by Senators Leno (D-San Francisco) and Benoit (R-Riverside), SB 678 aimed to reduce that number by offering to provide county probation departments with funding (50 percent of the cost of housing violators in state prison) for each year that

fewer adult felony probationers failed probation and were sent to state prison.^{xi}

SB 678 improved community corrections in California and probation departments' use of "evidence-based practices." As the Commission knows, community corrections refers to the supervision of individuals in a community setting rather than in a prison or jail. The most common type of community corrections in California is supervision through county probation, but it can also include supervision through diversion programs, state parole and other non-incarceration-based sanctions.

"Evidence-based" practices are practices that use research and the best available data to appropriately target programs to specific populations to reduce the risk of repeat offenses. Generally, the lower the individual's risk, the less supervision and programming is required to reduce recidivism. Higher-risk individuals require more intensive supervision and programming, including behavioral health programs, drug and alcohol treatment, and training programs to prepare individuals for employment or educational opportunities.

According to the National Institute of Corrections and the Crime and Justice Institute at Community Resources for Justice, there are eight evidence-based principles that apply to community corrections, a key component of which is the use of actuarial risk-assessment instruments. These instruments assess each individual's actuarial risk to re-offend and their need for services, so that interventions can be targeted based on risk and characteristics. Evidence-based practices also focus on enhancing probationers' intrinsic motivation to change; engaging high-risk individuals in structured, pro-social activities; offering positive reinforcement for progress made; and linking individuals to community support. Equally important as risk assessment is constant measurement of practices and outcomes; and the use of data for ongoing improvement.

III. Post-Realignment Risks and Opportunities

California faces three risks in a post-Realignment implementation era. The first risk is failing to adequately develop evidence-based community corrections, such that we have the right mix of sanctions, supervision and programs in place to hold individuals accountable and stop the cycle of crime. Moving from a prison-first framework to a model that emphasizes local strategies requires that we thoroughly develop effective alternatives to incarceration, evidence-based practices, and treatment and rehabilitation programs. We need to invest in building community corrections capacity locally.

The second risk is that we leave incomplete the work of sentencing reform that is required to strengthen our criminal justice system. The prior decades of ever-growing incarceration terms and prison felonies were both ineffective and unsustainable. Realignment shifted the state back to a local corrections-focused system, but the sentencing scheme remains largely intact. We need to match our new direction in corrections with a more thorough revamp of the sentencing laws that do not serve our ability to effectively reduce recidivism.

The third risk is that instead of strengthening community corrections and improving sentencing laws we blame Realignment and other recent policy changes for public safety challenges. We should not revisit politically driven approaches to justice policy that drove the "tough on crime" drumbeat. The public is ready for, and deserves, a data-driven and rational conversation about justice policy.

With counties still adjusting to Realignment implementation, it is crucial that leaders take the opportunity to join together and prioritize the best strategies to move forward safely and effectively. There are many examples of new innovation emerging at the local level to strengthen community corrections and maximize public safety resources. Below are just a few examples that point toward the direction California corrections should move.

- San Diego's Probation Department joined forces with University of California, San Diego to create an Evidence-Based Practices (EBP) Leadership Academy for managers in the adult probation division, who then passed on what they learned about risk assessment, motivational interviewing and case planning to their staffs. Probation caseloads are now assigned by risk, no longer by charge. San Diego Probation also worked with the county health department to place high-risk probationers in substance abuse and behavioral and mental health programs at regional recovery centers around the county. The Department expanded this initiative to offer treatment and programming to people on post-release community supervision as part of Realignment.^{xii}
- Napa County began a day reporting center in 2000 to help address jail pressures and has since seen its pretrial detention rate drop below the state average as a result of sending eligible defendants to day reporting instead of jail. Day reporting is a program that can closely monitor individuals (sentenced or not) via frequent check-ins, ongoing drug and alcohol testing, and case management. These centers can be a program hub (such as life skills and employment readiness classes, mental and behavioral health rehabilitation, and substance abuse treatment) and can provide supervision to individuals completing a split sentence, those sentenced to day reporting only or to people awaiting trial.^{xiii}
- San Joaquin County is creating a reentry court to reduce recidivism and revocations for those at the highest risk of returning to jail. Participants appear in court weekly, and a case manager works collaboratively with the court and community organizations to ensure appropriate substance abuse, mental health treatment and other rehabilitative programs are tailored to ensure that individuals stay on the right path. Studies show this model can reduce recidivism substantially.^{xiv}
- Marin County's Probation Chief used SB 678 funds to hire "recovery coaches," who work around the clock to mentor individuals through the recovery process and help them access treatment, employment, education, housing and health care. Three recovery coaches have provided intensive support to more than 100 probationers.
- Marin and San Francisco Counties have also initiated an innovative reentry program with CDCR to take custody of individuals who will be on PRCS 60 days before their release from prison. Those individuals will spend the end of their term in the county jail, where the jail's reentry coordinator and probation officers will work closely with them to prepare for their reentry into the community. This practice will ensure that the individuals' circumstances and needs have been assessed and can be met seamlessly when they are released.^{xv}
- Fresno Probation initiated a low-cost telephone reporting system for low-risk probationers that allowed the county to reduce caseloads and focus resources on higher-risk individuals. This included devoting SB 678 funds to create a day reporting

center, which offers substance abuse treatment, counseling, cognitive behavioral therapy and vocational and life-skills training. Based on data about which populations re-offend most, Fresno created a Youthful Offender caseload that requires individuals to participate in Thinking for a Change (a cognitive behavioral course) and other programs.

IV. Looking Outside California: Emerging Themes in Criminal Justice Reform

Another opportunity is to take a close look at trends emerging in other states to evaluate the potential for other models to work for California. Two states in particular have focused on incentives-based reforms to reduce recidivism and corrections costs, Ohio and Illinois.

In 2011, Ohio enacted HB 86, “Probation Improvement and Incentive Grants,” which invests in community corrections programs to reduce revocations and new commitments to correctional facilities. As part of the bill, the Department of Corrections and Rehabilitation is required to evaluate and measure the effectiveness of policies, practices and programs that receive subsidies.^{xvi}

Ohio courts, correctional facilities and probation and parole boards are also required to use a uniform assessment tool for all adult offenders.^{xvii} By establishing an impartial and uniform tool to be used across the board, the tool represents a deliberate shift towards an approach grounded in evidence-based research. These reforms are expected to reduce prison costs by \$78 million per year.^{xviii}

Redeploy Illinois, established under their “Crime Reduction Act” (Senate Bill 1289), is another example of using performance-based funding incentives to improve criminal justice practices. Incentive funds are directed towards local programs, such as risk assessment, electronic monitoring and drug testing and treatment.^{xix}

Ten pilot counties were given planning grants and worked with the Illinois Criminal Justice Information Authority to create strategic plans that required localities to provide information on targeted populations, planning partners, gaps in services/sanctions, a description of proposed alternatives to incarceration, a timeline and a detailed project budget. Localities received funding incentives and technical assistance if they agreed to reduce the number of people remanded to the Department of Corrections control by 25 percent. The initiative has already saved an estimated \$16.1 million. The success of the program has hinged on its model of engaging stakeholders throughout the implementation process, and ensuring that assessment tools and performance measures are utilized to capture relevant data.^{xx}

In other states, California can find additional laws that strength public safety approaches:

- **Evidence-Based Practices** (the application of methods proven by research to achieve verifiable outcomes in criminal justice practices) can result in sustained reductions in recidivism rates and justice system costs. Example states that have required that criminal justice expenditures be used for evidence-based practices include: Arizona (SB 1476), Arkansas (SB 750), Colorado, Illinois (SB 1289), Kansas (SB 14), Kentucky (HB 483), Ohio (HB 86), Pennsylvania, South Carolina (S 1154), Texas (SB 1055), Washington, West Virginia.^{xxi}
- **Sentencing Commissions** can be used to update and improve penal code and justice

practices, typically serving as independent agencies staffed by experts. Example states that have used commissions include: Alabama, Arkansas, Connecticut, Delaware, Washington DC, Illinois, Kansas, Louisiana, Maryland, Massachusetts, Minnesota, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Utah, Virginia, Washington State.

- **Mandatory Minimums** have been eliminated or altered in several states to give courts leeway in certain cases or to reduce penalties for certain crimes, especially nonviolent drug and property crime, with examples include: Connecticut, Delaware, New Mexico, Maine, Minnesota, New Jersey, Missouri, Georgia and Arkansas.^{xxii}
- **Probation Reforms**, especially expanding probation resources and capacity, have taken place in states such as: Arizona, Arkansas, Colorado, Georgia (HB 1176), Kentucky (HB 483), Michigan, Missouri, Nebraska, Ohio, Pennsylvania, Texas, and Vermont.^{xxiii}

V. Public Attitudes about Sentencing in California

Public opinion research tells us that California leaders can go further with justice policy reform and implement strengthened community corrections and new approaches to sentencing. There is a growing body of research that Californians are aware of and opposed to costly and ineffective public safety strategies. The following are some examples based on surveys that we have commissioned since the summer of 2012.

- **Three Strikes:** A survey^{xxiv} of 1,301 Californians who voted in the November 2012 election found support for reforming Three Strikes across all political parties and demographics, and two main reasons emerged for support of the change: eliminating unnecessary and ineffective life sentences for non-violent, non-serious crimes; and saving California millions of dollars every year by reducing the amount of prison resources devoted to warehousing non-violent offenders. Three out of four voters stated that “Prop 36 is a good start, but we still need more changes to make California’s prison and justice systems more fair, more effective and less costly.”
- **Other Reforms:** We have also found that an overwhelming majority of people believe that California’s criminal justice system needs reforming,^{xxv} with specific support for allowing courts to require that people await trial in the community through monitoring and supervision instead of in jail;^{xxvi} reducing simple drug possession from a felony to a misdemeanor;^{xxvii} expanding sentencing discretion and allowing judges to determine the appropriate length for sentences;^{xxviii} strengthening earned time credit for those who maintain good behavior and follow the rules of their sentence;^{xxix} and making elderly, low-risk prisoners who have not been sentenced to life in prison eligible for release.^{xxx}
- **Crime Victims’ Opinions:** In April 2013, we surveyed California crime victims^{xxxi} and found that more of them believe we send “too many” people to prison than “too few”; want a focus on supervised probation and rehabilitation by a two-to-one margin over prisons and jails; prefer investments in mental health and drug treatments by a three-to-one margin over incarceration; and believe that prisons either make inmates better at committing crimes or have no impact at all (three in four).

In Closing

Other states – as well as counties here in California – show us the way out of our incarceration crisis. Prison overcrowding in our state was decades in the making, so it will not be quickly remedied, but proven solutions do exist that will help us safely reduce incarceration rates and their costs, while improving public safety. This includes strengthening community corrections and performance-based probation efforts and fixing our outdated sentencing laws. We hope the Commission will build on its impressive recommendations to the state on how it can reform its justice system, and we hope state lawmakers are wise enough to listen to and implement those recommendations. Thank you for your time.

ⁱ “Solving California’s Corrections Crisis,” Little Hoover Commission, pages 35 and 68, 2007.

ⁱⁱ “Time Served: The High Cost, Low Return of Longer Prison Terms,” Pew Center on the States, page 3, 2012.

ⁱⁱⁱ “2012 Outcome Evaluation Report,” California Department of Corrections and Rehabilitation, October 2012.

^{iv} “Budget Background: Making Dollars Make Sense,” California Budget Project, September 2011.

^v Marcus Nieto, “The Changing Role of Probation in California’s Criminal Justice System,” California Research Bureau, v8, 1996, www.library.ca.gov/crb/96/06/96006.pdf

^{vi} *Ibid.*

^{vii} “The Future of California Corrections: A Blueprint to Save Billions of Dollars, End Federal Oversight, and Improve the Prison System,” California Department of Corrections and Rehabilitation, 2012.

^{viii} http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Monthly/TPOP1A/TPOP1Ad1305.pdf.

^{ix} “Non-Revocable Parole Frequently Asked Questions (FAQ) Sheet,” California Department of Corrections and Rehabilitation, http://www.cdcr.ca.gov/parole/non_revocable_parole/pdf/non_revocable_parole_faqs.pdf.

^x “Special Report: California Department of Corrections and Rehabilitation’s Implementation of the Non-Revocable Parole Program,” Office of the Inspector General, California, 2011.

^{xi} Chief Probation Officers of California, <http://www.cpoc.org/sb-678-project-information>.

^{xii} *Ibid.*

^{xiii} “Public Safety Realignment: California at a Crossroads,” ACLU of Northern California, March 2012.

^{xiv} County of San Joaquin, Public Safety Realignment Act of 2011 Implementation Plan, 2011.

^{xv} “Community Corrections: Increasing Public Safety and Reducing costs in California,” Smart Justice Strategies Issue Brief, Californians for Safety and Justice, 2012.

^{xvi} <http://oja.state.wi.us/sites/default/files/Performance%20Incentive%20Funding%20Initiatives%20Chart%20Initiative%20and%20Organization.pdf>

^{xvii} The ORAS-PAT tool Ohio uses for pre-trial populations is available to other states and counties. Yolo County in California is currently uses this tool.

^{xviii} <http://www.ccao.org/userfiles/CAB201101.pdf>

^{xix} <http://oja.state.wi.us/sites/default/files/Performance%20Incentive%20Funding%20Initiatives%20Chart%20Initiative%20and%20Organization.pdf>

^{xx} [http://ncja-](http://ncja-avectra.informz.net/admin31/content/template.asp?sid=31265&ptid=660&brandid=3481&uid=783847134&mi=2271710&ps=31265)

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^{xxi} <http://www.ncjp.org/content/how-three-states-are-using-evidence-build-state-criminal-justice-policies>

<http://www.rightoncrime.com/reform-in-action/state-initiatives/>

<http://oja.state.wi.us/sites/default/files/Performance%20Incentive%20Funding%20Initiatives%20Chart%20Initiative%20and%20Organization.pdf>

^{xxii} <http://www.famm.org/Repository/Files/FS%20List%20of%20State%20Reforms%202.25.13.pdf>

^{xxiii} <http://www.rightoncrime.com/reform-in-action/state-initiatives/>

<http://www.asca.net/system/assets/attachments/3702/1110SENTENCINGREFORM.pdf>

^{xxiv} Fairbanks Maslin, Maullin, Metz & Associates, 1301 voters in November 2012 election, November 2012.

^{xxv} Hart Research Associates, 606 registered voters in California, June 2012.

^{xxvi} Tulchin Research, 800 likely voters in California, May 2012.

^{xxvii} *Ibid.*

^{xxviii} Fairbanks Maslin, Maullin, Metz & Associates, 1301 voters in November 2012 election, November 2012.

^{xxix} *Ibid.*

^{xxx} *Ibid.*

^{xxxi} David Binder Research, 500 California crime victims, April 2013.