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TO: COMMISSIONERS, LITTLE HOOVER COMMISSION
FROM: DAVID STEINHART
RE: WRITTEN TESTIMONY FOR HEARING ON JUVENILE JUSTICE REALIGNMENT (Scheduled for February 28, 2008, State Capitol)

A. BACKGROUND AND INVOLVEMENT WITH SB 81

I am a California attorney specializing in juvenile justice issues and I am presently the Director of the Juvenile Justice Program at Commonweal, a California non profit organization. I have been deeply involved for more than 25 years in state policy reform efforts related to the "realignment" of juvenile justice cases from state to local control. In 2004-05, I served on the Governor's Juvenile Justice Reform Working Group, and at the request of the Governor's staff, I drafted a legislative model to implement what was then the consensus of the Working Group— that responsibility for parole should be shifted from the state Division of Juvenile Justice to county probation departments. In 2007, I worked closely with Senate and Assembly leaders and staff on the development of SB 81, providing input, historical perspective and specific recommendations in Capitol planning meetings. In 2007, I was appointed by the state Senate to the state Juvenile Justice Commission as reconstituted by SB 81. In the limited time available, I would like to highlight some key implementation challenges now facing counties, some issues relating to state oversight of realignment and some brief concluding remarks.

B. SB 81: AN UNPRECEDENTED OPPORTUNITY TO IMPROVE YOUTH OUTCOMES

I am among those who view the adoption of SB 81 as a landmark and historic juvenile justice reform in California. This is the first significant realignment plan, among many proposed over the last 20 years, to actually "make it" into state law. It represents a successful negotiation and unprecedented agreement between state and county stakeholders on the terms, particularly the financial terms, of juvenile justice realignment. In this respect, SB 81 is distinctly different from the "realignment" achieved by the 1996 imposition of sliding scale fees on counties making Youth Authority commitments. Those fees were imposed on counties after they had rejected a series of juvenile justice realignment proposals put forward by various legislative authors. Counties said "no" to these proposals because they did not like the fiscal terms and did not trust the state to perpetuate funding. The sliding scale law was the Legislature's hard line response, making counties pay to use the CYA. But, the sliding scale reform did not provide counties with resources to improve local programming. While commitments to CYA declined dramatically after 1996, for

fiscal and other reasons, there is little evidence that counties were meeting the needs of youth held back from CYA by funding new programs. Many of the youth kept under county control after 1996 found their way into the new county juvenile facilities that were built, starting in 1997, with $ 450 million in state and federal funds. Now, with SB 81, there is the promise of being able to do so much more than this — i.e., to provide juvenile offenders with programs and services, in custody and upon re-entry, that will make a real difference in their lives.

County representatives—including the Probation Chiefs (CPOC) and Supervisors Association (CSAC)—deserve a lot of credit here. They overcame their historic resistance and mistrust of realignment, promising lawmakers and the Governor that they could "get the job done". Now, counties have a historic opportunity to show what they can do with these rather tough-to-program adolescents. SB 81 is a tremendous opportunity, too, for the youth in the affected caseload. Now— instead of spending an average of 2+ years each in a state system with high rates of institutional violence, low levels of parole service and high failure rates—these youth will be eligible for the evolving benefits of shorter custody stays and a broader continuum of re-entry services. At least, that is the promise of SB 81—that these local juvenile justice options can and will be developed. This leads us to consider whether counties can deliver on this promise.

C. SB 81 IMPLEMENTATION: COUNTY CHALLENGES AND MONITORING NEED

The county capacity to serve the SB 81 shifted caseload—emerging concerns. The county capacity to serve the caseload shifted by SB 81 was a wide-spread concern raised in the Capitol discussions leading to the reform. Some of the key questions asked in SB 81 design meetings—which are still germane—included:

- Where will counties with no juvenile justice commitment facility (probation camp or ranch) and/or no juvenile hall put mid-level juvenile offenders?
- How will special needs youth—particularly those needing mental health treatment in a secure setting—be served if DJJ is no longer an option?
- Will state funds be sufficient to support the county costs of the shifted caseload?
- How prescriptive should the reform measure be in requiring counties to spend state funds on particular caseloads or programs? In precluding supplantation of existing salaries or services?
- What is the appropriate level of state oversight and enforcement for county spending under SB 81? What sort of evaluation scheme, if any, should be attached to the block grant?

As finally drafted and signed into law, SB 81 defers substantially to county decision-makers, without heavily prescriptive state rules and limits on how realignment funds can or should be spent. This may turn out to have been a mistake. However, it is too early in the life of SB 81 to draw conclusions about county spending and program development. SB 81 is a work in progress, and county personnel appear, by and large, to be fully committed and dedicated to making it work.

Developments of concern. Of course we want to be watchful and to spot problems before they become embedded in the SB 81 rollout process. Two trends of concern are:

- *SB 81 "shift" youth may be headed for commitments to juvenile halls that were never designed for long-term programming.* There is growing evidence that some counties are expanding their juvenile hall commitment programs to house "shift" offenders for long terms of custody imposed by Juvenile Courts, some exceeding a year in length. Juvenile halls— built to serve as short term detention and pre-trial facilities—are by and large not suitable as long term commitment facilities. They lack important program and long term care components, as well as state facility standards to support long term care. From a policy perspective, we should either discourage this response to SB 81, or we should completely re-examine and re-structure juvenile halls, including juvenile hall standards, to transform them into decent post-disposition and commitment facilities. A similar review should apply to probation camps and ranches which are now, under SB 81, experiencing rotation to a more difficult -to-manage population of youth with histories of placement failure.

- *Non-707 youth over 18 who are released from DJJ or who are violated on parole may be banked on the local adult probation caseload with little in the way of aftercare or re-entry services.* There are indications that non-707 youth who are 18 and older, who become county responsibility upon release from DJJ or upon parole revocation, are being banked on adult probation caseloads with little or no supervision or service. This may be a temporary problem since the older, expiring DJJ caseload of non-707s will self-extinguish within about two years. Meanwhile (and upon confirming the extent of the problem) we need to do more than park these youth on a banked probation caseload with little or nothing in the way of re-entry services.

Positive county developments. In the main, counties are working diligently to adapt to SB 81 with improved programming for "shifted" offenders. A good deal of the response seems to be focused on bringing new personnel and evidence-based programs into juvenile hall or camp/ranch programs being reformatted for youth who can no longer be sent to DJJ—for example, the Los Angeles County planned conversion of a Challenger Camp unit to serve this population. There is also evidence of SB 81-driven effort to improve non-secure programming, such as the Stanislaus County expansion of its wrap-around service program for probation youth. Several consortium efforts are underway to develop regional programs and facilities for realigned youth—including a Bay Area Regional Chiefs' plan to apply for SB 81 construction funds for a specialized regional facility and Central Region Chief discussions about opening a juvenile residential mental health facility in Merced. Other positive developments, fueled by the SB 81 reform, will be described to you by county representatives.

SB 81 monitoring needs are not being met. These and other implementation trends will need to be watched. However, SB 81 makes no provision for statewide, or county-by-county, monitoring of SB 81 spending decisions, program development or client outcomes. <u>There is a pressing need to establish some state-level mechanism to monitor basic SB 81 events.</u> Some examples of implementation events that need to be monitored are:

- What new programs and services are counties establishing to meet SB 81 caseload needs?
- To what extent are juvenile halls and probation camps/ranches being used as commitment programs for the SB 81 shifted caseload, and what problems may be arising with this trend?
- What upgrades of aftercare and re-entry services are being implemented as a result of SB 81 caseload shifts and block grant funds?
- Are county prosecutors "upcharging" arrested youth with 707(b) offenses (i.e., filing more 707(b) petitions) to bypass the SB 81 commitment limits and to qualify these youth for DJJ, and/or are prosecutors filing more cases in adult criminal court for the same reason?
- How is SB 81 affecting private placement caseloads—e.g., commitments to level 12-14 group homes or to out-of-state placements?
- What regional plans or agreements are counties considering or making to facilitate placements or services between counties?

Is there a problem with how local SB 81 spending decisions are being made? I have heard several complaints about the process of making county spending decisions—including program development decisions— for SB 81 block grant funds. Often these complaints come from community based service providers ("CBO's") who feel left out of the local fund allocation process. SB 81 provides that allocations from the state fund "shall be used to enhance the capacity of county probation, mental health, drug and alcohol and other county departments to provide rehabilitative and supervision services to youthful offenders" (WIC 1951 (b)). Private service providers are not on this list, even though they have an important role in local juvenile justice continuums of care. Code provisions for another major state juvenile justice funding stream—the Schiff Cardenas Juvenile Justice Crime Prevention Act (JJCPA)—fully acknowledges this role and require CBO representation on "Juvenile Justice Coordinating Councils" that make local JJCPA spending decisions. Counties are free to use the JJCC's to review and make local SB 81 spending decisions—but it appears instead that most counties have simply assumed that the funds "belong" to probation and that the Probation Department will make all relevant spending decisions. The financial stakes in some counties are quite high—for example, Los Angeles County received $5.5 million in grant funds in the first year of SB 81 and is poised to receive more than $20 million in SB 81 funds at full effect.

Probation surely has the central role, but the other agencies and service providers are important too. Moreover, Probation Departments are under continuing pressure to support existing personnel and to fill budget gaps, just as the state is under pressure to address chronic deficits. We surely want to avoid a situation where SB 81 funds are diverted to operations that have little to do with the SB 81 caseload. Notably, SB 81 does not contain a "no supplantation" clause controlling SB 81 grant allocations, nor does it include strong oversight or enforcement provisions on county expenditures.

This issue needs to be watched. We need, but lack, some mechanism for tracking how SB 81 funds are spent and what programs are supported by these funds. CSA, as the state agency

administering the Schiff-Cardenas JJCPA, does a good job of posting information on its website on the programs that are supported by JJCPA funds. It also publishes annual evaluation results for JJCPA programs. By contrast, SB 81 goes forward with no state-level monitoring of funded programs and no plans, that we know about, to track and publish information on how nearly $100 million per year in state juvenile justice grants will be spent.

Finally, we should all be aware that the "Runner Initiative" (a.k.a. "Safe Neighborhood Act") now being circulated for signature to qualify for the November 2008 ballot, would pre-empt these matters in several ways. Aside from the problem of earmarking $500 million per year for designated law enforcement programs, the Runner Initiative would also amend SB 81 by deleting "mental health, drug and alcohol and other county departments" from the statutory list of agencies eligible for SB 81 funds, leaving probation as the only authorized fund recipient. Further, the Runner Initiative amends the Juvenile Justice Crime Prevention act by banning community based agencies from the local Coordinating Councils that now make JJCPA program and spending decisions.

D. ISSUES RELATED TO THE STATE OVERSIGHT OF SB 81

As noted, SB 81 does not impose tight controls on how counties may spend grant funds or develop realignment programs. In my view, the state oversight provisions of SB 81 are simply too loose. I don't believe we are ready to compose remedial legislation on this point—it is still too early in the SB 81 rollout process to determine what changes should be made. We need to learn more about what is working and what is not. But eventually, I would guess, these oversight provisions will need legislative attention.

We do need to be careful here. SB 81 cannot, now or later, be over-prescriptive. Counties need flexibility to adapt SB 81 funds to their own circumstances and to the needs of their own juvenile justice caseloads. Tight-noose spending requirements, mandated "cookie cutter" programs and over-loaded evaluation schemes will spell the end of county interest in making realignment work. But some balance of oversight and flexibility is necessary, and right now the balance is tilted in favor of local flexion. Here are some brief oversight issues that I believe will ultimately need to be addressed:

No state agency is designated by SB 81 as an oversight body for realignment. The Corrections Standards Authority has tangential tasks but no mandate to administer block grants and no administration funds for SB 81. State Youthful Offender Block Grant funds are a "direct drop" from the state Controller to county general funds. To qualify for grants, counties had to submit only a single SB 81 spending plan to the Corrections Standards Authority. The county "Juvenile Justice Development Plans" submitted in January to CSA were, by wide admission,

"placeholder" plans, as counties were stripped of SB 81 planning dollars (Governor's line item veto) and had little time to prepare and submit the plans. There was certainly too little time to conclude "regional agreements" which are supposed to be reported in these plans. Oddly, there is no requirement that the plans be renewed or updated in future years. SB 81 provisions governing how counties can spend block grant funds are broad and general. SB 81 does not contain an anti-supplantation clause prohibiting the use of realignment funds for non-related purposes. The Division of Juvenile Justice has no real oversight responsibility. The Department of Finance calculates block grant amounts each year and distributes recall funds, but does not monitor or oversee county activities. All in all, there is an absence of state oversight of a Block Grant Fund that will approach $100 million in magnitude by 2010, and rising thereafter. The absence of minimal state oversight leaves counties free to do pretty much what they want with SB 81 funds. While counties may prefer this (no strings) and the state is OK with it (cost cutting objective achieved), this is not an arrangement that assures that juvenile offenders will get the full benefit of expanded programs and services.

Limited role of the Juvenile Justice Commission. This oversight gap was partly filled by reconstituting the State Juvenile Justice Commission as an SB 81 Commission. The old Commission, fashioned during Corrections Reorganization in 2005, never even met. It was overhauled by SB 81 and given new responsibilities. Its mandate now is to produce a statewide Juvenile Justice Operational Master Plan by January 1, 2009. The Commission is "to develop and make available for implementation by the counties" a set of strategies for risk/needs assessment, juvenile justice data management common to all counties and evidence-based programs. This Commission is really the only state-level body that has any global responsibility at all for juvenile justice realignment. However, its powers are advisory only. I have been appointed to this Commission by the state Senate, and I am hopeful that it will at least serve as a central forum to review SB 81 implementation problems and to discuss and offer relevant solutions. SB 81 extinguishes the Commission on 1/1/09—a rather short time frame in which to deliver the mandated products. The role and longevity of this Commission may well deserve legislative review.

In what agency should oversight be vested? From the perspective of the Little Hover Commission on State Government Organization and Economy, the architecture of SB 81 should cause some concern. No one wants to see an historic opportunity to build a continuum of juvenile justice services under SB 81 slip away, trampled by county cost pressures that divert funds from true needs and overlooked by state agencies that have no real oversight. I do think that some state agency needs to be vested with additional responsibility, if only to monitor SB 81 expenditures and outcomes. I do not think it should be the Division of Juvenile Justice which has, to a large extent, abdicated its role and entitlement to serve as a designer, broker or developer of

county-level services for juvenile offenders. This observation raises the old and heated issue of whether the Division of Juvenile Justice, as merged with the adult corrections system under "ReOrg" in 2005, can ever be a fully effective operation. That aside, there remains a need to vest some competent state agency with SB 81 monitoring responsibility, if not with broader evaluation and enforcement authority. By default this may be the Corrections Standards Authority. Alternatively, it could be a new and separate Juvenile Justice Department— along the lines discussed in the Little Hoover Commission's 2005 recommendations on Corrections Reorganization and recommended in your 1994 Report on "The Juvenile Crime Challenge: Making Prevention a Priority".

The crucial need to fund SB 81 adequately into the future. Aside from oversight, the state has another huge responsibility which, if not fulfilled, will wreck the realignment reform. That responsibility is to fund the caseload shift in perpetuity, at adequate funding levels. So far, so good. The Governor has protected the Youthful Offender Block Grant fund from cuts imposed on other revenue streams, and total state funds are scheduled to rise to $ 92 million for FY 09-10. Nevertheless, SB 81 funding does not sit in a vacuum. The state supports three main arteries of juvenile justice funds to counties including the JJCPA ($119 million last year), probation services (camp and ranch) funds ($201 million last year) and SB 81. While the Governor did protect SB 81 funds in his January '08-09 Proposed Budget, he simultaneously sought 10% cuts in the other two juvenile justice revenue streams. This is understandable given the current state deficit. However, in future years, we must avoid playing a shell game with county probation service funds—one in which SB 81 funds are "maintained" while the other important revenue streams suffer big cuts. If that happens, counties will predictably use their spending "flex" under SB 81 to patch and fill the holes thereby created.

A related concern is whether future Governors and lawmakers will honor the state's promise to fund the SB 81 caseload shift "in perpetuity". The shifted DJJ caseload (kids who cannot be committed) becomes harder to define as time goes on: it becomes, in later years, a virtual caseload of juvenile offenders who "used to be" sent to state institutions. In an era of term limits and short institutional memories, it will take a great deal of education to remind future budget writers that maintenance of SB 81 funding is vitally important.

Finally, the future of SB 81 may be clouded by the Runner Initiative. If the Runner Initiative becomes law, earmarking a half-billion dollars per year perpetuity for law enforcement operations outside of SB 81, lawmakers will have a dwindling supply of discretionary funds to support any of the existing juvenile justice funding streams.

E. CONCLUSION

Having sounded concerns about SB 81, I would like to return to my central belief that SB 81 is a necessary and landmark juvenile justice reform in California. It corrects a major malfunction in the California juvenile justice system—the faulty reliance of courts and counties on the Division of Juvenile Justice as a rehabilitation resource for mid-level juvenile offenders. It presents a wide and well-funded opportunity for counties to develop best-practice sanctions, programs and services for juvenile offenders.

The harshest critics of SB 81 have blamed the SB 81 "dealmakers" for "dumping" a caseload of hard to manage and possibly dangerous youthful offenders back into counties and communities. Cynics have likened SB 81 to the realignment of the state's hospitalized mental health population under Governor Ronald Reagan in the 1960s— a badly implemented plan that stranded thousands of homeless mentally ill patients in communities without a state-funded support network. However, SB 81 is substantially different. First of all, at full effect the "shifted" caseload is surprisingly small and manageable. After current DJJ institution and parole cases (non 707s) are flushed out of the state system, the on-going shift population will consist of only about 500 to 700 youth per year, statewide. This, in round figures, is the estimated annual number of juvenile offenders who can no longer be committed to DJJ, based on Department of Finance calculations modeled on commitment trend data. Secondly, state payments to cover county costs for shifted offenders appear to be adequate. These payments are based on $117,000 per offender per year, plus sliding scale forgiveness, and this level of support has been accepted by county negotiators (notably, CPOC and CSAC). Finally, even with the oversight concerns expressed above, SB 81 is in the main fairly well engineered. It is a reasonably detailed and comprehensive framework that adjusts jurisdiction, sentencing, confinement and fiscal provisions in multiple state codes. As drafted, SB 81 may not be perfect, and it may eventually need a tune up—but it is fundamentally sound.

I would say that the success of SB 81 depends heavily on two major factors: the state standing by its commitment to fund SB 81 adequately into the future, and county juvenile justice system performance. The state's last experience with juvenile justice realignment—AB 90 (the County Justice System Subvention Program)— was abandoned when commitment limits (county performance measures) were scrapped, offender commitments rose, and state subsidy funds all but vanished in poorly monitored county programs. We can learn from that experience by taking steps now to monitor, guide and support county realignment efforts, and by documenting the benefits of realignment to future lawmakers and Governors so that funding can be sustained. ❑