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Written Testimony for March 21, 2013 Hearing of Little Hoover Commission
Public Hearing on Bail and Pre-trial Services

I appreciate the opportunity to provide input to the Little Hoover Commission as it deepens its review of the various system impacts of 2011 public safety realignment. The focus of the March 21 hearing is to further examine jail population management strategies — specifically bail and pre-trial services — in the context of adult offender population responsibilities transferred to counties some 17 months ago.

As the former California Secretary of Corrections and now the Executive Director of the California State Association of Counties, I am pleased to offer my perspectives on these important policy questions. More than ever, California effectively has a single corrections system, with finite capacity and resources at the state and local levels. These limitations force us to assess where best to house offenders, how to most effectively invest scarce resources, and who can be safely managed in the community. As a community of interests who share the goal of public protection, we need to guide both policy and practice with achievable, evidence-based solutions that prioritize smart justice investments.

VALIDATED RISK AND NEEDS ASSESSMENTS

Risk is inherent to the criminal justice system. Our challenge is to measure and manage this risk, and we can do that most effectively by making use of information that can help predict risk and, in the context of jail population management, drive sound and cost-effective release decisions. The passage of 2011 public safety realignment has increased local population pressures and forces a reassessment of both the strategies we use to make population management decisions and the challenges counties face in making use of the best science available.

The Commission has asked about my experiences with the use of validated risk and needs assessments at the California Department of Corrections and Rehabilitation (CDCR). CDCR uses the California Static Risk Assessment (CSRA) and Correctional Offender Management and Profiling Alternative Sanctions (COMPAS) instrument as their primary risk/needs tools for either in-prison program assignment or, in a post-custody context, to determine supervision and sanction options for parolees. Research tells us that it is most efficient to supervise and devote limited program resources to those offenders with the highest risk to reoffend. That dynamic, of course, is different in using risk assessments for the pre-trial population in that those with the highest risk to flee or reoffend are those who remain in custody. The types of factors measured in a validated risk assessment post-conviction are likely different than those used for pre-trial purposes. However, regardless of the differences in the design or purposes for which the tools are deployed, I am a strong advocate for basing significant public policy on evidence and research.

Other states seem to be ahead of California in their use of and investment in pre-trial services. Kentucky, as just one example, began a statewide pretrial program

more than 40 years ago; it now relies on a uniform assessment tool that has yielded a 10 percent failure to appear rate and an 8 percent re-arrest rate. I suspect that California's reliance on pre-trial risk and needs assessment and, ideally, development of robust supervised OR programs with targeted services and appropriate sanctions will greatly expand over the next few years. There's not a lack of will in California. Like in many other areas, counties fall somewhere on a continuum in their fluency in and use of pre-trial programs. A 2012 report by California Forward's Partnership for Community Excellence highlights five California counties' pre-trial programs, two of which were established in the 1970s. Now planning for the third year of realignment implementation, many counties are looking to incorporate pre-trial assessments and services. The conversation about pre-trial methods and practices is happening already; it is part of the natural evolution as communities retool the criminal justice response. In an example of county interest, the Crime and Justice Institute solicited applications last year for intensive pre-trial technical assistance. Although the technical assistance could be offered in only two jurisdictions, nearly 20 counties applied for the support. Associated with this effort, CJI plans to disseminate pre-trial technical assistance strategies and lessons learned.

Necessity is the mother of invention. As counties experience the full impact of realignment in the next two or so years, the squeeze on jail capacity means counties will look to use different tools that are predictive of risk and support public safety goals. But there are challenges to counties' ability to fully realize the benefits of this approach. Primary among them is resources. A full continuum of pre-trial services features a validated risk/needs tool to inform sound release decisions but also offers supervision and services in the community. It takes time, staffing, training and resources to administer the tool. This system requires infrastructure and technology to manage the data and communicate information across court and county systems, and it contemplates investments in a service structure in the community. The latter piece will be particularly challenging in those counties that currently lack community service capacity.

Counties that have been successful in implementing pre-trial programs generally are jurisdictions in which there is strong collaboration across criminal justice and service partners. The court certainly has a central role in the pre-trial model, and the buy-in of the bench is absolutely critical. In the realignment era, we have the ideal mechanism in place to evaluate local capacity and interest in making these investments. The local Community Corrections Partnership (CCP) brings the right partners to the table to lead this conversation. At the local level, it will take strong leadership to overcome resistance where it may exist. As counties test the benefits and gain positive experience with evidence-based decision making, confidence in the approach will grow. As much as I understand the inclination to require use of a validated risk and needs tool to manage pre-trial population, I do not think that is the most effective way to bring about change. In the context of realignment, counties agreed to assume new responsibilities and risk – accompanied by resources to support the programs – in exchange for the ability to innovate and design locally. We

are already seeing change taking root. The best way to support counties in their choices would be to support training and technical assistance about research, evaluation, and best practices.

Exploration and investment in pre-trial tools and services is burgeoning. CSAC, the California State Sheriffs' Association, and the Chief Probation Officers of California are co-sponsoring joint training efforts focused on pre-trial topics beginning later this spring. There is significant in-state and national foundation interest in supporting counties' capacity development in this area. The National Association of Counties, in association with the Pretrial Justice Institute, is helping support county efforts nationwide and promoting best practices. There is a growing body of research that supports the use of evidence-based pre-trial release, including a paper issued by the Conference on State Court Administrators recently endorsed by the Conference of Chief Justices.

It is worth reflecting that counties are still in the relatively early stages of realignment implementation. Systems are undergoing significant change and continually evolving to manage new offender populations. The realigned population only represents a relatively small percentage of the criminal justice responsibility at the local level, but it presents an important opportunity to think more broadly across the system about the best correctional science and practices. From my perspective, the more evidence and research counties can use in making public safety decisions, the better the outcomes will be.

EQUITY, ACCOUNTABILITY AND CONSISTENCY IN BAIL SYSTEM

Public safety realignment forces a rethinking of all elements of the criminal justice system, including bail. If indeed bail decisions are based primarily if not exclusively on financial factors, that approach seems incongruent with the goals of realignment. In an era of scarce resources and increased population responsibilities, decisions about who must be detained and who can safely be released should be informed by science. If a person who is not at risk to flee or reoffend can't afford bail, the decision to detain degrades pro-social factors. An offender's inability to work and maintain social relationships will increase the likelihood of reoffending. So if our shared goal is to protect public safety and reduce recidivism, then we need to support a movement away from strictly financial-based release decisions and advocate for greater adoption of validated risk-based release decisions. In my view, the most important role the CCP can have in this context is not necessarily to advise the court about setting bail schedules, but to explore the local potential for evidence-based release decisions and a continuum of pre-trial services, sanctions, and supervised OR. That group is best positioned to develop the local support and collaboration needed across the various justice system partners for this investment.

Criteria for setting bail and making sound release decisions should focus on common factors that can predict whether a person will return to court and/or present a danger to the community. Based on today's best research, these generally include: current charges; warrant history; pending charges at time of arrest; supervision

status at time of arrest; criminal conviction history; failure to appear history; history of violence; residential stability; employment; community ties; and history of substance abuse. Research also indicates that these factors may need to be adjusted for local circumstances; a comprehensive guide to successful implementation of pre-trial services is available from the Pretrial Justice Institute.

The science behind informed release decisions, based on validated risk and needs assessments, will help achieve goals of greater transparency, accountability and consistency across systems – without engaging in the more controversial and perhaps less fruitful discussions about statewide or presumptive bail schedules.

FUNDING TO SUPPORT PRE-TRIAL PROGRAMS

Pre-trial programs and risk-based decision making are research-supported practices that should be deployed across the entire criminal justice population, not targeted to only the new offenders counties are managing as a result of 2011 public safety realignment. Local criminal justice systems are in the midst of a significant change. Some jurisdictions entered realignment implementation better resourced, more experienced with evidence-based practices, and more committed to a community corrections model. The funding construct for 2011 public safety realignment has a built-in incentive for counties to seek more efficient and economical means to manage offenders. Even if counties had enough capacity to detain many or most AB 109 offenders in local facilities, available resources would be insufficient to cover the costs. This reality, then, means that counties will increasingly pursue strategies to inform sound population management decisions. Adoption of solid, evidence-based practices will take time and the resources to support them.

The construct of public safety realignment gives counties the flexibility and discretion to invest local resources according to a plan recommended by the CCP, which is guided by community need and preference. Nothing prohibits investment in pre-trial programs or services, and certainly we are seeing pre-trial emerge as a feature in counties' plans. To date, the methodology for allocating resources to the 58 counties has not been targeted to program-specific priorities or incentives. However, the county-led group charged with making a recommendation about an allocation formula recognizes and is exploring ways over the long-term to incentivize performance and, perhaps separately from the financial discussion, support adoption of best practices.

As for state input, there is currently before the Legislature a proposal that would support reliance on research-supported, evidence-based practices. Senator Mark DeSaulnier has introduced SB 466, which would establish the California Institute for Criminal Justice Policy. As introduced, the bill contemplates that the University of California would house the institute and would require the institute to conduct cost-benefit, evidence-based analyses and develop strategies based on data and science that reduce recidivism and hold offenders accountable. The Commission might consider this model as a means to promulgate effective, evidence-based practices and advance correctional policy objectives.

Thank you again for the invitation to offer my perspectives. It is important to keep in mind where we are in the context of historic correctional policy change our state is undergoing. During what I would consider the relatively early phases of 2011 Realignment implementation, the majority of counties' work has been focused on managing the immediate impacts of the population shift – putting systems, staffing, and services in place during a period of significant and swift transition. Thanks to the support of Governor Brown and his Administration, counties now enjoy constitutional protections contained in Proposition 30. With guaranteed funding in place as we approach the third year of implementation planning, counties are lifting their focus from the immediate influx of new populations to set a longer-term course for retooling and enhancing their local criminal justice system response in a realigned world. There is extraordinary national interest in and focus on the work underway in California. Counties are ready for the task and open to an ongoing dialogue about the best ways to encourage research-supported practices that support strong public safety outcomes in our communities.