

Testimony to the Little Hoover Commission

Sentencing Reform: The new San Francisco Sentencing Commission

By Catherine McCracken, M.S.
Program Director, Center on Juvenile and Criminal Justice

Thank you for the opportunity to present this written testimony. Currently, I am employed with the Center on Juvenile and Criminal Justice (CJCJ) where I manage the agency's Sentencing Service Program, communication and policy, and development departments. In this dynamic role I promote effective community-based practices through public education, policy advocacy, and technical assistance. Through my tenure at CJCJ, I have developed a strong understanding of the challenges of formerly incarcerated individuals, as well as an expertise in identifying culturally-competent, client-specific, community-based incarceration alternatives for both adult and juvenile offenders. In 23 of California's counties, I have provided expert assistance on approximately 100 cases, including adult and juvenile sentencing recommendations and fitness hearing evaluations. Alternatives to incarceration are constructed through a thorough social history investigation and analysis of the individual's criminogenic risk factors.

In April 2012, the San Francisco Reentry Council appointed me to the San Francisco Sentencing Commission, an advisory body to the Mayor and the Board of Supervisors. This unique Commission was constructed by San Francisco District Attorney George Gascón. This body is designed to analyze local sentencing patterns and outcomes and to make recommendations for sentencing reforms that advance public safety and utilize best practices in criminal justice.

I have published a number of data-driven policy reports on various issues within California's juvenile and criminal justice system. In June and October 2012, respectively, I co-authored two publications with Santa Cruz County Chief Probation Officer Scott MacDonald, entitled *Lessons Learned: The Santa Cruz County Story* and *Local Reform in a Realigned Environment*. Additionally, I managed the recent launch of CJCJ's interactive map within the California

Sentencing Institute (CASI), which provides high-quality data analysis on expansive juvenile and criminal justice metrics. Additionally, in partnership with CA Forward I contributed to their September 2012 publication entitled, *Pretrial Detention & Community Supervision: Best Practices and Resources for California Counties*. Through the development of detailed dispositional recommendations and legislative policy studies, my work successfully promotes long-term public safety through the establishment of a continuum of care for youth and adults involved in California's criminal and juvenile justice system.

Today, the Little Hoover Commission is examining the need for continued sentencing reform in a realigned environment. Realignment comes 35 years after then-Governor Brown signed the Determinate Sentencing Law (DSL) of 1976 that contributed to unprecedented prison population expansion. Under the DSL, rehabilitation was eliminated as a goal of sentencing in California in favor of more punitive practices that emphasized incarceration. In response to the increasing prison and jail population, California launched the most ambitious prison and jail expansion effort ever attempted. Since 1984, the state constructed 21 prisons with a total design capacity of 83,219 while the counties expanded jail capacity to around 76,000. This massive expansion of bed space at the state and local level was not necessary; rather it was rooted in the punitive sentencing framework instituted through DSL. Localized programs, policies, and procedures existed at this time, but were neglected amidst the construction of new institutional space.

Recognizing the inadequacies of incarceration to improve public safety and the costly consequences of overcrowding, on April 5, 2011, Governor Edmund G. Brown signed into law Assembly Bill 109 (AB 109), commonly referred to as Realignment. This legislation is designed to reduce the prison population by placing restrictions on prison commitments for certain categories of offenders and transfers governmental functions previously managed by the state to county governments. In addition, the bill was intended to foster best practices at the local level so the state could move away from the failed policies of the past. Data from the California Department of Corrections and Rehabilitation (CDCR) demonstrates that Realignment is steadily progressing towards its stated goal. On August 8, 2012, the prison population reduced by 26,480 inmates as compared to October 1, 2011. This demonstrates the CDCR has advanced two-thirds of the way toward the goal of reducing inmate populations by 40,000 by 2017. However, while

Realignment has seen success at the state level, there is a danger of merely replicating overcrowding at the local level, if alternative community-based practices are not implemented.

In California's 58 counties, the realignment of criminal justice responsibilities presents significant challenges and necessitates a reconsideration of established sentencing practices and the development of a broader array of community sanctions. County-by-county analyses reflect disparate and varied approaches to the application of criminal justice policy creating a system of justice by geography. These disparities, whereby an individual's county of residence reflects their likelihood of confinement, impact levels of incarceration in both the state and local systems. When the California legislature adopted determinate sentencing, the purpose was to provide uniform prison terms for similar offenses. California courts all operate under the same set of statutes and laws; thereby, an offender should not receive disparate treatment solely as a result of his or her county of residence, as this is a reflection of the county practices and not the severity of the crime committed.

In addition, counties that maintain offenders at the local level by utilizing a continuum of self-reliant community-based strategies are able to better address the needs of their specific offender population. By targeting interventions to the unique needs of the local offender population, counties can maximize their resources and reduce the likelihood of recidivism, thus creating efficient public safety outcomes. However, some state-dependent counties continue to utilize both the state prison and county jail facilities as their primary response to local crime. Local justice administrators should utilize data-driven analysis and existing empirical research to locate approach strategies that reduce the use of unnecessary incarceration and promote long-term public safety.

In an era of Realignment, state-dependent practices have created significant challenges for these counties, as state prison is no longer a sentencing option for the realigned population of offenders. For example, in 2010, the most recently available data demonstrate remarkably different county practices. Kings County's rate of felony arrestees in state prison (1,145.7 per 1,000 felony arrests) was 10 times that of San Francisco County (110.3), despite San Francisco County having higher rates of reported crime. This trend was also seen at the local level where

Kings County's jail population (per 100,000 adults) was higher than the state average, as well as San Francisco County. Kings County's local un-sentenced jail population remains below the state average, which indicates local justice administrators are utilizing the jail to confine sentenced inmates. These data metrics indicate the county heavily relied upon state incarceration for low-level offenders.

In fact, in the first eight months of Realignment the county experienced a 54% decline in the numbers of new inmates committed to state prison. The question then remains for each county, how will local justice administrators respond to the new responsibility under Realignment? According to Kings County's 2011 local Realignment plan, justice administrators seek to maximize local supervision strategies such as electronic monitoring, as well as jail expansion. Local justice administrators should conduct a data driven analysis, prior to allocating resources to jail expansion, to identify populations for further examination and targeted interventions. An initial assessment can provide alternative strategies that can be implemented to alleviate jail bed space, thus aiding in the creation of an effective and efficient local criminal justice system.

During this time of Realignment, justice administrators will be challenged to rethink their approach to criminal justice realignment. Through each county's Community Corrections Partnership (CCP) local practitioners maintain a responsibility to implement innovative strategies that cultivate sustainable restructuring of local justice systems. The expertise of the representatives on the CCP is expansive and should be utilized to seek alternatives to incarceration that achieve the goals of public safety. It is imperative that county-based justice administrators control the future of their justice systems while not repeating the past mistakes at the state-level that created an ineffective structure relying on punitive practices rather than investing in self-reliant, local practices.

Counties that continue to rely on incarceration at both the state and local level will continue to contribute to the state of mass incarceration in California. Counties that historically relied on state incarceration of low-level offenders now must seek to maintain these individuals locally regardless of the continuum of services available at the local level. It is the counties with state-dependent practices that will struggle the most with Realignment, as their local infrastructure

does not provide the variety of local solutions necessary to serve offenders at the local level while achieving the goals of public safety.

Facility managers, both of jails and prisons, have little control over the admissions into their facilities. Facility populations can be influenced by two factors; admissions and length of stay. By targeting these two areas justice administrators can make influential population management decisions. In California, the length of prison sentences established by mandatory minimum sentences and the three strikes law has contributed to the overcrowded prison system. It is not that new commitments are on the rise, as much as inmates remain incarcerated for excessive lengths of stay, especially when measured against comparable practices internationally. Both mandatory minimum sentences and California's three strikes law reflect a punitive system, which does not consider the individual circumstances of the offender. A strike system is a mathematical equation rather than an individualized determination of public safety. This seems counterintuitive when the CDCR's mission incorporates the values of rehabilitation.

These excessive prison sentences demonstrate the need for sentencing reform, even in an era of Realignment. Realignment addresses the disproportionate number of inmates entering the prison system, but ignores how long an individual remains incarcerated. The recent passage of Proposition 36 provides incremental reform to California's Three Strikes law, as it addresses the third-strike provision. The California State Auditor estimates approximately 4,400 inmates could apply for re-sentencing under Proposition 36. Although, other analyses estimate much lower numbers of inmates will be impacted by this sentencing reform. The second-strike prison population is significantly higher, accounting for approximately 20 percent of the state's prison population. This is an area to examine for future sentencing reform.

Given that sentencing reform is still required in California to reduce the disparate county-by-county practices, justice administration and policy makers must utilize existing resources and examine model county practices to create an efficient and effective criminal justice system. Data-driven analysis is a fundamental component of sentencing reform. The analysis of historic sentencing trends provides insight into each of California's 58 county practices. Data regarding the effects of various local systemic processes can be used by county practitioners to improve

upon current sentencing mechanisms and maximize existing resources. Statewide agencies and policy makers must have access to these local data in order to better understand and assess the impact of proposed and existing sentencing laws.

The California Sentencing Institute was designed to be a resource for comprehensive data analyses regarding statewide sentencing policies, in order to further the public safety dialogue in this area. It provides a quick and comprehensive overview of county criminal justice practices, while also allowing for a more in-depth breakdown of county trends over time. Given the large disparities in county practices, it is imperative that sentencing law reformers consider county-by-county implications, rather than viewing the statewide trends in aggregate. As Realignment unfolds, and data becomes available the California Sentencing Institute will form a foundation for informed sentencing law discussion.

For example, there are California counties that are leading the way in progressive criminal justice reform. San Francisco County has undergone long-term systemic reform for the past 30 years when its jail system was first extremely overcrowded. The city's rate of jailings per 1,000 felony arrests fell steadily and modestly over the last 35 years compared to statewide trends. In 1970, San Francisco had 2,700 people in jails and prisons and falling to 2,700 by the end of 2011. In contrast across California, there were 43,000 people confined in 1970, and 221,000 at the end of 2011. County justice administrators now heavily rely on community-based services to address the rehabilitative needs of the local offender population. Not only are there model programs that are available for replication, but the local community decision making process is unique to most of the state. San Francisco's Reentry Council comprised of justice administrators and formerly incarcerated individuals sets priority areas for examination and reform. This body formed approximately six years ago includes the voice of those most affected by incarceration at the forefront of the decision making process.

Similarly, San Francisco recently constructed Sentencing Commission purpose is to examine local sentencing practices and to make recommendations for sentencing reforms that advance public safety. This advisory board to the Mayor and the Board of Supervisors is significant as it was lead by the District Attorney's Office, which advocates for a fair and equitable system

through smart and appropriate sentencing practices. The District Attorney's Office and the Courts must be actively engaged in the sentencing reform process, as they are the key stakeholders responsible for its implementation. Further, the Commission is an example of how to initiate the dialogue and analysis necessary to implement sentencing reform in California.

In conclusion, in an era of Realignment, California has significant work to conduct both at the state and local level. Local justice stakeholders can take Realignment as an opportunity to re-think their approach to their local jurisdictions. Furthermore, the state should seek a fair and equitable criminal justice system through a data-driven analysis of local sentencing practices.

Please feel free to contact me with any comments or questions at (415) 621-5661 extension 124 or cmccracken@cjcg.org. Thank you for your time.

Catherine McCracken, M.S.
Program Director
Center on Juvenile and Criminal Justice
40 Boardman Place
San Francisco, CA 94103

The Center on Juvenile and Criminal Justice is a nonprofit, nonpartisan organization that offers policy analysis, program development, and technical assistance in the criminal justice field.