Little Hoover Commission 9/26/13 – Lynne Lyman Written Testimony
(updated 9/20/13)

Introduction:
Good morning Commission members and staff. My name is Lynne Lyman and I am the state director for the Drug Policy Alliance, a national advocacy organization that is committed to ending the war on drugs. Additionally I serve on the steering committee for the Los Angeles Regional Reentry Partnership (LARRP), and on the LA Probation Department's newly created Community Advisory Committee on realignment.

Thank you for coming to Los Angeles to take testimony and further inform your important work on public safety realignment and sentencing in California. This is a timely and urgent conversation.

I will focus my comments on sentencing reform, specifically under realignment implementation in LA County, and more broadly for the state. I will also offer brief remarks on some further challenges for realignment in Los Angeles.

Overview:
Representing over 1/3 of the state's criminal justice population, it is no surprise that implementing a change as dramatic as realignment has been tremendously challenging in Los Angeles County. As you likely know, LA County was receiving 1000 FIPs each month onto PRCS from the prisons, although that number has since declined to approximately 500. Additionally, between 500-900 individuals are sentenced to LA County Jails pursuant to 1170 (h), with an approximate average of 5000 N3s in the jails at any given time[1], on September 12th that number was 6,100 with a cumulative of 15,700 . Despite the $272M that LA received last fiscal year, or the $322M we have received this year, the County has struggled to implement a comprehensive and effective program. The reasons are many and varied, a few of which my LARRP colleagues have highlighted already.

The Public Safety Realignment Act of 2011 was rushed through, providing almost no time for counties to plan, and input from broad stakeholders was not sought. While these facts might be less relevant for smaller counties, for LA County, it underlies the last two years of frantic scrambling that has occurred here. Furthermore, the law contained limited policies or guidelines for implementation; it was a broad local control measure, essentially a blank check with large dollar signs. And, while the law had language regarding the opportunity to use alternatives to incarceration, there were no statutory requirements, incentives, or even an evaluation component.

The law did include two tools to facilitate jail population management: split sentencing authority for the Courts and pre-trial release authority to the Sheriff.

Split Sentencing:
AB 109 gives courts the ability to sentence a person who is charged with a 1170(h)[2] offense and does not have a prior serious, violent, or sex offense record to a "split sentence" – where the individual is sentenced to county jail for the first part of the sentence term and afterwards is placed under mandatory supervision by probation for the rest of the term. Currently, Los Angeles is an outlier in utilizing split sentencing. Whereas other counties are using split sentences at rates as high as 85%

[1] LA County Probation Update on AB109 to the Board of Supervisors, April 23, 2013.
[2] 1170(h) of the California Penal Code states that "Except as provided in paragraph (3), [which excludes, in part, all defendants with serous, violent, or sexual priors], a felony punishable pursuant to this subdivision where the term is not specified in the underlying offense shall be punishable by a term of imprisonment in a county jail for 16 months, or two or three years."

successfully, LA County only uses split sentences 5% of the time. The statewide average hovers around 25%, with a mean of 45%[3].

Our low split sentencing rate stresses our jail capacity, results in more time behind bars for low level offenders, and misses the opportunity to provide community supervision and services to released offenders.

- Jail capacity: Our jails are at capacity with approximately 18,500 inmates, many of whom are eligible for split sentencing, but not receiving it. Rather than build new jails, or contract with CCFs for new beds, we should reduce this population through split sentences and other avenues. This would also allow LA County to continue to utilize the Probation Dept. programs and staffing available to the PRCS population, which is now dramatically declining. It has taken nearly 2 years to get adequate staff hired and trained, inter-departmental cooperation, and a continuum of community services in place. We should not overlook this opportunity.
- Impact of Incarceration: jail time is highly punitive – loss of employment, separation from family, physical violence, emotional disengagement from community, sense of hopelessness, deportation, relapse, decline in mental and physical health, and loss of housing often will or are likely to result. And once the jail term has ended, the barriers that individuals face in order to successfully reenter their communities are incredibly great – compelling many to turn to paths that eventually lead back to jail or prison.
- Community Supervision: Under 1170(h), N3 offenders are released from county jail without any supervision, services, or treatment. Research has shown that the period immediately following release from incarceration is wrought with risks, ranging from homelessness to sickness and even death.[4] It is well known that a great percentage of formerly incarcerated individuals are in need of drug treatment, and that nearly all will need some assistance finding housing, job training, medical and mental healthcare or other services. Indeed, the ability of a formerly incarcerated person to access such services is determinative of whether she or he will successfully reintegrate into the community. Nonetheless, only 7 to 17 percent of persons who are identified as having a drug or alcohol dependency receive treatment while incarcerated,[5] and access to these and other supportive services is utterly lacking where there is not some community supervision in place.

Despite its rather obvious benefits, Los Angeles County uses split sentencing at a rate far below what we are seeing in other counties. The Sheriff, the Chief of Probation, and the Board of Supervisors have all called for greater use of split sentencing, and yet our rate has gone unchanged for 23 months. The bottleneck appears to be occurring somewhere between the District Attorney, the Judiciary, and the Public Defender, whom each demonstrate reluctance in its utilization for poorly articulated reasons.

[3] California Forward, Partnership for Community Excellence Forum: Opportunities & Challenges in the Use of Split Sentencing in California, June 21, 2013.

[4] Persons reentering their communities following a period of incarceration are 12.7 times more likely to die than the average individual (in large part due to drug overdose). Binswanger, Ingrid A, Mark F. Stern, Richard A. Deyo, Patrick J. Heagerty, Allen Cheadle, Joann G. Elmore, and Thomas D. Koepsell. "Release from Prision – A High Risk of Death for Former Inmates," *The New England Journal of Medicine* at 157 (11 Jan. 2007).

[5] National Institute on Drug Abuse. *Treating Offenders with Drug Problems: Integrating Public Health and Public Safety*. Bethesda, MD: 2009.

Pre-trial Reform:
Nearly 60% of LA County jail inmates have not been sentenced, they are considered "pre-trial." An important tool given under realignment was Sheriff sole authority to release inmates pre-trial, pending Board of Supervisor's approval. While Sheriff Baca has requested this authority multiple times, the Board has yet to schedule a vote. And our current and former District Attorney have expressed their unequivocal opposition to this path, even claiming it would be "unconstitutional" in public meetings.

In 2011, U.S. Attorney General Eric Holder noted that, among non-sentenced, pretrial individuals being held in jails nationwide, "[a]lmost all of these individuals could be released and supervised in their communities—and allowed to pursue or maintain employment, and participate in educational opportunities and their normal family lives—without risk of endangering their fellow citizens or fleeing from justice[6]." Local criminal justice researcher and expert, Dr. Jim Austin, has calculated that based on the most conservative reading of current individual risk assessments of the pre-trial population in LA jails, between 1,000 and 1,500 of those currently behind bars could wait for their court date in the community[7].

Los Angeles County officials recognize the importance of a pretrial release program for managing jail populations, increasing public safety, and improving the effectiveness and cost-efficiency of the justice system in the county. In relation to Realignment implementation, several potential programs have been proposed and discussed. Nevertheless, after the failure of the early 2013 court-run pilot through the Public Safety Realignment Team legal subcommittee, new options must be considered if Los Angeles County is to have a successful pretrial release program. Alternatively, the Board could grant the Sheriff the authority he has requested.

The revival of the proposal to contract 500 beds with the Taft Correction Facility in Kern County is short sighted, a quick fix, and will be bad for inmates, their families, and the community that serves them. One of the stated goals of realignment was to have inmates supervised CLOSER to home, and indeed much research shows that this leads to lower rates of recidivism; the proximity allows families to visit, and community based organizations to better serve them and prepare them for reintegrating into the community. Jail expansion as a result of realignment represents the epitome of a failed policy, in that we will ultimately have just traded a state bed for a county bed. LA County has yet to even attempt any real alternative to incarceration sentencing or placements. This should be the most urgent priority.

Other Challenges of LA County Realignment Implementation:
You have heard from other community speakers about the numerous and complicated set of challenges faced by community reentry providers and advocates since realignment was enacted. So, I would just like to reiterate that the crux of the problem, does not lie with insufficient funding as is often claimed by Supervisors and other officials; $322 million is hardly a number to scoff at. Instead, the problem lies with LA County governance lack of strict oversight or accountability for this vast sum of taxpayer dollars and the thousands of lives it is purporting to be improving. How LA County actually spends these hundreds of millions should be made available to the public, and if the spending is not achieving the desired results, the approach and allotments should be modified. The County CEO should start by immediately disclosing what happened to the remaining $4M (of the $12M) from the last fiscal year that was approved for supportive services contracts with the Probation Department but never spent on the designated contract. Meanwhile extensions for residential stays are often denied and thousands are being underserved or receiving no services at all.

[6] Attorney General Eric Holder Speaks at the National Symposium on Pretrial Justice, http://www.justice.gov/iso/opa/ag/speeches/2011/ag-speech-110601.html, June 1, 2011.
[7] Evaluation of the Current and Future Los Angeles County Jail Population, *The JFA Institute, April 10, 2012.*

Meanwhile, as you heard from Mark Faucette, community providers are scrambling to provide free services, including housing to returning Prop 36 inmates as a condition of their release, even while there are no public dollars allotted for this sizeable (over 1000) population in LA County.

Statewide Sentencing Reform

Improving realignment implementation in LA County is an important part of the solution to local and statewide over-reliance on incarceration, and the resulting high recidivism rates, excessive cost, and devastation to communities of color. But most of what we have been discussing are back end reforms, ways to improve the outcomes once a person has already been caught up in the system. So I would like to now turn to front-end reforms, the desperate need to reform our laws to reduce the fire hose of people coming into the system, as well as the severity of the punishment. Our determinate sentencing policies, created from a drug war and tough on crime mentality that was not based on facts, best practices or science, are strangling the system, not enhancing public safety and not serving justice.

There is no durable or effective long-term strategy to address prison and jail overcrowding without reforming the runaway sentencing inflation of the prior decades that has hammered communities of color. In the name of a failed war on drugs, our strategies of the past decades have economically and socially disenfranchised African-American and Latino families and communities, with devastating intergenerational impact.

Today, more than 12,000 people are incarcerated in California state prisons for a nonviolent controlled substance offense, and an additional 11,000 for nonviolent property offenses.[8] Our recommendations to address the decades-long overcrowding crisis are primarily, but not exclusively, related to addressing the overuse of cruel, costly and ineffective lockup as a response to drug use and drug sales.

The first step to addressing the immediate overcrowding crisis: **parole all persons in CDCR that have no record of violent or serious crime**. Some could be paroled to safe, secure drug treatment or mental health treatment programs that are best equipped to prepare them for successful reentry.

Second: immediately **reform the racially discriminatory sentencing law that punishes possession of crack cocaine for sale more severely** than the same crime involving powder cocaine (AB 337 Dymally 2007). Apply the reform retroactively to relieve prison overcrowding, as the Federal Government did when it reformed its cocaine sentencing disparity.

Third: **reduce the penalty for possession of controlled substances for personal use to a misdemeanor**, as is the policy of 13 US states, the District of Columbia and the US Federal Government (SB 1506 Leno, 2012); or allow local charging and sentencing discretion in controlled substances cases, allowing possession of heroin or cocaine to be alternately charged as a felony or misdemeanor (SB 649 Leno, 2013). There are over 4000 persons in state prison for possession for personal use. These remedies should be applied retroactively.

Fourth: **reform (eliminate or reduce) the irrational enhancements for prior convictions for nonviolent drug offenses**. Under current law, for each prior drug sale, transportation, or possession for sale conviction, an additional three years is added to the current sentence (H&S 11370.2).

[8] California Department of Corrections & Rehabilitation. Data Analysis Unit. *Prison Census Data as of December 31, 2012.*

Fifth: **reform sentencing enhancements based on quantities of controlled substances** so that they apply only to persons substantially involved in the planning, direction, or financing of the underlying offense. Current law treats "mules" and other low level workers as if they were drug kingpins (H&S 11370.4).

Sixth: **reform (eliminate or reduce) enhancements based on a prior "strike."** Over 33,000 persons in CDCR, or 25% are "Second Strikers," meaning that their committing sentence is doubled, they could not be offered probation, and that they must serve at least 80% of their time in state prison. This is the major population driver for California prisons, failing to differentiate recent offenses and offenses from many years before, and punishing nonviolent property and drug crimes too severely. For example, a person with a prior burglary—no matter how many years in the past—who was convicted of drug possession for personal use faces up to 6 years in state prison, at a cost of over $300,000 to taxpayers. The Legislature may amend these sections only by a two-thirds majority vote.

In closing, I remind you that overcrowding is not a political issue, or a reelection issue. It is a life or death issue. Prisoners are dying of Valley Fever, medical neglect, and suicide at horrifying rates, while those who survive have not received the kind of rehabilitative services that might keep them from returning. Overcrowding and over-sentencing have overwhelmed the state's ability to deliver medical care, programming and safe conditions for persons found guilty of a range of crimes, including over 30,000 persons convicted of nonviolent property and drug offenses.