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California Prison Realignment: The First Six Month's of Assembly Bill (AB) 109's Implementation

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California Prison Realignment

The First Six Month's of Assembly Bill (AB) 109's Implementation

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“A Thesis Quality Research Project Submitted in Partial Fulfillment of the
Requirements for the Masters of Public Administration”

San Jose State University

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Research Question

Is Assembly Bill 109 an effective means for reducing California's prison population and recidivism rates in order to comply with the United States Supreme Court's mandate to reduce prison overcrowding?

Introduction

California has been ordered by the Supreme Court of the United States (SCOTUS) to reduce unconstitutional prisoner overcrowding in its state prison system. Possible solutions for achieving this mandate are to build more prisons, transfer prisoners out of state, or to establish a realignment policy that would send low-level non-violent offenders to county jails rather than state prisons. Since the state is struggling economically, building more prisons is untenable. AB 109 and its prisoner realignment plan seem to offer a positive alternative. Transferring jurisdictional control of specified convicts to county jails will reduce the number of prisoners entering the state prisons (Harvard Law Review, 2010). If implemented and funded properly through the provisions of its trailer bills, "AB 109 will reduce the number of offenders in the state prison system and assist in minimizing the state of California's fiscal crisis" (Santa Clara County, 2011, p. 4). This research has analyzed the effectiveness of the policy after six months of implementation, has offered recommendations for future development, and has outlined future areas of research that are necessary to determine the policy's overall success.

Historical Background

In 1851, California opened its first prison, San Quentin. One hundred and fifty years later, San Quentin remains fully operational and houses death row inmates. Over the last century and a half, California has added to its stock of prisons. According to the California Department of Rehabilitation and Corrections' (CDCR, 2011) website, there are currently thirty-three adult correctional institutions, thirteen adult community correctional facilities, and eight juvenile facilities in the California state prison system (CDCR, 2011). As of September 7, 2011, these prisons housed more than 145,000 adult offenders and nearly 3,200 juvenile offenders. The total inmate population makes the CDCR the largest state-run prison system in the United States (CDCR, 2011).

In the early 1980s and 1990s, California's prisons began to exceed their capacity. In 1980, California housed 23,264 inmates in twelve prisons (CDCR, 2011). However, owing to a combination of strict sentencing laws (especially the Three Strikes Law), determinate sentencing guidelines, and the "war on drugs," the state of California was on track to develop the largest prison population of any state in the nation.

From 1980 to 2000 California's inmate population increased by 554%, adding 137,391 inmates for a total of 160,655 by the beginning of 2000 (CDCR, 2011). In the same time span, the state added twenty-one new correctional facilities, costing the taxpayers billions of dollars in construction and operation costs. Due to this increase in incarceration, the state budget for the CDCR increased from \$3.5 billion in 1998 to \$10.3 billion in 2009 (CDCR, 2011). California's prison expenditures have risen to ten percent of the State's budget in 2011, when they were only four percent in the mid 1980s (Rogan, 2012). More specifically, the average cost per inmate in the state of California increased

to \$48,536 per year by 2009 (Harvard Law Review, 2010).

The history of the deterioration of the California state prison system spans decades, and may be attributed to Governor Brown introducing determinate sentencing in 1977. Determinate sentencing limited the discretion of not only the judges, but of parole boards, as well (Harvard Law Review, 2010).

Over the next quarter century, new laws made prison terms even longer. The California motto “tough on crime” established an attitude that led to one of the most notable corrections laws ever created: Three Strikes (The Economist, 2011). The introduction of the Three Strikes Law has contributed to California’s having the nation’s highest number of incarcerated offenders with life imprisonment terms (Moore, 2007).

What is the purpose of prisons? Is it to punish the criminal, to rehabilitate, to deter others from crime, or to protect the public from dangerous individuals? Most believe that it is necessary to incarcerate violent repeat offenders, but should non-violent offenders be locked up with the violent offenders in state prisons? (Haley, 2010). If prisoner realignment works to divert prisoners from state prisons to county jails, will that adequately reduce prison populations? The introduction of AB 109 and its trailer bills may offer one solution to California’s prison problem, but at the expense of county governments. If the policy succeeds, California should expect to see a drop in state inmates and related operations costs. However, costs and overcrowding may pass to the county level unless sentencing reforms accompany the new housing plan.

California’s legislature needs to establish proactive oversight for AB 109 that strictly enforces, funds, and maintains the revenue stream to ensure proper implementation. Although the Legislative Analyst’s Office estimates how much funding

will be required for the realignment process, the funding sources assigned to the program –1.0625 cents of the sales tax rate and \$12 of the \$25 vehicle license fee (VLF) – are sensitive to economic circumstances and may be inadequate to meet the needs of prisoner housing diverted to the county jails (Taylor, 2011).

Literature Review

As of September 2011, California incarcerated close to 144,000 inmates in its state prisons. This number fell in recent years owing to the pressure from SCOTUS and California policy changes. In 2006, California had a peak incarceration rate of 172,000 inmates (Rogan, 2012). Since 1970, California has seen 750% rise in incarceration levels, especially during the “war on drugs” campaign during the 1990s (Harvard Law Review, 2010, p. 753).

With no end in sight to the rapidly growing number of inmates in California’s state prisons, the CDCR was challenged to manage the growing population. New prison construction was a short-term solution as the number of prisoners continued to rise and budgets continued to fall, limiting construction funding (Rogan, 2012).

As the economy worsened, so did the wellbeing of California’s inmate population. There were many human rights violations, including inadequate healthcare, overcrowded living conditions, and lack of rehabilitation programs. Prisoners filed lawsuits against the CDCR for Eighth Amendment violations. Two key court cases led to the Supreme Court mandate to reduce the prison population and the AB 109 solution.

Court Cases: Coleman v. Brown and Plata v. Brown

Two court cases helped reform in California’s prison policy. In *Coleman v. Brown* (1990), the court ordered a reduction in California’s prison population to provide

constitutional levels of medical and mental health care, demonstrating the court's ability to generate a comprehensive remedial solution to prison overcrowding (Harvard Law Review, 2009). "The California governor and corrections officials have been sued by California prisoners for violating their rights under the Eighth Amendment's Cruel and Unusual Punishment Clause for being deprived of adequate health care" (Spector, 2010, p. 1). The safe operation of a prison is impossible with severe overcrowding (Spector, 2010). In a similar case filed approximately a decade later in *Plata v. Brown* (2001), the court ruled that the CDCR failed to provide adequate medical services and consequently violated the Eight Amendment (Rogan, 2012). The outcomes of these cases led to a court-ordered reduction in overcrowding, and because of the poor level and standards of prisoner healthcare, the California prison system was forced to change prisoners' housing. One California prisoner dies every eight days for lack of sufficient medical care (Vesley, 2011). According to Vesely, this is egregious, and the prison system needs to be reformed to meet the Supreme Court ruling (Vesely, 2011).

SCOTUS ruled that overcrowding and poor conditions in California state prisons violated inmates' constitutional rights and ordered California to rapidly decrease its inmate population. Many inmates sleep in gyms, dayrooms, and other areas not intended for housing purposes (Gale, 2008). In 2011, Governor Jerry Brown and the Legislature approved a plan that would relocate low-level (non-serious), non-violent, non-sexual offenders (known as "the three-nons") into the jurisdictional control of the counties in which they were arrested. Furthermore, the Governor's plan allowed offenders to be released to the county probation system instead of the parole board (Medina, 2011).

The Court's order is part of a two-decade long battle over medical and mental

health care in California prisons (Harvard Law Review, 2010). The first of the two cases was originally filed on April 23, 1990. In *Coleman v. Brown*, a United States magistrate judge found that the CDCR did not provide adequate healthcare to their inmates and therefore was in violation of the United States' Eighth Amendment (Harvard Law Review, 2010). The second case of *Plata v. Brown* was filed in 2001. This case followed the precedent set in the Coleman case. *Plata v. Brown* argued that the CDCR violated not only the Eighth Amendment, but also the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973 (Rogan, 2012). Judge Henderson, who was hearing the Plata case in 2005, put the entire CDCR healthcare system on receivership. A little more than a year later, the judge hearing the Coleman case ordered California to create a program to improve the state's healthcare for inmates in prison (California Health Line, 2005).

Following these recommendations, the cases of *Coleman v. Brown* and *Plata v. Brown* were to be jointly heard by a three-judge panel. Primarily, this joint suit focused on the insufficient care for inmates that left mental illnesses untreated and delivered medical care at inadequate levels. Throughout the long court hearings, court delays, and interventions, the plaintiffs in *Plata v. Brown* finally made some headway for resolution (Rogan, 2012).

By the time that the three-judge panel passed judgment on the *Plata v. Brown* case, the total inmate population was nearly 160,000 (Rogan, 2012). The CDCR prison facilities were built to house only half that number. *Plata v. Brown* maintained that the only solution for reform of California's inadequate prisoner healthcare provision would be to reduce the number of inmates closer to the design population. "Under the Prison

Litigation Reform Act (PLRA), a court may order reductions in the prison population, but only a three-judge court may do so” (Rogan, 2012). The panel ordered the state to reduce the population to 137% of the design capacity within two years (The Economist, 2011). The panel also required California to formulate a plan for their approval that would achieve compliance with the court’s decision.

The *Coleman* and *Plata* cases revealed that the overcrowding not only deprived prisoners of reasonable privacy, it also diminished the per capita funding for health and mental health care. The AB 109 solution is to divert into the county jail system the “three-nons” or the least dangerous criminals – non-serious, non-violent, and non-sexual offenders serving sentences of three years or less (The Economist, 2011). By reducing the population of the state’s prisons, the per capita funding for mandated health and mental health care should rise to acceptable levels (The Economist, 2011).

According to the CDCR, in 1989, the original design capacity of California’s prisons was 48,311. This number reflects a one prisoner per cell design. California’s lawmakers, courts, and Governor used this number to establish a baseline for overcrowding (Rushford, 2012). Comparing that number to the current inmate population demonstrates a dramatic increase in overcrowding. According to the Criminal Justice Legal Foundation, the state’s prison population from 1989 to 2007 “has been roughly double the design capacity every year” (Rushford, 2012, p. 4). These findings show that the CDCR’s current inmate housing policy is unsustainable, and realignment is needed to reduce the population of California’s prisons to a level closer to the design capacity. The chart below compares the population of the prisons with the existing design capacity between 1989 and 2007, showing the levels of overcrowding.

Figure 1: Population & Design Capacity.

Source: Rushford, 2012, p. 3.

During that same timeframe, while California's inmate population more than doubled, the state tripled its spending on CDCR from \$67 billion in 1989 to \$183 billion in 2007 (Rushford, 2012). Figure 2 depicts the state of California's rising costs for the CDCR.

Figure 2: California Budget Expenditure.

Source: Rushford, 2012, p. 4.

In 2011-2012 the state allocated just over 10% of the entire state budget to the CDCR (CDCR, 2012).

In January, a report by the Legislative Analyst's Office (LAO) specified that the ensuing savings could be projected from the implementation of AB109 (McCray, 2012, p. 10):

- \$435 million in savings to local law enforcement grant programs
- \$86 million in net savings related to low-level offenders and parolees, as well as undetermined amounts related to fewer prison construction projects.

- 2012-13 budget projects state savings of \$454.3 million during 2012 and \$1.1 billion over the budget year.

As of April 23, 2012, California corrections officials questioned whether AB 109 alone would enable them to achieve compliance with the Supreme Court's mandated overcrowding reduction. While 10,000 prisoners get released from California's prisons each month (Steigerwald, 2012), new prisoners are sentenced every week, and only those in the "three-nons" categories can be housed in county jail. If the incidence of crime outside of the "three-nons" categories rises, the diversion of these prisoners may not be adequate to generate a net reduction in prison population sufficient to meet the court-ordered level. The state will ask the court to raise the limit by 6,000 inmates to a capacity of 145% of original design capacity (Merigan, 2012).

The SCOTUS ruling, with a majority vote of 5 to 4 on May 23, 2011, set the terms of a population limit, and stated that it was necessary for the state to comply with prisoners' constitutional rights, and limit overcrowding, a reduction of approximately 46,000 inmates, over the span of three years (The Economist, 2011). Reducing the inmate population in California's state prisons should help make adequate the capacity in medical and health facilities, conditions for personnel, staff, and other inmates safer, and increase the likelihood for healthcare to be effective and efficient (Rogan, 2012).

Prior to the Supreme Court's decision, the California prison system was at 190% of its originally designated capacity (Harvard Law Review, 2010). The SCOTUS mandate directed the state of California to be at 135 % of capacity, or 110,000 inmates, by June, 2013. Furthermore, the system was ordered to reach a reduced population goal of 133,000 by December, 2011, meaning that 10,000 inmates needed to be transferred

within the first few months of the realignment process (Medina, 2011). The SCOTUS decision itself did not order prisoner releases. California adopted AB 109 as the best possible solution to meet the mandate handed down by the courts to ease overcrowding in California prisons. The figure below shows how California is reducing state inmates in comparison to the SCOTUS mandate timeline.

Figure 3: SCOTUS and California Timeline Comparison.

State and court-ordered plans to reduce the prison population are similar

Source: Misczynski, D. (2011), p. 22.

AB 109 and Its Trailer Bills

AB 109's projected impact is to reduce the levels of overcrowding. If it is successful, California's failing prison system can generate a comprehensive remedial solution to prison reform (Harvard Law Review, 2009). The plan of action to reduce overcrowding in California's prison system is Assembly Bill (AB) 109 and AB 118. This well-documented plan establishes a solution for the state of California to help reduce the

number of inmates across the state's 33 adult prisons. The bill was signed on April 4, 2011, and its effective implementation date was October 1, 2011 (CDCR, 2011). The state will continue to monitor those released prior to October 1, 2011 (CDRC, 2011).

AB 109 consists of the following key points (CDCR, p. 3):

- Prisoners that are currently in California state prison will not be transferred to county jails.
- There will not be a specified early prisoner release for current inmates.
- Any offender sent to California state prison recently will continue to serve the entire sentence in state prison.
- Any offender convicted of serious violent offenses, sex offenses, and sex offenses against children will go to state prison.

Proponents of the proposed prison realignment include the California Police Chiefs' Association and California Sheriffs' Association. Their analysis states that AB 109 is the only plan that can help reduce overcrowding in California's prisons without exacerbating the existing state deficit. However, the current plan is funded through a diversion of Vehicle Licensing Fee (VLF) funds from local government road repairs to state prisoner subsidies paid to the receiving county (Villacorte, 2011). "The realignment package includes \$6.3 billion in 2011-12 for court security, adult offenders and parolees, public safety grants, mental health services, substance abuse treatment, child welfare programs, adult protective services, and California Work Opportunity and Responsibility to Kids (CalWORKs)" (Taylor, 2011, p. 6).

The funding for the realignment of jurisdictional control over specified convicts from the state to the counties is critical to ensure public safety and a responsible and

effective form of punishment (California Budget, 2011), while reducing overcrowding.

The CDCR expects to meet the projected date set for compliance in 2013. Updates issued by the CDCR show that they intend to reduce their inmate population to 147% of prison design capacity by the SCOTUS pending date of December 27, 2012 (CDCR, 2011).

Below a chart depicts how the State of California will meet the mandated inmate population in their state prisons.

Figure 4: Court Ordered Targets.

Source: CDCR, 2012.

Dedicated funding needs to be in place to ensure that the mandated timeline for prisoner capacity is met. Under the current funding plan, the state's formula used to allocate funding for AB 109 includes three elements: "60 percent based on the estimated average daily population of offenders meeting AB 109 eligibility criteria; 30 percent based on U.S. Census Data pertaining to the total population of adults in the County as a

percentage of statewide population; and 10 percent based on the SB 678 distribution formula” (McCray, 2012, p. 10). The newly implemented realignment plan was also fortified with a series of trailer bills that provided for the financial structure to support the court-mandated population reduction in the state’s prisons.

AB 118 creates the structure for the financial allocations that support the inmate realignment. The state legislature approved funding of realignment through the diversion of a portion of the California state sales tax (1.0625 cents) and through diverting \$12 of the \$25 VLF to the counties (CDCR, 2011). The diversion of the sales tax revenue is estimated to create \$5.1 billion in funding for realignment in 2011-12. SB 89, also attached to AB 109, provides for the diversion of a portion of the VLF, which was originally designed as a source of funding for the DMV, road repair, and transportation for cities. “In addition, the realignment plan redirects an estimated \$453 million from the base 0.65 percent VLF rate for local law enforcement grant programs. Under prior law, these VLF revenues were allocated to the Department of Motor Vehicles (DMV) (\$300 million) for administrative purposes and to cities and Orange County (\$153 million) for general purposes” (Taylor, 2011, p. 7). Both houses of the California legislature passed this action in the 2011-2012 budget. Of the trailer bills passed by the legislature, SB 89’s key impact increased the motor vehicle registration fee by \$12 per automobile to offset the lost revenue. If the revenue projections are accurate, there should be no impact to the DMV and local transportation departments owing to the backfilling of VLF through the added \$12 increase (Taylor, 2011). A breakdown of AB 109’s trailer bills is depicted in the following table (CDCR, 2012).

Table A: Funding of AB 109's Trailer Bills.

AB 111	Gives counties additional flexibility to access funding to increase local jail capacity for the purpose of implementing Realignment
AB 94	Lowers the County's required contribution from 25% to 10%, and additionally requires CDCR and the Corrections Standard Authority to give funding preference to those counties that relinquish local jail construction conditional awards and agree to continue to assist the state in siting re-entry facilities.
AB 118	Outlines the financial structure for allocating funds to a variety of accounts for realignment. Establishes the Local Revenue Fund 2011 for receiving revenue and appropriates from that account to the counties. Directs the deposit of revenues associated with 1.0625 cents of the state sales tax rate to be deposited in the Fund. Establishes a reserve account should revenues come in higher than anticipated.
SB 89	Diverts \$12 of the Vehicle License Fee to the Fund. Revenue comes from two sources; freed up VLF previously dedicated to DMV administration and VLF that was previously dedicated to cities for general-purpose use. This bill also imposes an increase in the VLF fee of \$12 per car to recover the diverted funds.
SB 87	Provides counties with a one-time appropriation of \$25 million to cover costs associated with hiring, retention, training, data improvements, contracting costs, and capacity planning pursuant to each County's AB 109 implementation plan.

Source of Data: CDCR, 2012

AB 118 and SB 89 play pivotal roles in the success of AB 109. The diverted VLF and the portion of state sales tax are the main sources of funding dedicated to cover the costs of the realignment plan (CDCR, 2011). According to the CDCR's fact sheet, approximately \$400 million was provided to the counties in 2011-2012, with an estimated \$850 million for 2012-2013, and a projection of \$1 billion in 2013-2014 (CDCR, 2012). It is important to know, however, that these numbers are simply an estimate and they may change significantly based upon the outcome of the first year of the realignment.

As of June, 2012, funding for the realignment plan had only been secured for that year and not beyond. However, a more permanent allocation of funding for the

realignment was instituted by Proposition 30 in November, 2012. The 2012-2013 California Budget Summary states that the “Governor is sponsoring an initiative to provide Constitutional protection for the revenue dedicated to 2011 Realignment. This initiative will also protect local governments against future costs imposed upon them, as well as provide mandate protection for the state” (California Budget, 2012, p. 72).¹

The amount of state sales tax (1.0625 cents) dedicated to the realignment plan in its first year was projected at \$5.1 billion. The Governor diverted these funds from the General fund to the 58 California counties in order to account for realignment expenses. However, traditionally these funds have been dedicated to California’s education system, causing an impact on funding for the state’s educational programs (Taylor, 2012). In February, 2012, the California State Association of Counties (CSAC) announced that the amount of VLF being diverted to the counties was approximately \$462 million, up from the previous estimate in the 2011-2012 budget. The additional revenue was allocated to the Local Revenue Fund for future realignment expenditures (McIntosh, 2012).

It is important to understand the impact of how these trailer bills will affect the funding for counties in California. The bullets below explain SB 89’s role in realignment and its wide reaching impact (California City Finance, 2012):

- Eliminates VLF allocations to the County of Orange and cities after July 1, 2011, and instead, transfers these amounts (around \$190 million) together with the \$300 million above to a new Local Law Enforcement Services Account to fund the law enforcement grants.
- Imposes an increase in the Vehicle License Registration Fee of \$12 to produce

¹ Proposition 30 of 2012. It passed with 53.9% of the vote. (Rosenberg, 2012)

approximately \$300 million in FY 2011-12. This is a true fee for service that funds state DMV vehicle license registration operations.

- Provides for DMV charges to the MVLF for administrative services, limited to \$25 million in FY2011-12.

Further details of the funding in Figure 5 below depict the percentage of the state sales tax that is diverted away from the state's General Fund. On the left is an estimate of the revenue stream indicated in the state's budget for 2011-2012. The right shows the current projection of the sales and uses tax for the state. Due to the reallocation of \$5.1 billion for the backing of the realignment plan, other state programs that rely on this revenue stream for funding, such as the education system, may face significant spending cuts in the upcoming budget for the new fiscal year (California Budget, 2011).

Figure 5: Sales and Use Taxes.

Source: California Budget, 2011

According to AB 109 and its trailer bills, the realignment plan estimates that in 2013, the revenue total from the VLF should be upward of \$1 billion (CDCR, 2012). Law enforcement officials stressed that the state would permanently pay counties any extra costs to house prisoners who would normally be sent to state prisons (Song & Goldmacher, 2011). Counties want to make sure that they will not incur any financial losses. While the implementation of AB 118 and SB 89 will provide initial funding for the realignment, the long-term costs must be addressed. Some counties, such as Merced, have requested a state constitutional amendment that would guarantee funding for realignment (Song & Goldmacher, 2011).

Parole and Probation and How This Helps Overcrowding

California has significant budget shortfalls projected for the future, meaning that more effective management of convicted criminals and a concomitant reduction in prison system inmates is essential if the budget is to be balanced. This requires not only the realignment of incarceration for specified criminals under AB 109, but also effective transition reentry programs for inmates (Tonry, 1999). “Many prisoners can indeed be released without any threat to public safety. What caused this overcrowding in the first place were the draconian sentencing laws that now unnecessarily keep huge numbers of entirely non-violent inmates behind bars, for smoking dope or writing bad checks, or for missing parole appointments” (The Economist, 2011). Funding has increased for imprisonment but not for rehabilitation. According to the Department of Justice, fewer programs and lack of incentives to participate mean fewer inmates leave prison having addressed their work, education, and substance abuse problems (Petersilia, 2000).

The recidivism rate will rise if rehabilitative opportunities are not funded and

implemented through a comprehensive inmate transition assistance program. Transition services provide a crucial link to immediate sources of help to address these issues, focusing on providing continuity of care so that inmates who received services continue to get them once they leave (CDCR, 2011). The fewer services and assistance programs there are for parolees and other released prisoners returning to communities, the more likely it is that recidivism rates will climb (Petersilia, 2000).

The key to ending high recidivism rates is to develop public support to ensure that released prisoners get the help they need to deter them from re-offending. Forms of sentencing other than probation, prison, or a combination of the two (split sentences) are widely used in virtually every state (McCray, 2012). A few of these alternate forms of sentencing are described in the table below.

Table B: Alternate Sentencing Sanctions.

Work release and weekend sentencing	The inmate works at a regular job during the day but returns to a secure facility every night and weekend to serve a specified sentence.
Shock Incarceration	A short-term (one to ten days) period of custody as a sanction for those on post-release community supervision
Pre-Trial Release Programs	Is an important tool in reducing jail population because a significant number of California's jail inmates are awaiting trial. Upon release, offenders must continue to report to the court to maintain presence in the community while awaiting trial.
Day Reporting Centers	Are intermediate sanctions that require offenders to be supervised by a probation officer and assigned to a facility where offenders will report on a daily or other regular basis at specified times for a specified length of time to participate in activities such as counseling, treatment, social skill training, or employment training.
Electronic Monitoring-GPS/ House Arrest	GPS- Inmates being held in lieu of bail in a county jail or other county correctional facility may participate in an electronic monitoring program. House Arrest- If offender has significant community ties to family, friends, employers, and community groups.
Treatment/ Rehabilitative Programs	Programs that assist in educational and vocational support, employment attainment, housing opportunities, and counseling.

Source: A. McCray, 2012

Some possibilities of alternative sentencing for criminal offenders are work release and weekend sentencing, shock incarceration, community service programs, day fines, day reporting centers, house arrest and electronic monitoring, residential community corrections, and diversionary treatment programs. Other types of alternative sentencing options, such as mediation and restitution, are sometimes available (Evans, 2009). Some officials consider parolees to have a better chance to be rehabilitated under supervision since they can be provided with drug treatment and programs offered by faith-based and community groups (Song & Goldmacher, 2011).

AB 109 added section 17.5 to the California Penal Code, which states that California must reinvest its criminal justice resources to support community-based corrections programs and evidence-based practices that will achieve improved public safety returns (Hopper, 2012). This element of AB 109 represents a change from the long history of draconian sentencing and “incarceration first” tactics to an alternate, community-centered approach. Under AB 109’s realignment, alternative sentencing offers a better chance for low-level offenders to become productive members of society. Whether it is through county based treatment centers, support through community groups, or work release programs, offenders now have choices to get the help they need to rehabilitate and change their lives through more personal and attentive programs available at the county level and through probation.

Probation Subsidy Act of 1965

In the 1960s, there was a strong push for alternative sentencing guidelines. In 1965, then-Governor Pat Brown signed into a law a sweeping prison reform bill called

the Probation Subsidy Act. This act is similar to AB 109. Both measures funded the counties to keep low-level offenders in their custody rather than send them to state prison. The goal of the Probation Subsidy Act was to limit prison overcrowding at the state level. Today, AB 109 is attempting to accomplish the same feat, albeit with the hope of a little more success than its predecessor (Kuehn, 1972). The Probation Subsidy Act believed that “harmless offenders could be left in the community and successfully treated with little or no threat to public safety” (Rushford, 2012, p. 2). In the first few years of the program’s existence, California believed it was a success. The number of inmates heading to state prisons went down and there was little prison overcrowding. However, according to a report by the Criminal Justice Legal Foundation, while the state inmate population decreased, the crime rate rose significantly. “In the five years preceding the implementation of probation subsidy (1960-1965), violent crime rose by 18% or roughly 3.6% per year. In the five years after its implementation (1966-1970), violent crime had increased by 68% or 13.6% per year. By 1980, violent crime had risen by 216% and the homicide rate had increased by 300%” (Rushford, 2012, p. 2).

Research on the costs and benefits of the Probation Subsidy Act of 1965 show that, while the state saved money by decreasing the number of inmates in their state prisons, those costs were offset by the dramatic increase in recidivism rates for those inmates that were transferred to county jails or released early. These findings suggest that the long-term success of AB 109’s new parole versus probation programs must be closely observed.

Methodology: Process Evaluation - AB 109

The methodology for this research was a process evaluation of Assembly Bill (AB) 109 and its trailer bills, including an overview of the finances and effectiveness of California's adopted prisoner realignment plan. News periodicals and data available through the CDRC as well as other government websites were compiled. The focus of the evaluation is on how the requirements of AB 109 were implemented in the first six months, starting with the first prisoner realignment in October of 2011. Process evaluation considers problems, potential solutions, the implementation of those solutions, and whether that implementation complies with the mandate. In this case, the SCOTUS decision required the state to comply with the timeline for reducing California's prison overcrowding by 44,000 prisoners by June 2013.

The research focused on data for the first six months of implementation from selected California counties, focusing on whether AB 109 is the best possible solution to reduce overcrowding and meet the guidelines specified in the SCOTUS mandate, given the state's severe budgetary limitations and the short timeline imposed by the Supreme Court. Since the prisoner realignment program and overcrowding reduction will not be completed until June 2013, the evaluation of AB 109 shows: 1) how the process of realignment is working; 2) the reduction of prison population in state facilities; 3) the rise of population in county jails; and 4) the capability of county jails to absorb the new prisoner stream and whether the sales tax and VLF-based funding for the county jail expenses adequately reimburse the actual expenses of county jails through May 2012. Additionally, data indicated how the counties' allocated funding was useful in projecting the success of the new policy.

The process evaluation has necessitated extensive research of recent statistics and data to draw conclusions regarding AB 109's progress toward the court-mandated solution. However, while prisoner realignment may initially lead to a reduction in state prison overcrowding to court-mandated levels, if other factors such as crime rates and recidivism increase, it could prove that AB 109 was ultimately ineffective.

The table below shows the four steps in process evaluation for California's solution to prison overcrowding. It evaluated whether the solution aligned with the legislative intent of resolving the problem, whether the implementation of the solution aligned with the legislative intent of the solution, and whether other measures might increase the success of the solution to the problem.

Table C: Process Evaluation of AB 109.

<u><i>Problem:</i></u> Supreme Court mandate to reduce prison population due to inadequate health and mental health care caused by overcrowding	<u><i>Implementation:</i></u> A. Assessment of counties' data provided to the state. B. Probation/ not parole statistics – alternative sentencing reform C. Evaluate effectiveness of AB 109 for first six months
<u><i>Solution:</i></u> Transfer state inmates to county jails to reduce overcrowding and state spending. Change parole to probation for selected inmates	<u><i>Recommendation:</i></u> Continue AB 109, apply alternate sentencing options, reform realignment process (Prop 30), or other options. Secure funding, an oversight tool

Source of Data: CDCR, 2011

This process evaluation was conducted over the first six months of this new alignment plan in order to track its progress toward meeting the legislative intent of AB 109, which was to comply with the SCOTUS mandate. This research included an analysis of the counties to determine which jails had capacity, and whether offenders were moved around the state to available spaces to avoid jail overcrowding.

CDCR archives provided current statistics regarding the recently implemented directives, which led to development of an evaluation of how AB 109 and its trailer bills have supported the reduction of overcrowding in California prisons. This included costs, funding, and realignment initiatives. This data led to producing realistic projections of the AB 109 program outcome and assessment of any problems that have hindered prison reform and realignment in its first six months.

Findings

SCOTUS issued a federal mandate to reduce the state's prison population to ease overcrowding, creating a problem for the CDCR. California responded with AB 109 to serve as a new governing policy that would direct the realignment of state prisoners to county jails. To evaluate whether the realignment process is currently working, a sample of five similar counties was examined to collect and analyze relevant data that may indicate success or failure. The time period analyzed was from the implementation of AB 109 in October 2011 until April 2012. The collected data has been put into a table below that depicts the progress and the varying issues of AB 109. By selecting a diverse sample of counties, the differences in approach are evident as a result of there being no state-imposed standard.

For the program's first six month period, the table displays data regarding how many inmates have been deferred to the county jails, how much funding each county received, and whether the county chose to manage AB 109 through rehabilitation or jail expansion. For example, due to a higher than expected number of prisoners diverted to San Bernardino County jails, the county estimates that over 4,000 prisoners – non-

serious, non-violent, non-sexual offenders – will be released from jails within the first year of AB 109 due to county overcrowding (Misczynski, 2011).

Early data collection suggests that the state has underestimated the number of prisoners that counties will receive through diversion of the “three nons” from the state prisons to county jails. Thus overcrowding is likely to be experienced in the jails unless jail expansion is undertaken, or pre-trial supervision is diverted to non-jail systems and alternative sentencing programs are more aggressively used for appropriate offenders.

First-Months of Implementation

Table D: AB 109 County Sampling Statistics.

County Name	Amount of Sales Tax and VLF 10/11-4/12	Vacant Beds in Sept. 2011	Number of Prisoners Estimated by State	Number of Prisoners Received/Projected in First Six Months	Amount Allocated to New Beds	Amount Spent on Probation/Rehab. Programs	Total Funding Requested For Jail Expansion 10/11-5/12
Alameda	\$9.2 Million	300+	267	282* 47 Avg. Per Month	\$0	\$4.7 Million	\$0
Contra Costa	\$4.5 Million	190+	104	420 70 Avg. Per Month	\$1.4 Million	\$2.1 Million	\$0
Santa Clara	\$12.6 Million	1,000+	693	1,338* 223 Avg. Per Month	\$5 Million	\$8.6 Million	\$0
Kings	\$2.9 Million	80+	321	168* 28 Avg. Per Month	\$2 Million	\$600,000	\$35 Million *Pending Jail Construction AB 900
Orange	\$23.1 Million	1,260+	1,464	1,752* 292 Avg. Per Month	\$Unknown Cost for 750 New Beds	\$8.8 Million	\$100 Million *Pending Jail Construction AB 900

* Data is a six month projection using first month's data and multiplying by six.

Sources of Data: County Implementation Plans (October, 2011) ACLU (November, 2011).

The data accumulated in Table D is derived from the ACLU report published in March 2012 and individual county implementation plans, which were available through the Internet. The counties that the author looked at to gather data comparisons and trends were Alameda, Contra Costa, Santa Clara, Kings and Orange. Each county was selected for further study due to the disparate amount of beds, funding, and inmate population. Of the five selected counties, only Alameda County received fewer “three-nons” prisoners than it had vacant beds. Kings, Contra Costa, Santa Clara and Orange County exceeded the expected inmate projection set by the state, which in turn exceeded the available empty beds. A county-by-county breakdown follows.

Alameda County

Alameda County was allocated \$9.2 million for AB 109 funding in October 2011. The month prior to the implementation of AB 109, there were 300 unused beds in their county jail system. After the first six months of implementation of AB 109, Alameda County saw a steady rise of inmates. The total projected number of inmates of 282 was close to the state anticipated amount of 267. This positive correlation shows that Alameda County does not need to expand its jail facilities. Instead, Alameda County’s AB 109 implementation plan called for \$4.7 million in funding to be used for rehabilitative purposes.

Contra Costa County

Contra Costa County was allocated \$4.5 million for the funding of AB 109. In September 2011, Contra Costa had approximately 190 beds available for the state anticipated amount of 104 inmates over the first six months of AB 109 implementation. Contra Costa received nearly four times (420 inmates) the state’s projected amount and

averaged roughly 70 inmates per month. This did not lead to a need for overall jail expansion. Instead, the steady increase of inmates led Contra Costa to use \$1.4 million of the allotted funding on the procurement of more beds to accommodate the rising number of inmates being sent to their county jails. According to their county implantation plan, Contra Costa also expected to allocate \$2.1 million of AB 109 funding toward rehabilitation programs.

Santa Clara County

Santa Clara County was allotted \$12.6 million in funding for AB 109. With approximately 1,000 beds available for realignment, the state expected to send 693 inmates over the span of the first six months. As shown in Table D, the projection of inmates to be sent during this time was 1,338, or 223 per month, exceeding the total number of available beds. In order to comply with AB 109 and ease overcrowding, Santa Clara expected to use \$5 million of funding towards adding beds within their county jails, as well as spending \$8.6 million on rehabilitative programs. According to Santa Clara County's AB 109 implementation plan, they do not intend to use funding towards jail expansion.

Kings County

Kings County was allotted \$2.9 million in funding for AB 109 in October 2011. The state projected nearly 321 inmates to be sent to Kings County over the first six months. However, Kings County only had room for approximately 80 inmates in their jails at the time of implementation, therefore jail expansion was deemed necessary. Kings County provided \$2 million in funding for additional beds and also applied for \$35 million in emergency AB 900 funds for new jail construction. According to the above

data, Kings County only received 168 inmates over the six month timeline, well below the anticipated 321. Those numbers averaged out to an additional 28 inmates per month. The county implementation plan calls for jail expansion in the long term in order to be in compliance with AB 109 for years to come.

Orange County

Orange County was allotted \$23.1 million in funding for AB 109. Over the first six months of implementation, Orange County had been the most affected of the five counties. Orange County had nearly 1,260 beds available for the state anticipated amount of 1,464 inmates over the first six months of AB 109 implementation. According to the Orange County AB 109 implementation plan, the county was aware that it would need to apply for \$100 million AB 900 jail expansion funding in order to meet the demand. As shown in Table D, Orange County would receive a projected amount of 1,752 inmates, roughly 300 more than the state had anticipated. With an unknown amount of funding needed for approximately 750 new beds, Orange County provided \$8.8 million of AB 109 funding towards rehabilitation programs in an attempt to mitigate inmate overcrowding.

Six Months Later

The author conducted research on the first six months of realignment to determine if there was a significant relationship between the total number of inmates before and after the implementation of AB 109. In September 2011, the California prison population stood at nearly 144,000 inmates (CDCR, 2011); six months later, the California prison system held a population of nearly 127,000 inmates, a reduction of nearly 17,000 state inmates (Stanton, 2012). This data showed that within the first six months of

implementation the state prison system had decreased its total population size by nearly 12%.

Inmate Diversion Findings

In addition to the previously mentioned counties, the author conducted research on a small sample size of counties to understand whether they would favor rehabilitation or jail expansion. The counties studied were San Mateo, San Francisco, Los Angeles, San Bernardino, and Kings County. In order to determine the relationship, the author correlated the total amount of funding allocated per county to the method each county used to implement the AB 109 process.

Table E: Inmate Diversion Fiscal Year 2011-2012.

	#Inmates/ Probationers Expected	Amount of Funding Received	Rehabilitation or Jail Expansion	Overall Impact of AB 109 Per County
San Mateo	208 Inmates 351 Probationers	\$4,222,902	Rehabilitative programs using multidisciplinary teams for reentry	One of the leaders of successful implementation of AB 109; using own tax dollars to fund a previously planned new jail
San Francisco	164 Inmates 421 Probationers	\$5,049,838	Focuses on rehabilitative programs to reduce recidivism, not increase incarceration	AB109 does not fund the offender population, and fiscally penalizes the county for having strong rehabilitative programs
Los Angeles	8342 Inmates 9791 Probationers	\$112,558,273	Utilize funds for both and to hire 103 additional probation officers	Implementing an evidence based supervision model to limit recidivism (SB 678)
San Bernardino	2301 Inmates 2521 Probationers	\$25,785,600	Currently uses rehab measures but is pushing for jail expansion	Expect over 4,000 prisoners released from jails in first year due to overcrowding, creating a safety concern for community
Kings County	321 Inmates 185 Probationers	\$2,862,035	Plans to spend 70% of funding towards jail expansion	An increased effort to incarcerate rather than to help ease overcrowding

Source of Data: California Realignment Organization, April, 2012.

In reference to Table F in the Analysis section, the data shows a correlation between counties that have established rehabilitation programs as opposed to those that have chosen to incarcerate.

Analysis

The *Analysis* portion of this process evaluation has been exercised with the principal goal of determining whether or not AB 109 has operated efficiently and appropriately (Sylvia and Sylvia, 2004). The researcher applied the previously described four-phase research process of evaluation as detailed within the *Methodology* to acquire the *Findings*, which have been synthesized into multiple detailed “significant observations” within this *Analysis*. This Analysis contained a “process approach that involved collecting and assessing the data to determine whether the solutions to the problem were implemented as intended and produced the desired effects” (Sylvia and Sylvia, p. 91, 2004). The significant observations each incorporate an analysis that helps to determine whether or not AB 109 has been successful or if it thus far has failed to achieve its intended outcome.

The budget crisis in California is real and pervasive. Constitutional limitations growing out of the historic Proposition 13 have limited the ability of the legislature and local governments to raise taxes or fees to pay for increasing costs of services. AB 109 was proposed to solve a state-level problem of prison overcrowding, but it may be creating another state level problem of financial inadequacy. The cost-benefit analysis of the AB 109 realignment seems to lack a thorough analysis of all associated costs, including the lost opportunity costs associated with the reallocation of the state’s scarce General Fund expenditures. Specifically, the legislative analysis of AB 109 lacks the following details in its public records: the cost per inmate in CDCR, the cost per inmate in county jails, the savings per inmate under AB 109, and the cost for parole versus the cost for probation.

Lack of a thorough public analysis of this realignment leaves the state unable to evaluate the success of the strategy and whether it should be retained. The trade-offs inherent in the realignment and its funding mechanisms have an initial impact on non-safety programs and transportation system conditions, because more VLF money spent on prisons means less money for road repairs and city services. More broadly, California's economic downturn is forced reductions in police and fire service levels. This jeopardizes the financial interests of the counties by increasing risks to community safety. In addition, the Legislative Analyst's Office postulates that the diverted sales tax revenues will come from allocations for education. However, while the diversion of prisoners from state custody also represents a savings of costs to the CDCR, the funding for the realignment does not clearly come from a reduction in CDCR budgeted expenses.

Significant Observation 1: *While AB 109 shifted funding and responsibility away from the state to the county level, the number of inmates statewide has not changed; the prisons are less overcrowded, but the county jails are filled nearly to capacity. Also, while funds to pay for AB 109 have been diverted from VLF, education, and state safety budgets, the fallout from this accounting strategy is only beginning to be felt at local levels.*

In order to determine whether AB 109 is currently working, a sample size of five counties was examined to collect and analyze relevant data that may indicate the implementation's effectiveness. A six month time frame was used in order to observe new data regarding AB 109's possible development. By selecting a diverse sample of counties, the differences in approach evinced a lack of state-imposed standard.

The six month analysis presented in Table D showed that there are simply not enough beds, room, or adequate funding to house these additional inmates. Shifting the burden of overcrowding from the state level to the county level is a failed outcome. AB

109 needs to be able to manage the reduction of state prisoners without putting the safety of the community at risk by releasing inmates early due to county jail overcrowding.

Current estimates provided by AB109 and its trailer bills projected that the state of California would have its prison population reduced by approximately 20,000 inmates by the beginning of 2012. Upon full implementation of the mandated policy, the CDRC is currently projecting cutting one-fourth (40,000 inmates) of its total inmate population by 2014-2015 (Taylor, 2011). Such prisoner shifts and financial trade-offs need to be evaluated to determine whether the process of managing the program and funding the program is meeting the intended outcome of lowering prison overcrowding in a revenue neutral way. Public safety also needs to be carefully analyzed to assess the steady flow of inmates that are released back into California communities.

Furthermore, jail expansion provides a flawed method for counties to handle realignment. This concept does not address overpopulating county jails until they too become victims of overcrowding. It is necessary for the state to clearly define its objective and its funding responsibilities for realignment purposes. The six month window to evaluate AB 109 has demonstrated the need to conduct a proper time series analysis of AB 109 implementation.

The lack of a standardized reporting system among counties and lack of AB 109 implementation oversight from the state created difficulty in collecting accurate and timely data from county to county. Allowing the counties to use the funding without consistent oversight measures impaired the state's ability to evaluate the implementation process. Table E above shows disparities in the amount funded per county and how each sampled county intends to use it. It shows that the state fiscally penalizes counties for

having strong rehabilitative programs, thus reducing the number of inmates historically sent to state prisons, and provides larger amounts of funding for those counties with higher incarceration rates.

If the proposed realignment plan does not provide enough revenue to support the mandated diversion of prisoners into the jail system, the legislature will have to allocate more funds by cutting programs or rearranging legislative priorities. If for some reason the state revenues to support AB 109 exceed their expectations, then proper oversight would be beneficial to determine how to reallocate the excess revenue (Taylor, 2011).

Significant Observation 2: *The state has failed to create a data collection tool to develop evidence for an outcome evaluation. Data collection is imperative and should be required as part of the counties' agreement to receive funds for AB 109 implementation.*

The state has an interest in the short term to know whether the desired outcomes of lowered overall incarceration rates and lowered recidivism have been achieved through the implementation of AB 109. The difficulty in collecting consistent data from the counties sampled demonstrates the lack of a state data tracking system, making an outcome analysis difficult. The state needs to collect, to monitor, and to analyze all fifty-eight counties' data to determine which individual county-run programs and policies are the most effective for reducing recidivism, the only long-term solution to prison overcrowding. Such a tool must be developed and required as part of a mutual agreement between the state and counties to revise the method for the proper funding of AB 109 implementation. AB 109 provides for "a data-driven approach to reduce corrections and related criminal justice spending and reinvest savings in strategies designed to increase public safety" (McCray, 2012, p. 44). Fatal flaws may arise in this new realignment program if state officials neglect to require counties to report outcomes, or if they fail to

fund methods to evaluate AB 109. With no evaluation mandate, the state lacks statistics regarding the outcomes of implemented programs and services to reduce recidivism rates, as well as progress in released offender and community relationships. Despite this lack of oversight, 76% of the 58 counties have offered to plan and collect data independently to try to measure their outcomes of the implementation of realignment (McCray, 2012).

Data from the AB 109 implementation might demonstrate the fallacy in California's tendency to incarcerate, and compel officials to search for more proactive alternative sentencing strategies. A potential result could be to drop recidivism rates and lower populations in state prisons and in county jails. Some counties, like San Mateo, San Francisco, and Santa Clara, have focused on alternatives to incarceration, and could be counties to emulate for managing low-level offenders (Gabrielson, 2012). Their emphasis on rehabilitative programs, if proven successful, could be one solution of many to help modify the state's reliance on incarceration.

Significant Observation 3: *The current system allocates state inmates without concern for whether or not a county can house them or afford them, which in turn, causes overcrowding and early release at the county level. The current economic climate makes the construction of county jails a questionable investment; however, rehabilitative programs and community outreach programs for the "three-nons" may help reduce county inmate populations and costs.*

As of June 27, 2012, the AB 109 realignment process appeared to be proceeding as planned. The state had met its previous two mandated prisoner population benchmarks set by SCOTUS. In the first six months of realignment, the prison population dropped to approximately 127,000, a decrease of nearly 17,000 inmates (Stanton, 2012). However, it is important to note that county jails have had to absorb the new "three-nons" prisoners to make this reduction possible (Rushford, 2012).

According to county jail officials, the realignment plan has benefitted the state prisons but has created problems for county jails. After the first six months of implementation, some counties were already expressing concern over the lack of funding and staff to accommodate such a dramatic overhaul of California's prison system (Lugtu-Shaddox, 2012). Some officials estimated that, since realignment began in October 2011, their jails lacked the capacity to hold the number of felons in the "three-nons" category, creating an overcrowding issue for the county jails and forcing the early release of inmates back into the California communities (Lugtu-Shaddox, 2012). California counties are being allotted a higher number of inmates than originally calculated by the CDCR. For example, "Merced County has seen about 30 percent more offenders than the CDCR estimated, said Scott Ball, the county's chief probation officer. They expected 73 inmates but got 116 during the first four months of realignment" (Perez, 2012, p. 1). Situations like this are forcing counties to choose between the costs of "increasing jail space or releasing some criminals assessed to be at 'high risk' of re-offending" (Rushford, 2012, p. 9). In a recent report by the American Civil Liberties Union (ACLU), most, if not all, counties are using their AB 109 funding for jail expansions or increasing the number of beds per unit in existing buildings.

Based upon reviews of the county realignment implementation plans conducted by the ACLU, "approximately \$45.1 million in realignment funding provided to the top 25 counties has already been allocated for jail capacity expansion costs, including 7,002 new jail beds and 722 new corrections-related staff" (Hopper, 2012, p. 15). Since there was no oversight directed from the state to the county level to control spending, the counties were able to create their own individual plans that would either support or

advocate against incarceration. For example, “(While) San Mateo County expects to add 500 more beds, San Francisco intends to reopen a previously closed jail, which would produce 360 additional beds, and Alameda County has ruled out jail expansion altogether” (Hopper, 2012, p. 16).

Some analysts suggest that if the counties intend to use their AB 109 funding for jail expansion and not offender treatment programs, their jails will encounter similar overcrowding problems. In fact, in the first six months of the realignment program, the top 25 California counties that were apportioned roughly 92% of the total state allocation, “have either designated realignment dollars for jail capacity expansion or hope to tap into separate state funds earmarked for jail construction through AB 900 or both” (Hopper, 2012, p. 16). As shown in Table D, jail bed space expansion is a popular concept, which most counties have chosen to use to comply with the new realignment plan. Some counties, such as Kings and Orange, have petitioned the AB 900 fund for jail construction money, while others are adding beds to existing facilities. This methodology focuses on incarceration rather than creating solutions to reduce recidivism.

A few counties’ decisions to focus on alternative sentencing and community-based services, instead of relying on jail expansion, have provided a cheaper and safer route to realignment. Since the state did not dictate how the funding for realignment was to be used, individual counties are choosing to allocate their funds based on local perceptions of need, resulting in inconsistency in how California’s county jails are managing realignment. For example, San Francisco and Sacramento Counties have proposed the idea of reopening previously closed jails to reduce the burden of overcrowding within their respective counties. However, opening jails could result in significant increases in

the cost of realignment for the counties. In Sacramento County, reopening the jail would cost \$700,000 per month to manage and maintain it effectively (Hopper, 2012). Los Angeles, San Mateo, and King Counties are building new jails, while Santa Clara and Alameda Counties are using the funding to acquire additional beds and fully implement treatment and rehabilitation programs to reduce incarceration rates and recidivism. Alameda County is, in fact, the only one in the top 25 counties that has not included jail bed expansion in its AB 109 implementation plan (Hopper, 2012). According to Santa Clara County's AB 109 implementation plan, it would cost the county nearly \$20,000 to house one inmate for a year. So, instead of incarceration, Santa Clara County has chosen to rehabilitate to cut costs and reduce recidivism.

Counties are feeling the pressure of managing the realignment plan. According to the Bay City News, "Since realignment took effect October 1st, 2011, Contra Costa County jails have taken in 420 additional non-violent, non-sexual, non-serious inmates – a staggering 500 percent above the state's early projections" (Bay City News, 2012, p. 1). Undersheriff Mike Casten stated, in order to cover the cost of these additional inmates, the funding for the counties needs to change. Contra Costa was only allocated approximately \$6 million (Cheever, 2012). Casten predicts that his county's funding would need to double this year in order to comply with the realignment plan. Without the funding, inmates will have to be released into the community to prevent jail overcrowding.

California counties have been hit hard by the realignment plan, receiving far more prisoners than the state estimated. In fact, the data in Table D depicts a growing trend toward overcrowding that will not only be a state issue but a county level problem as

well. Once empty beds are now filling up at an alarming rate. The data projects the counties' ability to sustain adequate facilities for the new flow of inmates for a short period of time before they too are overcrowded and are forced to resort to alternatives such as early release. Some counties, such as Riverside and San Bernardino, have already initiated that trend by releasing hundreds of inmates back into society. Furthermore, in the early phases of realignment, many counties have exceeded their predicted inmate projections. For example, Orange County, Contra Costa County, and Santa Clara County will have received the state's estimated 12 month total of new inmates in the first six months alone. According to Rodney Jones, the Chief of Police of Fontana, "When someone is released early under realignment, an opportunity exists to break a vicious cycle of recidivism. As a society, we incarcerate individuals who cannot abide by the rules in close proximity with other individuals already incarcerated for not following those same rules. No one should be surprised that they re-offend when they are released" (Fontana, CA, Chamber of Commerce, 2012 p. 1).

In smaller counties, such as Trinity, the effect of realignment has also been significant. The state had informed Trinity County that they would only expect to see an additional inmate or parolee a month in accordance with the new realignment plan. However, since January, Trinity County has received seventeen additional inmates. This has caused the county to hire five more probation officers and staff. Chief Probation Officer Terry Lee, while supporting AB 109 in principle, believes that the state needs to double the funding starting this November (Morris, 2012). He is concerned that inadequate funding for jail costs could cause early release of prisoners, and inadequate funding for probation supervision could lead to higher crime rates in the community.

A key issue Mr. Lee highlights regarding the “three-nons” is that the classification arises from the inmate’s last arresting crime. The state is not using prior convictions in order to determine if they are indeed low-level offenders (Morris, 2012). Therefore some of the “three-nons” prisoners may actually have a history of violent or other serious crimes or sexually related crimes, meaning that early release back into the community could pose public safety problems. The bottom line is that the evaluation of prisoners for participation in the “three-nons” category should be modified to take into account the individual's total criminal history, not just the most recent offense, and those with other than “three-nons” convictions previously should still go to state prison.

Significant Observation 4: *AB 109’s funding allocation formula financially rewarded counties that historically sent more “three-nons” inmates to prison instead of rehabilitative centers, which reflects the savings to the state of diverting those prisoners to the county jails. However, this approach contradicts the goal of AB 109 to reduce the incarcerated population overall.*

AB 109's realignment program should be supported based on the cost to house or rehabilitate the individual prisoner rather than on past practices of incarceration sentences, which led to overcrowding in the first place. Instead, the funding formula was created from the state’s perspective rather than being based on the costs that county jails would experience from the realignment. Table E depicts how a handful of the counties intend to spend their allocated resources in order to meet their individual county needs. To date, a majority of counties have expressed the desire to use the funding on more beds, jail expansion, or reopening closed jails instead of funding treatment services to help close the revolving door of recidivism.

Since the state's goal was to lower its prison population, the formula included funding related to the number of "three-nons" prisoners sent to state prisons from that county. The rationale was that this was the cost avoided by the state (Gabrielson, 2012). This creates disparities in per capita funding for prisoners being received in county jails, since some counties have used community-based programs rather than prison as punishment. For example, San Francisco, Alameda and Contra Costa counties feel that the state of California has actually penalized them for having introduced alternatives to incarceration, such as medical treatment, work-release programs, and home detention (Cheever, 2012). These large population counties received considerably less AB 109 funding per capita than other smaller counties due to their modest number of low-level offenders sent to state prisons. A prime example, shown in Table F below, is the difference in funding given to the "rehabilitative" Alameda County over San Bernardino County that employs high incarceration rates. The allocation of funds seems to indicate that the state would rather see the counties incarcerate more inmates than develop rehabilitation and community-based initiatives.

Table F: AB 109 Funding Comparison: Alameda County and San Bernardino County.

County	Population	Crime Rate	Funding
Alameda	1.6 million	2.8%	\$ 9.2 million
San Bernardino	2 million	2.2%	\$ 25.8 million

Source of Data: J. Cheever, 2012.

Significant Observation 5: *Newly proposed legislation recognizes the importance of incorporating rehabilitation into the AB 109 process.*

California has recognized that flexible alternatives need to exist so the state can more effectively reduce overcrowding and lower recidivism. AB 109 was a huge effort to

regain control of its prison-crowding crisis. Six months into this new reform bill the outcome is teetering between success and failure. The flexibility mentioned added a change not only in policy but also in the state's sentencing guidelines. State policies have focused on determinate sentencing, crowding prisons with drug users, when prisoners have an opportunity to be rehabilitated through county programs and treatment centers.

On February 24, 2012, California State Senator Mark Leno introduced SB 1506 that would have revised the sentencing parameters of one of the state's highest convictions: personal drug possession. Instead of being charged with a felony and a mandated three-year prison term, the proposed bill labels it as a misdemeanor charge with one year in a county jail. The recommended plan would have been beneficial to California if it had passed. According to the ACLU report, it would have not only eased overcrowding in state prisons and county jails, but have had a massive cost benefit as well. "This single sentencing reform would save counties \$159 million annually, in addition to the \$64.4 million in yearly savings for the state" (Gabrielson, 2012, p. 18). By combining AB 109 and SB 1506, the state prisons and county jails would have been able to limit overcrowding and apply the savings to alternative sentencing and treatment programs. Recidivism rates were expected to steadily decline over the next few years with this form of policy. However, in June 2012 only eleven state senators supported the bill and it failed. (Rivas, 2012)

While coordination has been lacking between the state and counties, the progress of AB 109 has encouraged state officials to develop a new plan that aims to increase the success of realignment, reduce spending costs, comply with the federal mandate, and decrease recidivism. On April 23, 2012, the CDCR presented a plan called "The Future

of California Corrections: A Blueprint to Save Billions of Dollars, End Federal Oversight, and Improve the Prison System” (CDCR, 2012). This new strategy overall is more efficient and has an objective to significantly improve CDCR operations (CDCR, 2012). “The plan would cut spending by billions of dollars, cancel some construction projects, close one lockup and bring back 9,500 inmates housed in other states — all while meeting court orders to reduce crowding and improve medical care” (Merigan, 2012, p. 1). To be more specific, the table below lists the goals and the projected outcomes of this new plan.

Table G: The Future of California Corrections Plan.

Reduce CDCR’s annual budget by more than \$1.5 billion upon full implementation, including \$160 million dollars in savings from closing the California Rehabilitation Center.
Eliminate \$4.1 billion in construction projects that are no longer needed because of population reductions.
Eliminate \$2.2 billion annually that would have been spent had realignment not been implemented.
Return all out-of-state inmates to California by 2016 to bring back jobs and manage offenders closer to home while saving millions in taxpayer dollars.
Satisfy the U.S. Supreme Court’s order to lower the state’s prison population.
Satisfy the federal courts that CDCR has achieved and maintained constitutional levels of medical, mental health and dental care to avoid costly oversight.
Incorporate a standardized staffing formula to better manage staff levels and costs, improve the classification system to provide proper inmate housing placement, and reduce the reliance on costly high-security facilities.

Source of Data: CDCR, J. Callison, April 23, 2012.

Since this new plan has recently been implemented, a thorough analysis needs to be conducted to determine if it will be successful, including meeting the federal mandates timeline, dropping recidivism rates, and cutting spending. “If the new plan is successful, prisons will fall to 7.5% of spending in the 2015-16 budget” (Merigan, 2012, p. 1). This plan would reduce spending by nearly three percent from the current CDCR budget expenses. Further studies will be needed on this new plan to assess its overall outcome.

Some critics of this new plan, however, are already sharing their opinion. According to Emily Harris of Californians United for a Responsible Budget, which opposes heavy prison spending, “It is not really a bold vision in any way, the state should be paroling more inmates and easing criminal sentences, which would help lower the prison population further” (Merigan, 2012, p. 2).

The state of California is at a crucial juncture. At best, the realignment of the three-non offenders to the counties will help ease prison overcrowding, continue to maintain public safety, and spend their allocated funds on programs that reduce recidivism. At worst, the realignment plan will be perceived as a mistaken transfer of authority from one superior jurisdiction (the state) to another (the counties). The counties will use the same sentencing guidelines, overfilling jails and creating the need for jail expansion. Recidivism rates will increase and AB 109 will be a disaster. In order for this not to happen, the state of California needs to uphold the realignment process through proper oversight and financial support (Gabrielson, 2012).

The newly proposed Future of California Corrections plan might be a positive step in California correction reform to assist the effectiveness of realignment and the state’s prison policy. Currently, nobody can predict the full impact AB 109 will have on crime and recidivism until after a longer period of implementation. However, in order to establish a baseline for California crime statistics, analysts can use the Attorney General’s report for comparison analysis of trends in crime leading to incarceration. “In the longer term, however, the realignment of inmate and parolee populations has the potential to significantly reduce cost pressures on the state’s prison system, as well as

achieve a large share of the state inmate population reduction ordered by the federal court” (Taylor, 2011, p. 9).

Overall, the hope of this massive realignment implementation hinges upon eliminating overcrowding, reducing the crime rate, and decreasing recidivism. Yet with a new emphasis on probation and parole and more than 52,000 offenders being transferred from state prisons to county jails over the next few years, it will be challenging to realize lower crimes rates (CSA, 2012).

Lastly, in November of 2012, the people of California helped secure funding in the state’s constitution for AB 109 by voting on Proposition 30. Not only will it help the state of California to avoid future cuts to education, healthcare, public safety and other programs, but also to guarantee the essential funding necessary for realignment to be successful.

With AB 109 implementation assured for the foreseeable future, additional research is essential to ensure that it is properly implemented to make the most effective use of the scarce public funds allocated to the counties. How will the counties be impacted? Will sentencing reform take over as the major contributor to reducing overcrowding? If so, how far-reaching will it be? The state could incorporate an incentive program in order to implement evidence-based public safety policies and practices. State funding could then be allocated to the counties that are on track to lower recidivism rates as well as promote cost-effective alternatives to incarceration (Hopper, 2012).

Significant Observation 6: *New parole and probation measures must be implemented successfully under AB 109 in order to stabilize the state prison population and guarantee fiscal savings for the state budget.*

One of the more effective plans included in AB 109 to reduce overcrowding in state

prisons is the handling of parolees. Beginning on October 1, 2011, all parole revocations will result in a return to county jails for a maximum of 180 days rather than being sent back to a state prison (CDCR, 2011, p. 4). This is a positive method both to lessen the sentences for non-violent offenders and to keep state prison populations lower. AB 109 is not designed for a massive release of prisoners into communities; rather, it designates authority and jurisdiction to the counties for future low-level offenders.

In addition, particular offenders that are released from prison will now be supervised in the community by county probation agencies rather than California's state parole agents. "When locally supervised offenders violate conditions of their supervision, the courts, rather than the Board of Parole Hearings, will preside over revocation hearings to determine if they should be revoked to county jail" (Taylor, 2011, p. 16). Under the proposed realignment plan, California's parolee population is anticipated to drop by nearly 25,000 during the fiscal year of 2011-2012. By the 2014-2015 deadline, the projected reduction is expected to be close to 77,000 parolees (Taylor, 2011). This reduction reflects a state savings of about \$453 million in 2011-12. By the completion of the process, the state is assuming a savings of close to \$1.5 billion in their budget (Taylor, 2011).

The savings for the state are realized at the expense of the counties' probation officers, who will see the biggest impact from the realignment as their caseloads rise. In addition, they will also have to anticipate a high risk and high maintenance population of incoming probationers. Previously, only people with jail sentences of one year or less were housed in county jails and probation officers oversaw only departing inmates and those sentenced only to probation (McCray, 2012). Now people sentenced up to three

years will be housed in county jails, meaning that more serious offenses have been committed. Because of this, almost every county's AB 109 implementation report emphasized the need to hire and train more probation employees. Some counties, such as Kern, have now armed their probation officers. This move demonstrates a strong similarity to the status of the state's parole agents (McCray, 2012).

In order for the probation department to be effective under the new realignment, they need to ensure that their ratio of caseload per officer is reasonable. Suggested caseloads for high-risk offenders should be no more than fifty probationers to one probation officer, according to the Madera County's implementation plan (McCray, 2012). As the implementation of AB 109 continues, adequate funding must continue to flow to county probation departments to ensure that the larger numbers of parolees and the higher risk parolees are properly supervised to protect the community.

California mandated that each county must have completed a Community Corrections Partnership (CCP) before the implementation date of October 2011. While most counties have established a CCP, their methods of application may vary from county to county. However, they all provide an array of intermediate sanctions, supervision, and alternative treatment options in addition to incarceration. For example, "Counties can institute Pre-Trial Release Programs with enhanced supervision, Day Reporting Centers, and flash incarceration in addition to providing behavioral health assessments and treatment, housing, and employment services" (California Budget, 2012, p. 74). With realignment changing the way parole and probation will be used in California, these alternative sentencing options and sanctions could prove to help ease the strain of overcrowding, not only in state prisons but at the county level as well. With

proper oversight and necessary treatment services available, this new method of sanctions can assist in reducing overcrowding and recidivism (California Budget, 2012).

However, the state needs to consider how it plans to augment AB 109 over the next few years and the efficacy of Governor Brown's plan. As of May, 2012, the state had roughly 127,000 inmates and was projected to be 6,000 over the limit at the deadline, and hopes to meet the reduction mandate by the end of 2013.

Significant Observation 7: *AB 109 has had an impact on reducing the state prison population, however its impact on lowering recidivism has yet to be determined.*

In the first six months the state succeeded in achieving the mandated reduction in the state prison population, although the data to determine whether the desired overall outcome of lowering recidivism has yet to be collected. The six month time frame was not a sufficient amount of time to gather adequate data to determine if recidivism rates went up or down. One change that could be made in the AB 109 plan to avoid a repetition of past increases in crime and recidivism is an increase in rehabilitation and treatment programs, so that when inmates are released their likelihood of reoffending drops significantly. Support services for inmates are what the Probation Subsidy Act lacked, which caused a spike in reoffending (Kuehn, 1972).

Currently, there is no allocation formula negotiated into the realignment plan dictating how the counties spend their funding. Instead, they are allocated an amount based upon historical sentencing figures and can spend it on whatever they want (Taylor, 2011). If the counties have no obligation to provide rehabilitation and treatment to the "three-nons" prisoners, then AB 109 may lead to unwanted results. In the short term, the state might meet the prison population reduction mandates through June 2013. In the long term, a rise in recidivism, possibly including violent crime, is likely without

rehabilitative programs and treatment services available for prisoners in all counties (Rushford, 2012).

One method of enforcing the way counties allocated their money is to change the way it is received from the state. The ACLU made an interesting recommendation for the state to revise how AB 109 should be funded. Since one of the main goals of this new policy is to reduce recidivism, the state should incentivize funding to counties that focus more on crime prevention, treatment and vocational programs instead of incarceration. The counties with the least amount of recidivism would then receive more funding.

Conclusion

Over the last 30 years, California's response to the boom in incarceration was to build more prisons. However, the skyrocketing costs of the CDCR coupled with an economic downturn have created a massive deficit in the state's budget. Billions of dollars later, California is still trying to address its overcrowding issue. Due to prisoners' rights violations over the years, and two extremely important court cases, SCOTUS issued a direct federal mandate that ordered California to decrease its inmate population to 110,000 by June 2013. California responded by instituting a new prison reform policy that transferred the jurisdiction of low-level offenders from state prisons to county jails. However, six months into AB 109's implementation to reduce overcrowding, a possible disconnect arose among factors that could influence the outcome of this policy. The seven significant observations within the *Analysis* each provide a crucial component supporting this conclusion.

First, the state of California did not evenly disburse funding to the counties, nor did the state explicitly detail how the funding should be used. Instead, the state made it

abundantly clear that those counties which have historically chosen the method of incarceration over rehabilitation, were awarded more funding for this overhaul of prison reform. This methodology is exactly what has placed California's state prison system into its state of crisis. Counties with strong rehabilitative programs, treatment, and alternative solutions to incarceration have been financially penalized in the first year disbursement of funding for AB 109. Research suggests that most counties are spending allocated funds for jail expansions, renovations, and increased staff instead of using the funds to create programs to address recidivism, the second main initiative of AB 109. However, "realignment legislation contains no requirement that counties offer community supervision, treatment, reentry services, or any other alternative" (Silbert, 2012, p. 9). County officials have argued that they need these modifications and improvements of their jails in order to accommodate the increased number of offenders placed under their supervision. Others believe that this may simply cause the burden of overcrowding in the state prisons to shift to the county level. In order to prevent this from happening, counties must determine if it would be more effective to release low-risk prisoners with electronic monitoring instead of building more jails and choosing incarceration over rehabilitation.

Over the next few months, policy disputes will arise over the success of the realignment plan. One measure will be whether the state meets the SCOTUS mandate by June 2013. It also may take years of research to understand the greater impact this policy has on recidivism in California communities. It is clear that this new policy will reduce overcrowding in California state prisons, but without the proper management of AB 109 funding, and with counties diverting funds for jail expansion and not treatment, the possibility of overcrowding in county jails becomes likely. This could lead to inmates

being released early without the proper training, treatment, and rehabilitation needed to successfully reenter society. In one particular community the early statistics are worrisome. According to Chief of Police of Fontana Rodney Jones, “As Justice Alito cautioned, any prison reduction could lead to a grim roster of victims. Since realignment was implemented, Fontana has realized a 13 percent increase in violent crimes and a 22 percent increase in non-violent crimes” (Fontana, CA, Chamber of Commerce, 2012 p. 1).

California’s realignment policy will need to be thoroughly examined on various levels. Data will need to be collected to prove or disprove its success rate. Research on crime rates, reentry programs for offenders, and jail population statistics will need to be analyzed to derive a possible conclusion on realignment. Each county had autonomy for financing implementation of the proposed realignment. It would be ideal to study a particular county before AB 109 went into effect and use those results as a springboard to compare and contrast any related effects of realignment.

One critical area of importance that needs to be addressed by the CDCR, stems from the designation of certain convicts as low-level offenders. This labeling can make offenders eligible for county jail sentences. Many counties have alerted the state that they have transferred high-risk inmates to their counties instead of low-level offenders. Counties such as Tuolumne, Calaveras, Merced, Trinity, and San Bernardino, have questioned the state’s process in diverting offenders to their respective counties. Currently, the CDCR only monitors a prisoner’s last conviction in assessing his/her risk to the community. This is an egregious error by the state, and it needs to be promptly addressed. The state is basically allowing an inmate to have a record that includes high-

risk criminal activities such as rape or murder, however, if his/her last arrest was for petty theft or a violation of parole, than he/she is now considered a low-risk offender.

When the new budget is passed for AB 109 in November, policy reforms must address not only this concern, but the various funding issues, the lack of oversight, the overcrowding in county jails, recidivism, and other controversial topics that this report has addressed. After assessing the outcomes and full implementation of AB 109, focus needs to shift towards long-term efficiency, to create a set of guidelines to ensure AB 109's overall effectiveness over an extended period of time. These directives, established by the Legislative Analyst's Office (LAO) of California, are addressed below (Taylor, 2011):

- Develop local funding allocation formulas with an eye towards the long-term, and simplify the structure of the realignment accounts to provide financial flexibility.
- Enact statutory changes to give counties appropriate program flexibility.
- Ensure that local fiscal incentives are aligned with statewide goals.
- Promote local accountability.
- Avoid state-reimbursable mandates.

Areas of Future Research

In addition to the LAO's findings, a longitudinal study of cost savings should be conducted, along with an enhanced study of recidivism rates after the realignment was implemented. These recidivism rates would be particularly useful to compare reoffenders that were sent to the county jails versus similar prisoners that were sent to state prisons.

Study is needed to clearly define the state's role and funding responsibilities for

the realignment. Allowing the counties to use the funding without any oversight impairs the state's ability to gain unity in such a massive shift in policy. It would be interesting to see if the counties that were heavily funded implemented any type of treatment services that were useful or sustainable over time, or if the counties simply used the funding to expand or remodel jails. Understandably, if they did not include rehabilitative services in their expenses, justification would be required to support a claim that incarceration is favorable in comparison to treatment and alternative sentencing, especially since "two-thirds of California's 58 counties are already under some form of mandated early release" (CSA, 2012, p. 1).

Further study will be needed to assess the eventual outcome of Proposition 30. This ballot measure wrote into the state constitution certain provisions related to the implementation of AB 109. Additionally, it guaranteed ongoing revenues to local governments, required the state to share some unanticipated program costs, and restricted the state's authority to expand realignment program requirements (Bowen, 2012). More specifically, it required the state to continue to allocate the specified tax revenues established in 2011 to local governments to assist in realignment expenses (Bowen, 2012).

Proper risk assessment analysis will also be needed in order to manage the county jail population. "With the right tools, like a certified risk-assessment program and electronic monitoring, along with mandatory participation in substance-abuse programs and community-based service counseling, each county can identify inmates and release them back into the community with minimal threat to public safety" (Hilliard, 2012, p. 1). This method would be far more conducive to a successful post-release outcome than

incarceration or pre-trial detention. According to numbers released by the LAO (2012, p. 8), “At \$100 per day, the state’s pretrial population costs taxpayers approximately \$1.8 billion annually. That is more than half of California’s \$3 billion budget shortfall.”

Study is needed to help the CDCR establish a new clear-cut policy on the criteria for a low-level offender incorporating prior convictions. Research should be conducted to determine if the state properly complied with the designation of inmates sent to county jails. A year-to-year trend, through November 2013, is needed to analyze recidivism rates of the offenders released, as well as a cost-benefit analysis comparing the expense of county jail incarcerations versus state prison sentences.

Study is needed on whether and how sentencing patterns have changed after AB 109 had been implemented. Data is needed to determine if District Attorneys are more inclined to charge criminals with “three-nons” and if judges are more likely to sentence criminals to terms that keep them within the county jail system instead of sending them to state prison.

Study is needed to compare five year recidivism rates for specified crimes before and after AB 109 in order to determine if realignment is just shifting populations from the state to county level or if there is an actual decrease in incarceration and its related costs overall.

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