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## **Abstract**

California experienced escalating issues with prison overcrowding from the late 1970s to 2010, as the prison population skyrocketed to unprecedented highs. This article will discuss the problem of prison overcrowding, and one recent policy intervention implemented to decrease overcrowding and offender recidivism rates, the Public Safety Realignment Act (AB 109). After providing background on the Public Safety Realignment Act, this article will analyze the effectiveness of the policy and make recommendations.

## **Keywords**

realignment, AB 109, prison overcrowding, recidivism

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**Abstract**

California experienced escalating issues with prison overcrowding from the late 1970s to 2010, as the prison population skyrocketed to unprecedented highs. This article will discuss the problem of prison overcrowding, and one recent policy intervention implemented to decrease overcrowding and offender recidivism rates, the Public Safety Realignment Act (AB 109). After providing background on the Public Safety Realignment Act, this article will analyze the effectiveness of the policy and make recommendations.

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### **California's Prison Problem**

The populations of California's prisons have gradually increased since the late 1970s, when the state prison system reached its full capacity of 85,000 inmates (Newman & Scott, 2012). Inmate populations continued to grow, reaching an all-time high of about 171,000 prisoners in 2006 (California Department of Corrections and Rehabilitation, 2007).

The prison population reached critical numbers due to a convergence of multiple factors including the rise of "tough on crime" legislation such as the three strikes law and harsh mandatory minimum sentences (American Legislative Exchange Council, 2015). Budget cuts to county-level mental health and substance abuse treatment services exasperated the revolving door effect especially for those with mental illness and addiction (Silbert, 2012). California's high rates of recidivism compared to other states led to large numbers of individuals serving time for parole violations (Owen & Mobley, 2012)

Due to mounting issues in the prison system including an all-time high prisoner population Governor Schwarzenegger declared a State of Emergency in 2006 (Schwarzenegger, 2006). Schwarzenegger cited dozens of problems caused by facility overcrowding: plumbing issues, frequent riots, packed dormitories created in spaces not intended for residence, and insufficient resources to meet inmates' mental and physical health needs (Schwarzenegger, 2006). Furthermore, the California Department of Corrections and Rehabilitation (CDCR) budget reached an all-time high of \$9 billion by 2011, at an annual cost of about \$45,000 per inmate (ALEC, 2015).

Due to the negative impact of prison overcrowding on prisoner safety and access to healthcare, a class action lawsuit was filed against the state of California in 2011. The Supreme

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Court ruled that the overcrowding in California's prisons "results in cruel and unusual punishment in violation of the Eighth Amendment to the US Constitution," effectively framing prison overcrowding as a human rights issue (Reinhardt, Stephen & Henderson, 2009, p. 14). In response, the CDCR was mandated to reduce the prison population down to 137.5% of intended capacity, a decrease of over 45,000 inmates within two years (Newman, 2012).

Several racial and socioeconomic classes are overrepresented in California's prison system, and thus prison overcrowding issues disproportionately impact some communities. Of those currently in California's 33 prison facilities, 42% are Latino, 29% are African American, and 6% are other non-Caucasian races. People from large cities, the unemployed, the mentally ill, and those experiencing substance addiction are also overrepresented in the system (Public Policy Institute of California, 2015).

#### **AB 109: Public Safety Realignment**

California Assembly Bill 109, also known as the Public Safety Realignment Act, went into effect in October 2011, significantly changing California's policies around the sentencing, incarceration, and supervision of prisoners (Owen, 2012). The goals behind realignment were to decrease the number of inmates in state prisons, decrease the number of low-level offenders in prison, reduce recidivism, and increase prisoners' community integration after release. Another intent was to "encourage counties to develop and implement evidence-based practices and alternatives to incarceration to limit future crimes and reduce victimization" (CDCR, 2013, p. 1). Furthermore, the CDCR asserted realignment was "based on the

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premise that the provision of community-based support services [would] increase offenders' potential to successfully re-integrate into their communities" (CDCR, 2013, p. 1)

AB 109 created additional sentencing options other than straight prison sentences, and made fundamental changes to the way state parole and county probation is run. Realignment changed the protocol so that some low-level offenders with non-serious, non-violent, and non-sexual charges are sent to county jail rather than prison for sentences up to three years in length. Other offenders are now eligible for "split sentences," a combination of jail time and post-release supervision (Silbert, 2012).

The act also changed procedures around the post-release supervision of state prison inmates, shifting supervision for many lower-level offenders from state parole officers to county-based probation officers, through a new version of supervision called Post-Release Community Supervision (Owen, 2012). Post-Release Community Supervision (PRCS) utilizes community-based agencies to provide supportive re-integration services. Additionally, the vast majority of parole violators will now receive sentences for time in county jail rather than prison, as they were before realignment (Silbert, 2012).

AB 109 is administered as a collaborative effort between the California Department of Corrections and Rehabilitation and the individual counties. On the county level, the Community Corrections Partnership is responsible for implementing and overseeing realignment (Owen, 2012). The Community Corrections Partnership of each county usually includes legal system stakeholders, such as the "Chief Probation Officer as chair, the District Attorney, the Public Defender, a Judge, the Sheriff, the Police Chief, the county directors of mental and

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behavioral health, and other social service programs” (Owen, 2012, p. 49).

Realignment is primarily funded by state sales tax revenue and vehicle license fees, which were guaranteed through the subsequently passed AB 118 and SB 89. Additional funding was secured through AB 87, which “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” (CDCR, 2011, p.1).

### **Feasibility and Fit of Mission, Goals, and Objectives**

The Public Safety Realignment Act focuses on a concrete and measurable overall goal of decreasing the prison population down to mandated levels within two years, as well as the objectives of reforming sentencing, increasing treatment options for those on post-release supervision, and decreasing recidivism. As implementation is still underway, the effectiveness of AB 109 largely remains in question since there are limited peer-reviewed studies on its statewide outcomes. In order to determine realignment’s success thus far, the policy’s original mission, goals, and objectives must be assessed in relation to their feasibility and current success. The policy must also be assessed for its ability to address the root causes of prison overcrowding.

Utilizing Chamber and Wedel’s criteria for a value-critical policy appraisal, it is crucial that policy interventions like AB 109 have specific goals and objectives including performance standards and ways of measuring effectiveness. Likewise, it is important that the intervention is a good match for addressing the social problem in its acknowledgement of both

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the problem's causes and consequences (Chamber & Wedel, 2005).

Viewed through this analytical framework, the Public Safety Realignment Act has been moderately successful in meeting its goals thus far. As of April 2015, the original goal of reaching 137.5% of statewide prison capacity was met, with a count of 135.3% of capacity (Harris, 2015). Realignment additionally addressed the issue of prison facility overcrowding by increasing flexibility of sentencing, expanding options around split sentencing, and providing opportunities for individuals to participate in alternatives to traditional incarceration. In this way, the change to incarcerating parole violators in county jails rather than prisons has decreased the number of low-level offenders in the state prisons. The majority of individuals who violated their parole terms are held in jail rather than prison, leading to a decrease in the percentage of prison inmates who are serving time for parole violations alone (ALEC, 2015). Realignment's approach of moving parole violators to the jails acknowledges harsh parole violation sentencing as one of the causes of prison overcrowding.

Post-Release Community Supervision increases community-based support services for those on post-release supervision in an attempt to decrease recidivism (Silbert, 2012). However, the overall success of this goal remains in question, as limited statewide recidivism outcome data has been published. As of the last outcome report by the California Department of Corrections and Rehabilitation in 2013, there was no notable reduction in recidivism in the first year following realignment (CDCR, 2013). This is understandable as county probation departments require time following realignment act to plan and implement effective programs. While overall statewide

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recidivism rates were static in the first year, they are expected to decrease over the next several years as implementation continues.

### **Effectiveness of Eligibility Criteria**

A core goal of the Public Safety Realignment Act is to improve the quality of the corrections system while containing costs. The prison overcrowding issue is expensive for the state of California, as each prison inmate costs taxpayers about \$45,000 per year (ALEC, 2015). In an age of budget scarcity, creating efficient policy interventions is a state priority. Applying Chamber and Wedel's policy analysis framework, one should consider the policy's ability to create cost-effective improvements to the system (Chamber & Wedel, 2005). One way of assessing the efficiency of the Public Safety Realignment Act is to consider if the population eligible for changes in sentencing and supervision under AB 109 is the most appropriate target of intervention. Due to the recent implementation of AB 109, it is difficult to make an accurate assessment of the realignment's efficiency in this area, though some hypotheses can be made considering the policy's ability to meet the criminogenic needs of those eligible.

AB 109 appears to effectively reach the low-level offenders at the root of California's prison overcrowding issue (Linn & Petersillia, 2014). All inmates eligible for post-release community supervision under AB 109 have committed non-violent, non-serious, and non-sexual crimes, and are thus a lower-risk population. Furthermore, many of these "non-nons" have prior involvement in the criminal justice system, sometimes multiple prison sentences, due to behavior stemming from untreated mental illness and substance abuse (Linn &

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Petersillia, 2014). Rather than continuing the revolving door at a high cost, AB 109 encourages county probation departments to improve their ability to provide treatment addressing these chronic issues (Linn & Petersillia, 2014). The move of low-level offenders from traditional parole to post-release county probation supervision under AB 109 may ultimately cut costs, if relatively inexpensive community programs successfully decrease recidivism in the long run.

### **Policy Implementation and Equality**

When considering the successes and challenges of the realignment, it is crucial to acknowledge the differing impact of the policy on different populations of prisoners. In Cummins's framework for policy analysis, the value of equality is highlighted. An ideal policy intervention requires that “all citizens meeting the eligibility of a policy provision have equal access to the benefit and the benefit formula is applied equally across individuals and groups” (Cummins, 2011, p. 217). The value of equality serves to ensure that all eligible individuals see improvements due to the policy, not merely a sub-group of individuals.

The Public Safety Realignment Act is implemented on the county-level, which has led to highly variable outcomes across the state and a low level of equality. Due to county-level decision making on how to use non-restricted AB 109 funds, there is a lack of equality in how different counties provide services to AB 109-eligible individuals. Furthermore, there is a lack of equality in the amount of prison population reduction across facilities, leading to continual overcrowding issues at some facilities.

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The variation in AB 109 implementation strategies is partially due to the limited restriction of funding to specific interventions, leading to varying allocations for social services versus corrections (Silbert, 2012). For example, twelve counties spent over 75% of their AB 109 funds on sheriff and law enforcement activities in 2014. These counties spent less than 25% of their funds on community services, such as substance abuse and mental health treatment (Linn and Petersillia, 2014).

Fourteen counties fostered a rehabilitation-based model of post-release supervision and spent over 75% of their funding on social services in 2014. Four of these counties created innovative wrap-around service networks involving community agencies providing shelter, subsidized housing, and substance abuse and mental health treatment (Linn & Petersillia, 2014). Due to differing budget allocations, some counties provide significantly greater parolee access to rehabilitative services than other counties. Furthermore, while realignment decreased the overall state prison population down to 137.5% capacity as originally mandated, this decrease did not affect all facilities and prison populations equally. The mandate requires that the overall system remain under 137.5% of capacity, but makes no requirements of the population levels of individual facilities. As of April 2015, prison capacities currently varied by facility from 66% to 166% of the intended capacity (Harris, 2015).

Although prisoners at some facilities have experienced relief from overcrowding, other prisoners remain in facilities as full as they were before realignment. For example, prisoners held at Wasco State Prison (currently at 165% of capacity) may experience worse conditions than at the California Health Care Facility in Stockton (at 66% of capacity) (Harris, 2015, p. 2). This discrepancy in post-realignment prison populations shows

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unequal improvements to overcrowding-related conditions that AB 109 intended to address.

### **Summary Assessment**

Overall, the Public Safety Realignment Act can be considered somewhat successful since the CDCR met its mandate of reducing the statewide prison population below 137.5% of intended capacity. Governor Brown terminated the State of Emergency of the prison system on July 30, 2013 due to the decrease in prison population and improvement in prison healthcare services. Brown stated, "Prison overcrowding no longer poses safety risks to prison staff or inmates, nor does it inhibit the delivery of timely and effective health care services to inmates" (Brown, 2013).

Despite reaching the mandated prisoner population, individual facilities vary from 66% to 166% of intended capacity. Some facilities continue to experience populations near the same levels as before AB 109 (Harris, 2015). Due to these challenges, California was given a two year extension in 2014 from the Supreme Court in order to continue implementing AB 109 and decreasing the number of prisoners (Harris, 2015).

Although the CDCR successfully met its mandate, some unintended consequences resulted from realignment: an increase in the population in the already-crowded county jails and increased pressure to transfer prisoners out of state. As of April 2015, about 8,300 Californians were being held in prisons in other states. The California Department of Corrections and Rehabilitation is currently barred from moving additional prisoners out of state in order to lower California state prison populations (CDCR, 2015). California's county jails have seen a population spike due to the sentencing change that allows some felons and parole violators to serve their terms in jail rather than

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prison. In the first year following realignment, Los Angeles and Fresno's jail systems saw increases of 15-30% of their previous daily population (Janetta, 2013). Multiple counties are seeking local approval and funding to construct additional jails in response to this increased need (Janetta, 2013). One might wonder if AB 109, and similar policy interventions, led the overcrowding issue to simply shift from prisons to jails.

Realignment's impact on recidivism rates and parolee access to supportive services needs to be studied for a longer period of time before firm conclusions can be drawn. In the first year of data released by the CDCR, recidivism rates appeared unchanged due to realignment (CDCR, 2013). Due to the variation in counties' implementation strategies, ranging from rehabilitation-based to punitive, local outcomes vary greatly. The overall impact of the Public Safety Realignment Act will be clarified after several years of statewide data collection.

### **Recommendations**

There are additional ways to continue decreasing the rate of prison incarceration in California. For example, the Center on Budget and Policy Priorities recommends addressing the causes of prison overcrowding by continuing to reform sentencing laws, including decriminalizing some drug activities, limiting harsh mandatory minimum sentences, and dropping some low-level felonies down to misdemeanors, as Proposition 47 did in 2014 (Mitchell, 2014).

Expanded opportunities for prisoners to earn credits for "good time" or participation in rehabilitation programs while incarcerated would also shorten sentences for those motivated to seek early release. Furthermore, an increased reliance on alternatives to incarceration, such as mandatory drug and alcohol

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treatment rather than prison sentences for those with substance abuse issues would help divert some individuals out of the prison system and into rehabilitative programs (Mitchell, 2014).

### References

- American Legislative Exchange Council. (2015, January 1). Prison overcrowding. Retrieved from <http://www.alec.org/initiatives/prison-overcrowding/>
- Brown, E. (2013, January 8). Terminating prison overcrowding emergency proclamation. Retrieved from [http://gov.ca.gov/docs/terminating\\_prison\\_overcrowding\\_emergency\\_proclamation\\_\(10-4-06\).pdf](http://gov.ca.gov/docs/terminating_prison_overcrowding_emergency_proclamation_(10-4-06).pdf)
- California Department of Corrections and Rehabilitation. (2007, January 1). Average daily prison population report: Calendar year 2006.
- California Department of Corrections and Rehabilitation. (2013, December 1). Realignment report: An examination of offenders released from state prison in the first year of Public Safety Realignment.
- California Department of Corrections and Rehabilitation. (2014, November 1). Fall 2014 population projections. Retrieved from [http://www.cdcr.ca.gov/Reports\\_Research/Offender\\_Information\\_Services\\_Branch/Projections/F14Pub.pdf](http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Projections/F14Pub.pdf)
- Chambers, D., & Wedel, K. (2005). The analysis of policy goals and objectives in social programs and policies. In *Social policy and social programs: A method for the practical public policy analyst* (4th ed.). Boston, MA: Pearson/Allyn & Bacon.

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- Cummins, L.K., Byers, K.V., & Petrick, L. (2011). *Policy practice for social workers: New strategies for a new era*. Boston: Allyn and Bacon.
- Harris, K. (2015, April 15). Defendants' April 2015 status & benchmark report. Retrieved from <http://www.cdcr.ca.gov/News/docs/3JP-Apr-2015/April-2015-Status-Report.pdf>
- Jannetta, J. (2013, January 16). As the California prison population drops, the jail population rises. Retrieved from <http://www.urban-wire/california-prison-population-drops-jail-population-rises>
- Lin, J., & Petersillia, J. (2014). Follow the money: How California counties are spending their Public Safety Realignment funds.
- Mitchell, M. (2014, October 31). 4 Ways states can reduce incarceration rates. Retrieved from <http://www.cbpp.org/blog/4-ways-states-can-reduce-incarceration-rates>
- Newman, W. J., & Scott, C. L. (2012). Brown v. Plata: prison overcrowding in California. *Journal of the American Academy of Psychiatry and the Law Online*, 40(4), 547-552.
- Owen, B., & Mobley, A. (2012). Realignment in California: Policy and research implications. *Western Criminology Review*, 13(2), 46-52.
- Public Policy Institute of California. (2015, April 1). California's changing prison population. Retrieved from [http://www.ppic.org/main/publication\\_show.asp?i=702](http://www.ppic.org/main/publication_show.asp?i=702)
- Reinhardt, S., Karlton, L., & Henderson, T. (2009, August 9). Plata v. Schwarzenegger: Three judge court opinion and

order. Retrieved from

[http://cdn.ca9.uscourts.gov/datastore/general/2009/08/04/Opinion & Order FINAL.pdf](http://cdn.ca9.uscourts.gov/datastore/general/2009/08/04/Opinion%20&%20Order%20FINAL.pdf)

Schwarzenegger, A. (2006, October 4). Prison overcrowding state of emergency proclamation. Retrieved from <http://gov.ca.gov/news.php?id=4278>

Silbert, R. S. (2012). Thinking critically about realignment in California. *The Chief Justice Earl Warren Institute of Law & Social Policy*, 2.

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