

The Impact of Plata and Realignment on State and Local Corrections: The Use of Economic Incentives to Reduce Correctional Populations

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Abstract

While it is clear that Plata and Realignment have had significant effects on the size and attributes of state and local correctional populations, less attention has been directed toward how counties have responded to these reforms. This paper reviews previous successful efforts to reduce the use of incarceration largely using economic incentives.

Next, it examines the effects of Realignment thus far at both the state and local levels. In particular, two counties (Los Angeles and Contra Costa) have produced strikingly different results in terms of how state sentenced offenders are sentenced and supervised in the post-Realignment era. An argument is made that by providing economic incentives to local policy makers with the flexibility to imposed sentences that meet their interests, major reductions in correctional populations will result.

Reversing Mass Incarceration

While criminologists and social commentators seem quite adept of documenting the origins and consequences of mass incarceration, they appear to be theoretically and practically impotent in crafting a strategy for reversing the current levels of or nation's ongoing imprisonment binge.

There are only a few states (New York, New Jersey and California) that have departed from this pattern and have implemented reforms that have served to sharply reduce their prison populations.¹

New York City represents the one example in the USA where the entire correctional system (probation, parole, jail and prison populations) has been reduced by 60% largely by reforming its law enforcement policies and practices.² Specifically, in the 1990s, the number of persons arrested for felony crimes declined as the number of misdemeanor arrests increased. With felony arrests (especially drug arrests) declining the Rikers Island population dropped by nearly 50% from 22,000 to 12,000 while prison and probation admissions also declined. Overall the state prison population has declined from a high of 73,000 in 1999 to 54,000 by 2012.³

¹ Mauer, Marc and Nazgol Ghandnoosh. July 2014. *Fewer Prisoners, Less Crime: A*

² Austin, James and Michael Jacobson. January 2013. *How New York City Reduced Mass Incarceration: A Model for Change?* New York, NY: The Brennan Justice Center and Vera Institute.

³ Mauer and Ghandnoosh, *supra*, p.3.

Table 1 shows the dramatic reductions in all correctional populations for just New York City. These reductions were not doubt facilitated by the even larger reductions in reported serious crimes which have dropped by 225%.

Table 1. New York City Correctional Populations
1996-2008

NY City Attributes	1996	2008	% Change
Probation	75,895	44,022	-72%
Jail	19,255	13,223	-46%
Prison	46,798	30,201	-55%
Parole	36,018	23,279	-55%
Total	177,966	110,725	-61%
Part 1 UCR Crimes	382,555	117,956	-224%
Total Arrests	314,328	333,325	6%
Felony	132,602	100,045	-33%
Misdemeanor	181,726	233,280	22%

Sources: New York State Division of Criminal Justice Services and New York City Probation Department

In New Jersey the decline in the state prison population resulted from a combination of litigation and sentencing reform. In 2004 the state settled a law suit against the Parole Board where parole hearings were being delayed well beyond a person's parole eligibility date. As the same time parole grant rates increased from 30% to 50%. The state also modified its sentencing guidelines for drug crimes which served to divert people from prison.⁴

This paper examines in greater detail the experience of California which has used an economic model in combination with on-going litigation and federal court orders to lower the prison population by enticing counties to reduce their use of incarceration. Without going into much detail about the Realignment act, it will be argued that Realignment was an extension of California's rich history of using economic incentives to reduce juvenile and adult prison populations.

I then focus on two counties (Los Angeles and Contra Costa) which have very unique approaches to sentencing and criminal justice polices to examine how they are using the resources being provided by the state to manage their formerly state prisoners.

The Use of Economic Incentives

Modern capitalism has a lot to do with the way Americans behave and how we structure public policy. Put differently, if one wishes to restructure current public

⁴ Mauer and Ghandnoosh, *supra*, pp. 6-7.

policy must take into account the power of capitalism and traditional economic theory. There are many examples of this truism. Example "A" is the current federal tax code. Its whole purpose is to encourage economic activity and profits for certain sectors of our economy. If we want to encourage people to buy houses, we provide tax credits on the mortgage interest they pay. If we want people to buy solar systems or purchase more energy efficient appliances and electric cars, we provide tax credits. If we want people to stop smoking, we impose high taxes on cigarettes to make them more un-affordable.

In social policy, which is relevant to the question of how to reduce prison populations, there are two very strong examples of using financial incentives to lower the people cared for by government. As reported by Spelman (2009) and Gottschalk (2009), the massive decarceration of state hospitals was the result of two developments. First was the successful invention of mind altering drugs like Thorazine that allowed mentally ill to be treated in community based settings. But the other factor was the passage of Medicaid where the federal government paid for the care of the mentally ill in local hospitals and nursing homes. These two developments reduced the state mental health population from about 560,000 in the 1950s to under 100,000 today.

The same effects can be seen for public welfare. To get people off welfare, we paid the states to do that. In President Clinton's first campaign, he promised to "end welfare as we know it." When the 1996 law replaced the federal AFDC with a state-run Temporary Assistance for Needy Families (TANF) it was funded, in part, by the federal government. Prior to 1996, there were 14.1 million AFDC recipients. By 2010 there were only 4.4 million TANF recipients.⁵

Even in the criminal justice system, using economic incentives to change public policy has been successfully applied. The Department of Justice's Office of Justice Program can be viewed, in part, as means to economically induce states, counties and cities to behave differently. Large grants were offered by the Clinton administration to lure states into passing more severe prison sentences (Truth in Sentencing or TIS) by helping to pay for the new prisons that need to be built. Clinton also promoted the hiring of 100,000 police also paid by the federal government.

Boutique pilot programs like smart policing, weed and seed, drug courts, boot camps, and residential drug treatment programs have been largely fueled, at least initially, by federal grants. But these federal justice programs, unlike the successful efforts to reduce mental ill and welfare populations, have had the collective effect of *increasing* and not reducing the size and scope of the criminal justice and correctional systems.

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http://www.acf.hhs.gov/programs/ofa/datareports/caseload/2010/2010_recipient_tan.htm

There are two powerful trends that are causing policymakers to consider reducing the nation's massive prison and jail populations. First, the crime rate has dramatically declined. The current crime rate is what it was in 1968 when our prison population was only 190,000 compared to the current 1.6 million prison population. Second, the 2008 recession has forced state and local agencies to seek reductions in their correctional budgets.

Prior Efforts in California Using Economic Incentives

California has a long history of using economic incentives to lower adult and juvenile prison populations. The first major experiment was the 1965 Probation Subsidy Act that was signed into law by the current California Governor's father Pat Brown. The law sought to reduce both juvenile and adult admissions to state prison and the California Youth Authority.

By all accounts the program was very successful in terms of reducing state prison populations. Shortly after 1965 the state prison population reached 28,452 but declined under Governor Ronald Reagan to 19,773 by 1972.⁶ Unfortunately crime rates were beginning to rise nationally and in California so probation subsidy became an easy target for causing the crime rate increase. Led by then Los Angeles Police Chief Ed Davis, the subsidy money was characterized as "Blood Money". Shortly after Jerry Brown was elected in 1975 he gutted the prison admission requirement and allowed counties to receive state funding regardless of prison commitment numbers. Shortly thereafter along with the demise of indeterminate sentencing, California and other states began their historic increases in prison populations.

A second but often neglected experiment occurred within the California Department of Corrections in the early 1990s. In an effort to reduce technical parole violations, the CDC created a incentive program where parole agency divisions were economically rewarded by lowering technical violations. Each parole unit was budgeted for a specific number of prison beds that could be occupied for technical violations. If the number of allowable beds was exceeded, the unit budget was reduced but if the number is below expectations, additional support services for parolees were funded.

The model also included training parole agents in alternative revocation decision-making and keeping decision makers regularly informed of the budgetary consequences of their actions. This program resulted in about 10,000 fewer parole revocations in 1992 and 3,000 fewer prison beds being used. Like the probation

⁶ California Department of Corrections. 1974. *California Prisoners 1973*. Sacramento, CA: California Department of Corrections.

subsidy program, the parole revocation program was also terminated due to its success and the claim that it was based on “blood money”.⁷

The California Youth Authority is an example of economic incentives fueling a dramatic reduction in youth incarceration and parole at the state level. In 1996, after years of criticism about the conditions of confinement in the California’s juvenile prisons, media and academic exposes, and unacceptably high recidivism rates, the California legislature passed a law charging counties on a sliding scale for the state confinement of non-violent youth.

Shortly thereafter, the CYA institutional and parole populations began to plummet (Figure 1). These declines were facilitated by a lawsuit filed by the Prison Law Office in 2003 (*Farrell v. Cate*) which later evolved into a consent decree that was designed to correct unconstitutional conditions in the remaining CYA facilities.⁸

When compliance with the consent decree was no longer feasible, the state launched its first “Realignment” program where counties were paid substantial funds to house youth and young adults who had been committed to the CYA. That reform, plus a decision to remove parole violators from custody, led to further declines in the CYA population. As of 2013 there were only 659 inmates in the CYA and none on parole supervision. During this remarkable decline in the CYA populations, crime rates and juvenile arrest rates were also plummeting (Figure 1).

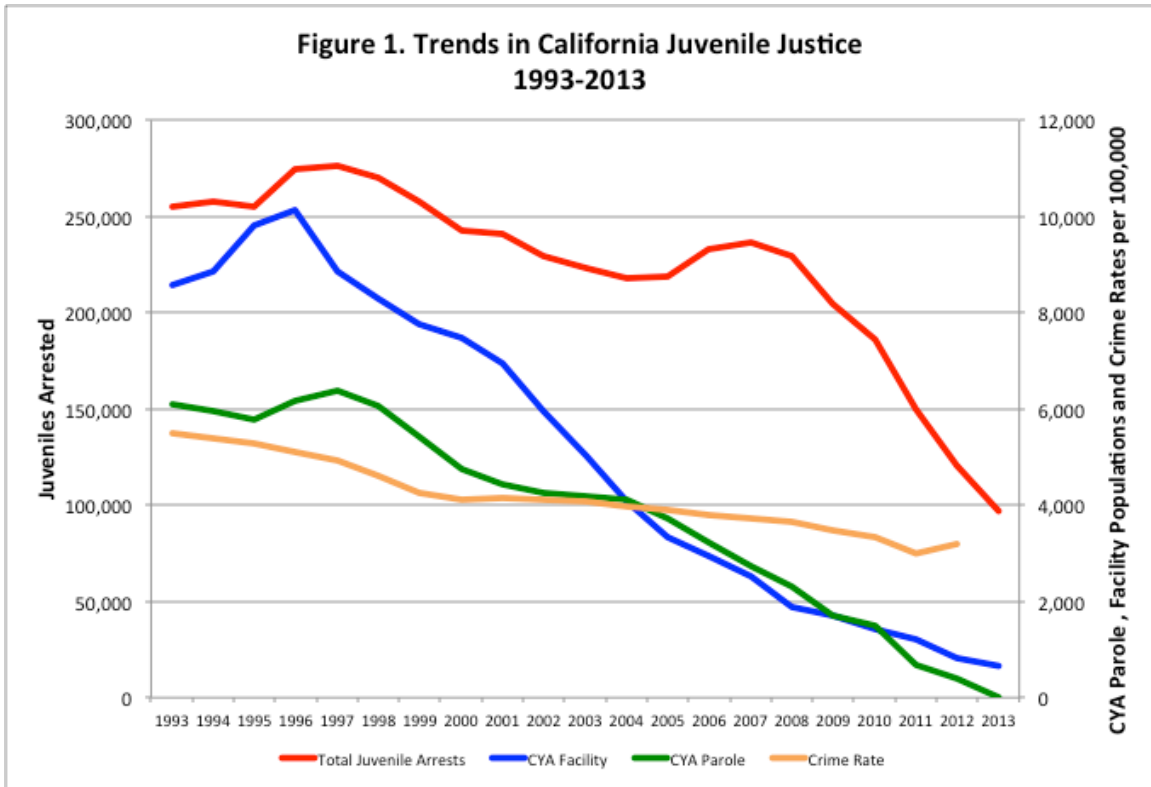
The most recent example of economic incentives driving California’s correctional populations was the passage of SB 678 Adult Probation Performance Incentive Act. Like the other economic models, SB 678 rewarded counties that used probation in lieu of a state prison sentence. In this case the target were probation violators who were being sent to prison due to a violation(s).

The most recent report from the California Administrative Office of the Courts claims that the legislation has succeeded in diverting a sufficient number of probation violators which has averted a prison population of 9,500 inmates. Using a marginal cost factor, the estimated savings to the state per year is \$278 million.⁹

⁷ Holt, Norm. 1995. *Reducing Parole Revocations By Improved Decision Making: The California Experience*. Unpublished paper.

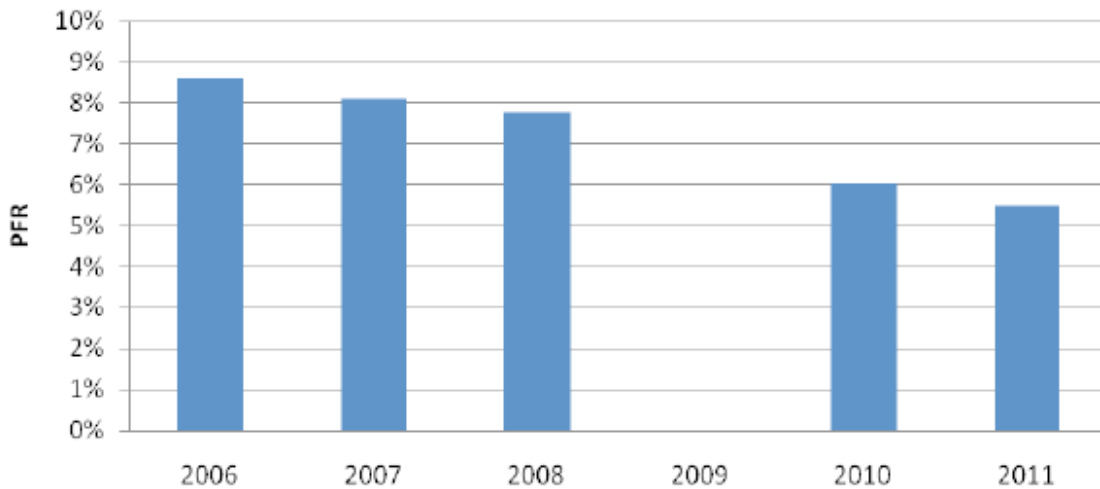
⁸ Margaret Farrell v. Matthew Cate, Civil Action, No. RG 03079344

⁹ Administrative Office of the Courts, July 2012. *SB 678 Year 2 Report: Implementation of the California Community Corrections Performance Incentives Act of 2009*. San Francisco, CA: Administrative Office of the Courts, Criminal Justice Court Services Office



Source: CDCR, DJJ

Figure 2. Pre and Post Probation Performance Based Failure Rates



Source: California Administrative Office of the Courts

A Closer Look at Re-Alignment

On October 1, 2011, Assembly Bill (AB) 109 also known as the Realignment legislation took effect. AB109 was designed, in part, to reduce the state prison population to meet the to 137.5 percent of design capacity as ordered by the Three-Judge Court and affirmed by the U.S. Supreme Court by June 27, 2013. The original estimates of the likely impact of AB 109 showed the legislation would reduce the state prison population by over 40,000 inmates which would allow the CDCR to reach compliance with court order.¹⁰ As such it was the key component to resolving the on-going litigation in the consolidated *Coleman, Plato v. Brown* cases.¹¹

Once passed there has been a groundswell of concerns that Realignment would fail. Petersilia summarized the collective fears of those wary of any effort to downsize California's prison populations

“If it (Realignment) does not work, counties will have simply been overwhelmed with inmates, unable to fund and/or operate the programs those felons needed, resulting in rising crime, continued criminality and jail (instead of prison) crowding.”¹²

The immediate fear for the counties was that the 40,000 inmates would swamp their county jails. As an effort to alleviate that situation the legislation provided local judges to “split” the sentences of the AB109 inmates so that the impact on local jails could be tempered. This provision as allowed under Section 1170(h) of the Penal Code, can either be ordered by the Court to serve their full sentence in jail with no post-release supervision or to “split” the sentence between jail custody and a separate period of Mandatory Supervision (MS). However, the key was that the courts would have to use this discretionary authority to reduce prison terms.

There were other aspects of the law that impact community supervision. Inmates currently imprisoned in the CDCR as of October 1, 2011 and who were convicted of “non-serious, non-violent, or non-high-risk sex offenses” (regardless of prior convictions) prior to Realignment would, upon their release from state prison, be supervised by county probation departments. This population, known as Post-Release Community Supervision (PRCS), was formerly supervised by state parole and will decline over time.

Realignment is funded with a dedicated portion of state sales tax revenue and vehicle license fees. According to the CDCR, current funding for FY2013-14 is over

¹⁰ California Department of Corrections and Rehabilitation. 2011. *Fall 2011 Adult Population Projections*. Sacramento, CA: CDCR.

¹¹ *Brown v. Plata*, 131 S. Ct. 1910, 1947 (2011).

¹² Petersilia, Joan. May 2014. *California Prison Downsizing and Its Impact on Local Criminal Justice Systems*. Palo Alto: CA: Stanford Law School, Stanford Criminal Justice Center.

\$1 billion per year.

State Trends

SB 678 and Realignment have had a dramatic impact on the number of adults under state correctional control – a net reduction of over 108,000 people with most of the declines in the state parole population (Table 2). While the prison population was projected to decline by 40,000 by CDCR, there has only been a 25,000 decline since Realignment began in 2011. The overall decline since 2007 has been 40,000 inmates. But unfortunately, the population is now projected to rise again to approximately 147,000 in five years.¹³

At the local level the trends are not yet fully known but it is increasingly clear that whereas the prison population has declined pretty much as projected the sentenced jail population has increased but has not matched the state prison reduction. The lack of a compensating increase in the jail population is largely due to the widespread use of “split sentencing” which allows the court to lower state prison terms for the locally sentenced inmates. As shown in Figure 2, as of 2013, about 28% of the 1170(h) sentences have been split sentences. And there is considerable variation by county with Contra Costa having the highest reported rate (92%) and Los Angeles the lowest rate (6 %).

Overall the jail population is currently where it was in 2007. It should also be noted that Los Angeles County’s jail population now accounts for approximately 5,000 1170(h) sentenced inmates which is more than half of the increase in the California jail population and is linked to their low use of split sentencing.

The adult probation population, despite the claimed diversion effects of SB 678, steadily declined until 2012 when it rose slightly. In 2013 adult felony caseloads as reported to the California Attorney General moderately increased again but it remains at the levels reported in 2010 just before Realignment. What is not clear is whether the Attorney General’s data include or exclude the PRCS and MS caseloads. This level of ambiguity led Joan Petersilia to claim a 100,000 plus increase in the probation caseloads due to re-alignment and the need for more resources and funds.

“By the end of 2012, California’s adult probation population had skyrocketed from 311,692 in 2010 to 416,414 in 2012, an increase of over 100,000 probationers (or 34% growth in just two years). This growth rate is far beyond anything experienced in any other part of the corrections system, and the sheer numbers alone created management and supervision challenges for probation

¹³ California Department of Corrections. June 2014. *Spring 2014 Population Projections*. Sacramento, CA: CDCR, Office of Research.

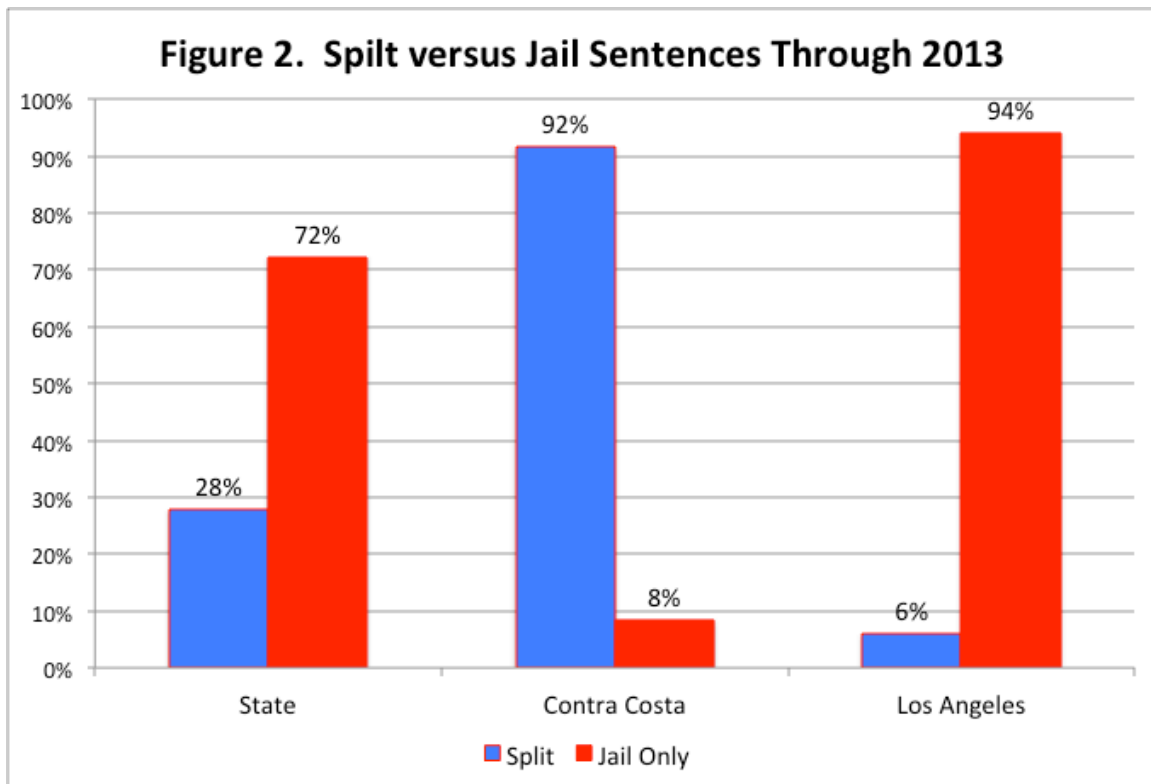
agencies.”¹⁴

¹⁴ Petersilia, Joan. 2014. *Voices From The Field: How California Stakeholders View Public Safety Realignment*, Palo Alto, CA: Stanford Law School, Stanford Criminal Justice Center, p. 176.

**Table 2. Summary of Changes in California Correctional Populations
2007-2014**

Year	State Prison	Pretrial Jail	Sent Jail	Total Jail	Total Inmates	Parole	Sub Total	Felony Probation	PRCS	Mand. Super.
2007	173,312	56,571	26,613	83,184	256,496	126,330	382,826	269,384	0	0
2008	171,085	56,232	26,165	82,397	253,482	125,097	378,579	269,023	0	0
2009	168,830	54,589	26,277	80,866	249,696	111,202	360,898	266,249	0	0
2010	162,821	52,059	21,386	73,445	236,266	105,117	341,383	255,006	0	0
2011	160,774	50,397	20,896	71,293	232,067	102,332	334,399	247,770	0	0
2012	133,768	50,309	29,827	80,136	213,904	69,453	283,357	249,173	33,861	4,932
2013	132,911	51,400	30,619	82,019	214,930	55,499	270,429	254,106	33,279	9,651
2014	135,793	51,488	31,039	82,527	218,320	44,792	263,112	NA	NA	NA
Change since 2007	-37,519	-5,083	4,426	-657	-38,176	-81,538	-119,714	-20,211	33,861	4,932
Post AB109	-24,981	1,091	10,143	11,234	-13,747	-57,540	-71,287	-1,403	33,279	9,651

Sources: CDCR, BSCC Jail Survey, California Attorney General



Source: Chief Probation Officer website

Better information does exist on the size of the PRCS and MS populations which is reported to the California Chief Probation Officer website. That data shows the PRCS has risen to 33,279 while the caseload is now at 9,651. As noted earlier, the former population should steadily decline while the latter may continue to increase if more AB109 prisoners are released from local jails with a split sentence.

Overall the probation caseload reported by the Attorney General show little change in the adult probation caseload. But even if one assumes the PRCS and MS caseloads are excluded from the probation count, the probation population could only have increased by about 43,000 – not over 100,000. Further, assuming that PRCS and MS cases need to be added to the overall totals in Table 2, the overall decline has been about 75,000 people since 2007.

Relative to the impact on crime rates, the results can be used to feed one's ideology depending on how one views the data. Figure 3 shows the reported index crime rates from 1960 to 2013 from two perspectives.

The traditional method is crime rates per 100,000 population. This is done largely because the probability of a person reporting a serious crime each year is extremely low and even more so for middle and upper class households. The probability that a person reports a serious crime to police is also shown in Figure 3. This measure shows that only 3 percent of the California population reported a serious crime in 2012 and has been at that level since 2008. Using the “probability” measure, crime rates have remained unchanged since AB109 was passed. But if you want to excite the public about rising crime rates due to AB109 one can use the rate per 100,000 population metric.

This is exactly what the researchers at the Public Policy Institute of California did. Their analysis between 2011 and 2012 crime rates which showed an uptick in property crime rates only, led them to conclude that Realignment was causing property crimes rates to go up.

“...we find robust evidence that Realignment is related to increased property crime. In terms of overall property crime, we estimate an additional one to two property crimes per year on average for each offender who is not incarcerated as a result of Realignment.”¹⁵

In a similar vein, Joan Petersilia also gave credence to the “Realignment causes crime” relationship based solely on the 2011-2012 change in crime rates.

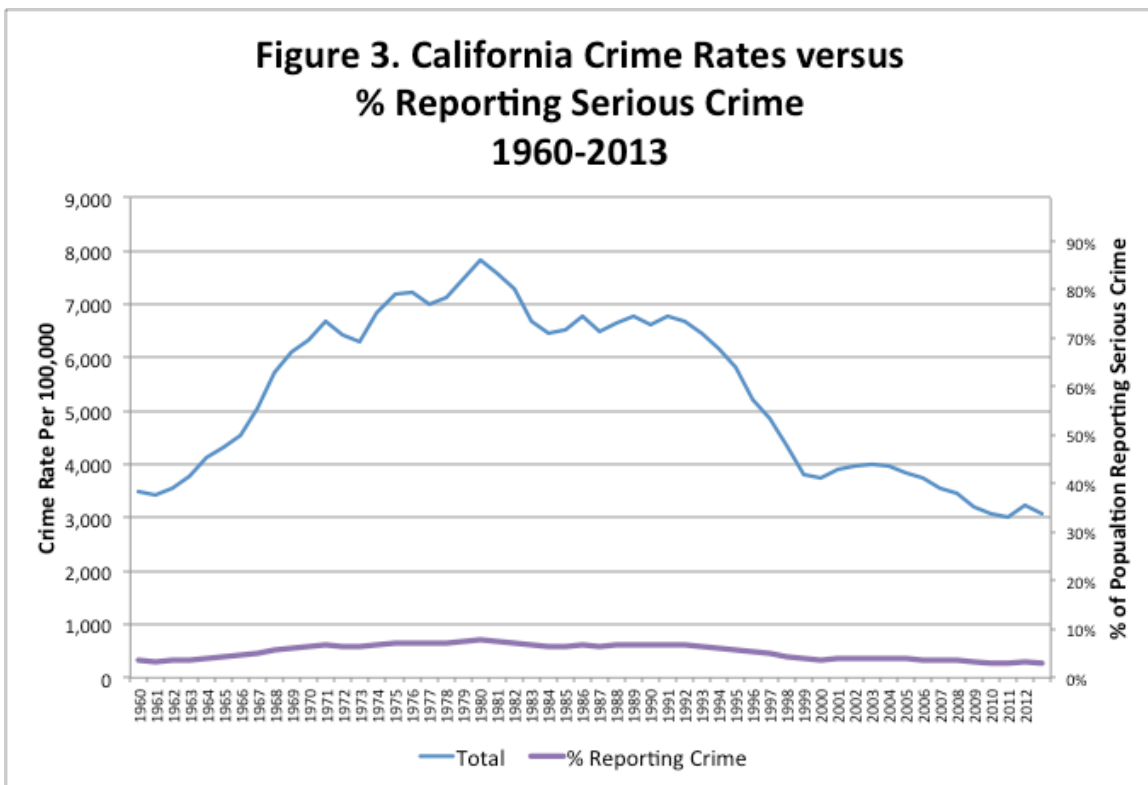
“Police officers walking the beats in cities across California had few positive

¹⁵ Lofstrom, Magnus and Steven Raphael. December 2013. *Public Safety Realignment and Crime Rates in California*. San Francisco, CA: Public Policy Institute, p. 2.

comments about Realignment. They considered it an unfunded state mandate, imposed on them at a time when they were already facing budget cuts that had led to officer layoffs and expanded obligations. Most believed that more criminals are on the streets and that crime has been rising as a result. In July 2013, the California Attorney General’s Office released its Crime in California report, which confirmed these suspicions. Violent and property crime increased about 3% to 5% between 2011 and 2012.”¹⁶

These breathtaking conclusions fail to address the fact the 2012 crime rate uptick was well within the normal fluctuations for year-to-year crime rate changes. Further, many counties had experienced either reductions or no significant change in their crime rates. And if these researchers had been more patient, they would have had to contend with the most recent 2013 crime rate report from the California Attorney General showing *declines* in both property and violent crime rates.

A more reasoned conclusion is that to date there has been no significant increase in crime rates since re-alignment was implemented. The “no impact” result on crime rates is similar to the results for the CYA, parole violation and probation subsidy programs implemented in California and the recent prison population reduction reforms in New York and New Jersey noted earlier.



Sources: UCR and California Attorney General websites.

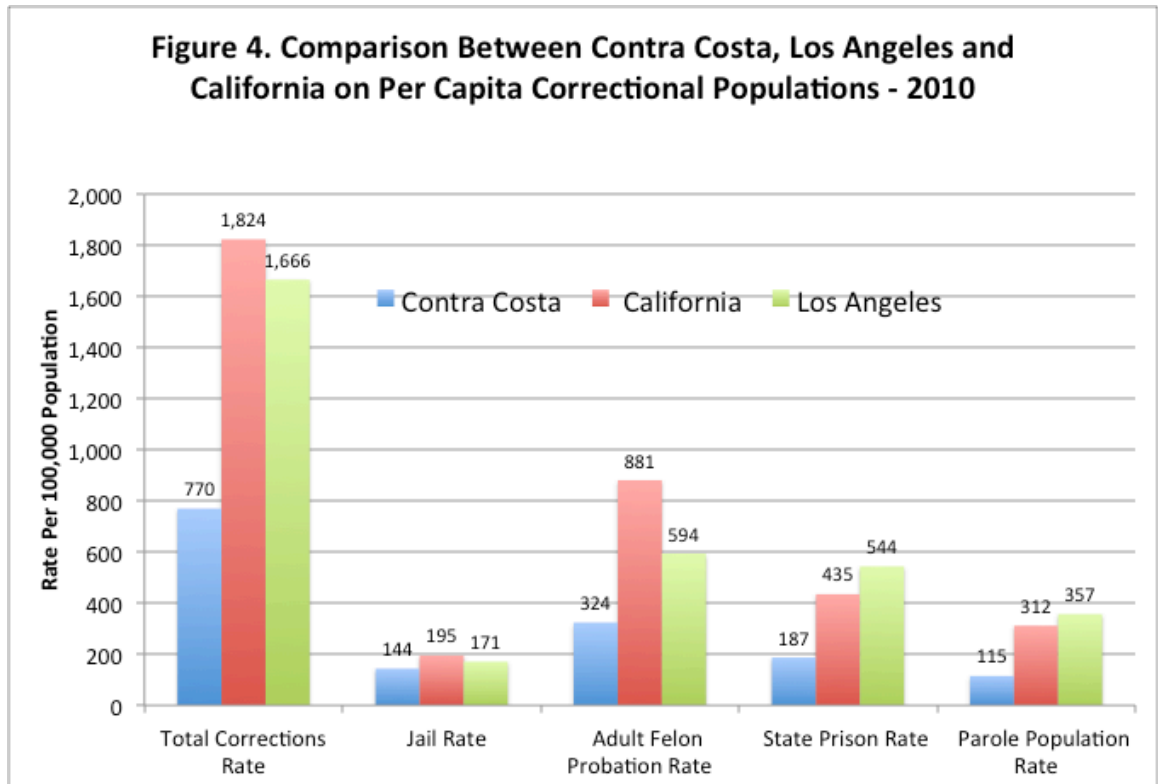
¹⁶ Petersilia. *Voices From The Field: How California Stakeholders View Public Safety Realignment*, p. 12.

A Closer Look at Realignment

To better understand how the counties are responding to re-alignment two case studies for Contra Costa and Los Angeles counties are presented next. Both were chosen because they represent very different approaches to administering the new law even though they have similar crime rates (about 3,000 per 100,000). As shown below, these divergent approaches mirror long-standing approaches to sentencing practices which have also served over many years to impact the use of state imprisonment.

Figure 4 shows the various rates of correctional control for the two counties and the entire state in 2010 just prior to the implementation of Realignment. Contra Costa stands out with having by far the lowest correctional population control rate of only 770 per 100,000 population as opposed to the state rates of 1,823 and the Los Angeles rate of 1,666. It may of interest to note that there at 17 counties with total correctional rates of 3,000 per 100,000 or more. Much of Los Angeles's higher overall rate can be linked to its higher rates for state prison and parole.

One can speculate that if the rest of California behaved like Contra Costa (and some other low corrections usage counties) California's prison and jail populations would be no more than half of what they now are. They would also be approaching the rates that are consistent with today's low crime rate.



Sources: CDCR data files, Attorney General and BSCC websites.

Both counties approached the task of implementing AB109 in a manner consistent with their historic criminal justice practices. As shown in Table 5, Los Angeles adopted a plan to incarcerate the formerly sentenced state inmates in their jail system. This was feasible as the jail population, like more jails in California and the U.S. had been declining for several years. The decline was largely due to dramatic declines in adult arrests and bookings – similar to what occurred in New York City and other major jails.¹⁷

By the time AB 109 was implemented, the Jail had over 5,000 empty beds. The incarceration model was preferred as the Courts and especially the then District Attorney Steve Cooley were adamantly opposed to Realignment.

“Governor Brown’s Realignment proposal in the area of Corrections and Rehabilitation will wreak havoc on Los Angeles County’s criminal justice system and the State as well. Convicted felons will not be appropriately punished. In addition, there would be woefully insufficient bed space for these convicted felons in Los Angeles County jails. Thousands of convicted felons will be on the streets with minimal supervision... The Realignment proposal is a public safety nightmare”.¹⁸

Table 5. Correctional Populations for Contra Costa and Los Angeles 2010 and 2013

Attribute	Contra Costa		Los Angeles	
	2010	2013	2010	2013
Jail	1,608	1,577	15,252	18,515
Pretrial	1,377	1,212	10,746	9,951
Sentence	231	365	4,506	8,565
Probation	2,918	3,300	54,824	60,490
Regular	2,918	2,787	54,824	50,380
PRCS	0	239	0	9,877
MS	0	274	0	233
Totals	4,526	4,877	70,076	79,005

¹⁷ Austin, James, Wendy Naro-Ware, Roger Ocker, Robert Harris and Robin Allen. April 10, 2012. *Evaluation of the Current and Future Los Angeles County Jail Population*. Washington, DC: The JFA Institute.

¹⁸ Cooley, Steve. February 2011. *Governor’s Proposed Transfer Of Responsibility For Delineated Felons And Parolees To Local Jurisdictions*. Los Angeles, CA: Los Angeles County District Attorney.

Sources: BSCC and California Probation Officer realignment website

Due to the unwillingness to use split sentencing and Los Angeles's historic tendency to rely on state prison sanctions, much of the money allocated for the Realignment in Los Angeles has been dedicated to housing over 5,000 AB 109 sentenced inmates and building more jails.

Table 5 also shows the ambiguity of the probation caseload data for Los Angeles and the state as a whole. The number of people on active adult probation in Los Angeles varies widely based on the source of the information. The Attorney General's data shows that there were about 54,824 adults on probation in 2010 and that number only increased by about 1,000 to 55,808 (only 218 are on misdemeanor probation).

To try to clarify the Los Angeles adult probation, the Department was contacted and verified that it currently has only 60,490 adults on supervision. Of that number 9,877 are on PRCS status and only 233 are under MS supervision. That would leave 50,380 on non-AB109 supervision which is nearly 5,000 less than existed in 2010. The outstanding question is where did the nearly 5,000 probation population go?

Unlike Los Angeles, Contra Costa has continued its reliance on non-incarceration options. Because Contra Costa already had a lower rate of state imprisonment, it had a much smaller AB109 population to accommodate. Its jail population is essentially the same as it was in 2010. This was achieved by lowering its pretrial population to accommodate the slight increase in the sentenced population.

The remainder of the AB109 population has been accommodated via community supervision with an additional 513 people under community supervision. In exploring why Contra Costa has pursued this non-incarceration approach the following factors were identified.

1. Historically Strong Collaboration Among the Key Criminal Justice Agencies

While Contra Costa is not a small county with over one million residents, it is small enough that the local criminal agencies are able to maintain a close and collaborative relationship. The key agencies (Courts, DA, Public Defender, Sheriff's Department, and Probation Department) have traditionally convened on a regular basis to review current trends and outstanding issues.

As an example, soon after AB109 was passed, the agencies met to review what would be the best evidenced-based approach to managing the influx of inmates that would now be held in the local county jail. As part of AB109, each county was required by statute to form a Community Corrections Partnership (CCP). The function of the CCP was to submit spending plans to the state that would outline how the AB109 funds would be allocated. Within Contra Costa County, such a committee existed previously that facilitated the adoption of a plan of action on how to best implement AB109.

Based on the decisions made in the early meetings of the key agencies, there was a consensus that maximizing the use of “split sentencing” and contracted treatment services would be the desired strategy for the following reasons:

- a. Split sentencing would allow the criminal justice system to better manage and service people sentenced under AB109 as it allowed for a period of supervision that otherwise would not have existed.
- b. Research showed that the length of time incarcerated was not related to recidivism, so shorter incarceration would not have an impact on crime rates particularly for the short sentences issued under AB109.
- c. The County has maintained a well-respected probation department that would provide credible services and supervision to its clients (described in greater detail below).
- d. The County has maintained a strong Public Defender’s Office that would provide a strong defense for its clients and argue for plea agreements that would favor a split sentence.
- e. The assessment of the individuals being sentenced to local jails under Realignment showed that many required substance abuse treatment, medical care, and residency and employment services.

For these reasons, the County allocated about 60% of its Realignment funds to programs and services designed to assist people convicted of crimes (probation, public defender, health services, and contracted programs).

The Sheriff’s Department and Probation Department have collaborated closely to facilitate the re-entry of AB109 inmates from incarceration to probation. A recent article highlighted how such cooperation takes place.

Probation Chief Phil Kader credits the relative success of the Probation Department in part to the access that the Sheriff’s Department has provided to “clients” while they are still incarcerated.

At West County Detention facility in Richmond, probation officers are able to meet privately with inmates in small rooms, which are otherwise used for attorney-client conversations. Officers then figure out which transitional programs are most appropriate for their clients: job training, drug treatment or help to find housing.

West County Detention facility is programs-based, Sheriff Department Lt. Brian Vanderlind, the facility commander says. Most of the inmates here take advantage of the various educational opportunities provided.

2. Short Probation Terms.

Unlike other jurisdictions, the justice system in Contra Costa County issues probation terms that are significantly shorter. For example, neighboring Alameda County typically gives a five-year probation term for individuals convicted of a felony crime. In Contra Costa County, most probation terms are within the 24-36 month range.

3. Low Recidivism Rates for Felony Probationers

Related to the positive reputation of the probation department, a recent study found that the recidivism rate is relatively low in Contra Costa. A three year follow-up recidivism study of felony level probationers was completed in 2013 based on a cohort of 1,818 people placed on probation in 2009. The results found that only 21% of the sample was re-arrested for a new crime during the three-year follow-up period. The study also found no association of recidivism by the length of supervision which gave support to the County's use of short probation terms.

Summary

There are increasing examples of prison populations being reduced at significant levels. Modified police practices in New York City has helped reduced correctional populations by a third or even higher. New Jersey lowered its prison population by 25% by reforming its parole board and diverting drug offenders from state prison. These results were achieved as crime rates continued to fall.

California relied upon economic incentives to virtually eliminate its incarcerated state youth population. Similarly, technical parole violation were significantly reduced by offering economic incentives to parole agents. More recently, probation violations sent to state prison have been reduced by paying counties to keep them at the local level. Here again crime rates declined as these reforms took place.

AB 109 is yet another example of using financial incentives to reduce incarceration. Despite the fears of practitioners and criminologists, the reform has successfully lowered the correctional population without an associated increase in crime rates. The current law provides sufficient options for counties to temper whatever concerns have been raised about AB109 "overwhelming" local criminal justice systems and causing crime rates to escalate.

One area that AB109 has not been successful at is saving money. The most recent information shows that overall budget of the CDCR did not decline but has increased substantially. In 2011, the CDCR budget was \$9.5 billion and was projected to decline to \$7.8 billion. Instead it had increased to \$11.3 billion by FY 2013. This sharp increase in costs despite reductions in prisoner and parole populations is a

sobering reminder of the gritty determination of government agencies to resist budget cuts.

The sharp contrasts between Los Angeles and Contra Costa counties show how much variation already existed in the use of imprisonment prior to the introduction of AB109. For the “low use” counties, AB109 produced a minor adjustment in existing policies which has served to fund further imprisonment reductions. These counties are not the problem in managing California’s prison population. Rather is places like Los Angeles county who even with the opportunity to and funding to lower rates of imprisonment choose bot to do so.

Wise investments in a well-organized and efficient local criminal justice environment can serve to promote examples of how to significantly reduce all forms of correctional control. Local government will implement reasonable reforms if they are paid to do so and have the flexibility to sentence people as they see fit. Trying to achieve such results in the high use counties will require a different and perhaps more punitive form of economic incentives.