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Governor's Realignment Plan—Criminal Justice

L E G I S L A T I V E A N A L Y S T ' S O F F I C E

Presented to:

Senate Budget and Fiscal Review Subcommittee No. 5
On Corrections, Public Safety, and the Judiciary
Hon. Loni Hancock, Chair





Overview of the Governor's Realignment Proposal

- The centerpiece of the Governor's budget proposal is a major realignment of state and local program responsibilities that would be subject to voter approval.
- Specifically, the Governor's plan would raise \$5.9 billion in taxes to fund the shift of a like amount to counties to implement increased program responsibilities. In the area of criminal justice, these programs include:
 - Court security.
 - Various public safety grant programs.
 - Jurisdiction of lower-level adult offenders.
 - Jurisdiction of parole violators.
 - Adult parole.
 - Jurisdiction of remaining juvenile offenders.



Factors to Weigh in Assigning Program Responsibilities

- Programs where statewide uniformity is vital, where statewide benefits are the overriding concern, or where the primary purpose of the program is income redistribution—usually are more effectively controlled and funded by the state.
 - Reduces inappropriate service level variation.
 - Focuses state attention on programs integral to state goals.
- Programs where innovation and responsiveness to community interests are paramount—usually are more effectively controlled by local governments.
 - Facilitates citizen access to the decision-making process and encourages experimentation.
 - Allows community standards and priorities to influence allocation of scarce resources.
- Coordination of closely linked programs is facilitated when all programs are controlled and funded by one level of government, usually local government.
 - Increases attention to programmatic outcomes.
 - Reduces incentives for cost shifting among programs.
- If state and local governments share a program's costs, the state's share should reflect its level of program control. If the costs of closely linked programs are shared, the cost-sharing arrangements should be similar across programs.
 - Increases accountability to the public.
 - Promotes efficiency in expenditures and discourages inappropriate cost shifting.



Realignment Program Design Factors to Consider



Link Program Funding Responsibility and Program Policy Control

- Realignment works best when the same level of government has program policy authority and fiscal responsibility.
- Let the level of government that pays a program's bills set its rules.



Build in Accountability

- Promote accountability by quantifying results regarding governmental performance and broadly disseminating information to the public.
- Minimize reliance on detailed reports to state agencies.



Address Cost Impacts of Changes in Program Responsibility

- Provide sufficient revenues to maintain an appropriate level of program services over the long run.
- Roughly match the rate of growth for the portfolio of realigned programs with the rate of growth for the portfolio of realignment revenues.
- Avoid creating state-reimbursable mandates.



Allow Realignment Funds to Be Used Flexibly

- Limit earmarking of realignment revenues or segregating revenues into multiple pots.
- Allow funds to be used to meet diverse and changing local objectives.
- Promote accountability through performance measures, not fiscal controls.



Realignment Program Design Factors to Consider

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Develop a Simple Revenue Allocation Methodology

- Design a revenue allocation methodology that works over the long term.
- Minimize long-term reliance on formulas that reflect prior-year revenue allocations or program costs.
- Distribute revenues based on each local government's population or another broad based indicator of overarching need.



Rely on Financial Incentives to Promote Intergovernmental Coordination

- Create fiscal incentives that encourage the efficient achievement of programmatic goals by multiple levels of government.
- Identify and address counter-productive fiscal incentives between state and local government.



Governor's Proposal to Shift Court Security



Overview of Proposal

- Current law generally requires trial courts to contract with their local sheriff's offices for court security. Courts thus have little opportunity to influence either the level of security provided or the salaries of security officers.
- Under the administration's plan, state funding to pay for court security would be shifted to counties. The administration estimates that this shift would result in \$530 million in state savings, with counties receiving a commensurate amount in realignment revenues.



Proposed Court Security Shift Is Problematic

- In our view, the Governor's proposal does not make sense. While control of funding for court security would be shifted to counties, the state judicial system would continue to be responsible for the overall operation of the courts.
- Absent financial control, the courts would have difficulty ensuring that the sheriffs provided sufficient security measures. As a result, sheriffs would have an incentive to spend as little as possible on court security.
- We believe a better and more cost-effective approach would be to direct the courts to contract on a competitive basis with both private and public entities, including sheriffs, for the provision of court security. We estimate that this change could save the state about \$20 million in 2011-12 and \$100 million annually within a few years.



Governor's Proposal to Shift Various Local Public Safety Programs



Overview of Proposal. The Governor proposes to realign various public safety grant programs (such as the Citizens' Option for Public Safety Program, juvenile justice grant programs, and local detention facility subventions or booking fees) to local governments. Currently, these programs are funded from a temporary Vehicle License Fee increase that will expire at the end of 2010-11.



Programs Suited for Realignment. The proposed shift would allocate resources directly to the local governments that bear the primary responsibility for ensuring public safety and provide them with greater flexibility to meet their unique public safety needs.



Governor's Proposal to Shift Jurisdiction of Lower-Level Offenders



Overview

- The Governor proposes that all offenders sentenced for a non-serious, non-violent crime—who have no prior serious or violent criminal convictions and who are not required to register as sex offenders—be placed under local jurisdiction rather than under state jurisdiction.
- The administration estimates that this shift would result in \$336 million in state savings and reduce the prison population by about 9,800 inmates in 2011-12. Upon full implementation in 2014-15, the estimated savings would increase to about \$1.4 billion with a prison population reduction of roughly 38,000 inmates. In 2011-12, \$150 million of the savings relates to a proposed one-time reduction in inmate and parole rehabilitation programs.
- According to the administration, local jurisdictions would receive \$212 million in realignment revenues in 2011-12 and \$821 million upon full implementation to accommodate the offenders shifted.
- The proposal would be applied prospectively to offenders sentenced for criminal convictions occurring after July 1, 2011. No offenders currently in state prison would be transferred to the local level.



Program Suited for Realignment

- ***Improved Program Outcomes.*** Realigning lower-level offenders would allow local governments to utilize different approaches to rehabilitate offenders and protect public safety. This is important since local communities are different and most low-level offenders sent to prison are eventually returned to the community from which they came.
- ***Better Coordination of Programs.*** Since most health and human services programs in California are administered at the local level, local governments are better positioned to provide rehabilitation services for offenders.



Governor's Proposal to Shift Jurisdiction of Lower-Level Offenders

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- ***Reduced Cost Shifting.*** Realignment would reduce the incentives for local governments to shift costs to the state for certain offenders. In addition, it would provide incentives for local governments to improve crime prevention efforts since they would bear more fiscal responsibility for offenders in the criminal justice system.
- ***Better Prioritization of Correctional Resources.*** It costs on average about \$46,000 to incarcerate an inmate in state prison each year. In contrast, it costs around half that amount to incarcerate an offender in county jail for an equivalent time period—and significantly less for community supervision. Given the state's massive fiscal shortfall, it makes sense to prioritize expensive prison space for the most serious and violent offenders.
- ***Reduced Prison Overcrowding.*** The proposal would put the state closer to meeting a potential court-ordered reduction in the inmate population. Reducing prison over-crowding could improve state prison operations, such as by reducing the number of lockdowns and increasing access by the inmates who remain to rehabilitation programs.



Issues for Legislative Consideration

- ***Local Authority Should Be Maximized.*** The proposal assumes that local governments would manage the offenders through incarceration, community supervision, and treatment programs. However, the administration has not identified any specific sentencing law changes to allow for this. We recommend providing local governments with maximum flexibility to best meet local priorities.
- ***Local Capacity Issues Should Be Addressed.*** Currently, over one-third of counties are under court-ordered jail population limits. Although local governments could contract for space in state prisons in the short-term, the Legislature may wish to reexamine the priority for jail construction funding



Governor's Proposal to Shift Jurisdiction of Lower-Level Offenders

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authorized by Chapter 7, Statutes of 2007 (AB 900, Solorio).

- ***Fiscal Estimates Reasonable, But Subject to Uncertainty.*** Although the administration's fiscal assumptions seem reasonable, it has not provided sufficient implementation details. Moreover, the exact amount of state savings would depend upon how the California Department of Corrections and Rehabilitation (CDCR) houses the remaining inmates. In addition, local governments could in effect shift some costs back to the state if local prosecutors changed how criminals are charged in court so that they were no longer in the categories of offenders kept at the state level. Our review also indicates that the administration is scoring a small amount of savings twice.
- ***Other Possible State Savings.*** A massive reduction in the prison population could reduce workload for other state agencies. For example, the Office of the Inspector General would likely perform fewer prison audits and investigations.
- ***Rationale for Rehabilitation Reductions Unclear.*** According to the administration, the \$150 million reduction to rehabilitation programs in 2011-12 reflects the reduced need due to a lower offender population. However, the administration indicates that in initially adjusting to the loss of lower-level offenders, it would actually reduce the number of contract beds rather than state prison beds. Since CDCR does not operate its rehabilitation programs at the contracted facilities, it is unclear why a reduction to these programs would be warranted in 2011-12.
- ***State Prison Operations Significantly Impacted.*** The CDCR currently relies on low-level inmates to perform certain jobs to keep the prisons operating at a reduced cost, as well as to operate fire camps. Realigning lower-level inmates would significantly impact these and other state operations.



Governor's Proposal to Shift Jurisdiction of Parole Violators



Overview of Proposal

- The Governor proposes to require that all parole violators be under local jurisdiction rather than be returned to state prison unless the parolee is convicted in court of a new crime.
- The administration estimates that this change would reduce the prison population by about 6,300 inmates and result in state savings of \$201 million in 2011-12—increasing to \$211 million upon full implementation in 2014-15.
- According to the administration, local jurisdictions would receive \$87 million in realignment revenues to accommodate the offenders who were shifted.
- The proposal would be applied prospectively to parolees violating parole after July 1, 2011. No offenders currently in state prison would be transferred to the local level.



Program Suited for Realignment

- ***Consolidated Responsibility for Short-Term Incarceration.*** State prisons are generally designed for long-term commitments of more than one year, while county jails are designed for short-term commitments of less than one year. Given that parole violators may be returned to prison for up to one year—and on average are only returned for four months—realigning parole violators to local governments would consolidate responsibility for short-term incarceration at the same level of government.
- ***Improved Outcomes, Coordination, and Innovation.*** Most parolees returned to prison by CDCR never receive rehabilitation services due to their short stay in prison. Keeping parole violators at the local level could improve their access to rehabilitation programs and other health and human services programs administered at the local level. Moreover, local governments could experiment with different alternatives to reincarnation for parole violators that may spur innovation statewide.



Governor's Proposal to Shift Jurisdiction of Parole Violators

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- **Better Prioritization of Correctional Resources.** It costs on average about \$15,000 for CDCR to return a parolee to prison. Given the state's massive fiscal shortfall, it makes sense to prioritize expensive prison space for the most serious and violent offenders.
- **Reduced Prison Overcrowding.** The proposal would put the state closer to meeting a potential court-ordered reduction in the inmate population. Reducing prison overcrowding could improve state prison operations, such as by reducing the number of lockdowns and increasing inmate access to rehabilitation programs.



Issues for Legislative Consideration

- **Local Authority Should Be Maximized.** The Governor's proposal assumes that local governments would manage the offenders through "flash incarceration" and treatment programs. We recommend providing local governments with maximum flexibility to use these different options in accordance with local preferences and priorities.
- **Local Capacity May Require Expansion.** Although this proposal would shift a relatively small portion of the prison population, local governments would likely need to expand capacity further given the Governor's other realignment proposal to shift lower-level offenders.
- **Authority for Revocation Decisions Needs to Be Determined.** At the time of this analysis, the administration had not identified who would be responsible for adjudicating parole violations—the state's Board of Parole Hearings (BPH), the courts, or a new or existing local agency. Determining which agency is best suited to hear parole revocation proceedings would depend on whether the Governor's adult parole realignment proposal is also implemented. In addition, the administration's estimates of the net savings resulting from this proposal may have to be revised to reflect the agency selected to perform this task.



Governor's Proposal to Shift Adult Parole



Overview

- The Governor proposes to shift responsibility for supervising and providing services to all adult parolees from the state to local governments.
- The administration estimates that this change would reduce the parole population by about 18,500 offenders and result in state savings of \$239 million in 2011-12—increasing to \$726 million upon full implementation in 2014-15.
- According to the administration, local jurisdictions would receive \$114 million in realignment revenues in 2011-12 and \$410 million upon full implementation to accommodate the offenders shifted.
- The proposal would be applied prospectively to inmates released from prison onto parole after July 1, 2011. No parolees currently on parole would be transferred to the local level.



Program Suited for Realignment

- ***Improved Outcomes and Innovation.*** Giving local governments a direct stake in the success of offenders living in their communities is likely to improve offender outcomes and reduce their risk of reoffending. Moreover, parole realignment would encourage small-scale experimentation and piloting of projects at the local level to improve offender outcomes.
- ***Improved Incentive Structure.*** Local governments would have a greater incentive to intervene and treat these criminal offenders early because they would be responsible for the costs of reincarcerating offenders who commit violations of their parole.



Governor's Proposal to Shift Adult Parole

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- ***Eliminates Duplication of Efforts.*** Local probation departments and the state's parole agency fulfill very similar functions. In particular, they supervise criminal offenders living in the community, monitor their compliance with state laws and other conditions of their supervision, and provide programs and services designed to reduce recidivism.
- ***Greater Coordination of Programs.*** Since most health and human services programs in California are administered at the local level, local governments are better positioned to provide rehabilitation services for offenders—which research suggests can reduce recidivism.



Issues for Legislative Consideration

- ***Local Authority Should Be Maximized.*** We recommend allowing local communities to determine how best to supervise parolees. However, local governments would still be obligated to follow some voter-approved requirements, like monitoring registered sex offenders on parole with Global Positioning System technology.
- ***Assisting Local Government Staffing Needs.*** Local governments would need to hire new staff to supervise the offenders, and the state would have to eliminate its parole agent positions. The Legislature may want to explore strategies to ease the possible transition of state parole agents to local government positions.
- ***Transitioning Inmates to Local Governments.*** The transition of state inmates to local governments would require significant coordination. In particular, CDCR would need to communicate to local governments information on which state inmates are being released and when. Local governments would also need CDCR to inform inmates being released where they should report when they return to the community.



Governor's Proposal to Shift Adult Parole

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- ***Probation Best Suited to Supervise Offenders.*** Since local probation departments perform functions similar to state parole, they would be in the best position to take over parole. However, probation may need to adopt new policies—given that the shifted offenders would include a population with more serious offenses.
- ***Other Parole Policies Need Consideration.*** Although most parolees are supervised for an average of three years, the Governor's proposal provides funding to counties for the realigned parolees equivalent to 18 months of community supervision. The Legislature should consider how long offenders sent to counties under a realignment should remain on parole at the local level and how they would be discharged from parole.
- ***Fiscal Estimates Require Review.*** The administration's fiscal estimate assumes that state parole would cease to exist and that there would be additional savings from CDCR headquarters and BPH. Although this appears reasonable, the administration should provide more detail on the assumed savings.



Governor's Proposal to Shift Jurisdiction of Remaining Juvenile Offenders



Overview

- Currently, counties initially oversee all juveniles entering the criminal justice system and supervise most juveniles determined to be certain serious offenders. The state, on the other hand, supervises the most serious juvenile offenders, housing them in facilities run by the Division of Juvenile Facilities (DJF). The Governor proposes to shift full responsibility for all remaining juvenile offenders from the state to counties.
- The proposal would be applied prospectively after July 1, 2011. No juvenile offenders currently in DJF would be transferred to the local level.
- In 2011-12, counties would start receiving wards who would have otherwise been sentenced to DJF. The administration estimates that this will initially amount to several hundred wards and would be around 1,200 wards upon full implementation in 2014-15.
- The administration's proposal would result in about \$258 million in state savings in 2011-12. Initially, counties would receive \$78 million in realignment revenues to supervise wards who would have otherwise been committed to DJF, while the state would receive about \$180 million in realignment revenues to supervise the wards currently housed by DJF.
- As wards currently in DJF were released to local jurisdictions, the state's share of realignment revenues would decline. Upon full implementation, counties would receive all of the realignment revenue related to juvenile offenders—about \$242 million, according to the administration.



Governor's Proposal to Shift Jurisdiction of Remaining Juvenile Offenders

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Program Suited for Realignment

- ***Increases Accountability for Results.*** Counties would have a fiscal interest in promoting positive outcomes for all juvenile offenders and in preventing low-level offenders from becoming more serious offenders.
- ***Promotes Flexibility, Efficiency, and Innovation.*** Counties would have a greater ability to design programs to meet their unique challenges in dealing with juvenile offenders.
- ***Consolidates Responsibility for Juvenile Offenders.*** Counties already have the vast majority of responsibility for the juvenile justice system. Less than 1 percent of juvenile arrests result in commitment to DJF, and counties have recently taken on responsibility for DJF parolees. Thus, under the Governor's proposal, funding and responsibility for all juvenile offenders would be maintained at one level of government.



Issues for Legislative Consideration

■ Provide Counties Capacity During Transition Period

- Although the Legislature has provided \$300 million in lease revenue bonds in recent years to finance the construction and renovation of juvenile facilities at the local level, some counties may need not initially be in a position to accommodate the shifted juvenile offenders.
- The Legislature could authorize counties to contract with DJF as they transition and expand their juvenile facilities and operations.



Governor's Proposal to Shift Jurisdiction of Remaining Juvenile Offenders

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■ **Avoid Negative Incentives**

- Since counties would not be required to pay for the total cost of youths sentenced to adult prison, the proposed realignment could create a fiscal incentive for counties to charge youths as adults.
- The Legislature could require counties to pay the cost of youths sent to state prison.

■ ***Review Key Implementation Details***

- Counties may require additional authority and flexibility to carry out their new responsibilities, such as to house youths as old as 25 in juvenile facilities.
- Although the administration's fiscal assumptions seem reasonable, it has not provided sufficient implementation details. For example, it is not clear how funds will be allocated to counties, what if any restrictions would be placed on their use, and whether the funding provided to counties would match the costs to supervise the shifted offenders.