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2009-10 Budget Analysis Series

Criminal Justice Realignment



2009-10 BUDGET ANALYSIS SERIES

SUMMARY

Despite spending significant sums, the state's success in rehabilitating juvenile and drug-addicted adult offenders has been poor. Specifically, the state spends more than \$200,000 a year to house a juvenile offender in a state youth correctional facility. Although these facilities are intended to rehabilitate youthful offenders, over 50 percent of them return to state custody within three years of their release. Similarly, the state has seen poor results from its in-prison substance abuse programs for adults. While national studies find that in-prison programs can reduce recidivism rates by about 6 percent, California's in-prison programs have not achieved success.

Several times over the last 20 years, the Legislature has achieved notable policy improvements by reviewing state and local government programs and realigning responsibilities to a level of government more likely to achieve good outcomes. The Governor's 2009-10 budget plan contains a proposal to shift some funding for some criminal justice programs from the state to the local level. We recommend that the Legislature expand upon this concept, and implement a policy-driven realignment of nearly \$1.4 billion of state responsibilities to counties along with resources to pay for them. In particular, we propose that the state shift to counties programs for juvenile offenders and adults convicted of drug possession crimes. Under our realignment concept, counties would have broad authority to manage juvenile and drug-addicted adult offenders programs to achieve success.

We recommend that the Legislature finance this criminal justice realignment by increasing the vehicle license fee (VLF) rate to 1 percent (which results in a revenue gain of \$1.1 billion) and redirecting \$359 million of existing VLF revenues. Under this financing approach, realignment would serve as a nearly \$1.4 billion ongoing General Fund budget solution.

2009-10 BUDGET ANALYSIS SERIES

OVERVIEW

The Governor’s 2009-10 budget proposes to shift the funding for four local public safety programs from the General Fund to the VLF. As shown in Figure 1, local governments would receive \$359 million of VLF—resources currently allocated to the Department of Motor Vehicles (DMV). The DMV, in turn, would increase the annual vehicle registration fee by \$12 to offset this revenue shift. The administration indicates that this proposal would provide stable, but somewhat reduced, ongoing support for the local public safety programs and \$359 million of annual General Fund savings.

Our review indicates that the administration’s proposal could serve as a starting point for a policy-driven realignment of state-local criminal justice responsibilities. Under this realignment, the Legislature could reduce annual state expenditures by nearly \$1.4 billion, improve services for juvenile and adult offenders, and provide a more reliable reimbursement stream to local governments for mandates.

The funding source for our proposed criminal justice realignment is the VLF: \$359 million

shifted from the DMV, as proposed by the Governor, and an additional \$1.1 billion raised by increasing the VLF rate to 1 percent. As shown in Figure 2 (see next page), these funds (\$1.5 billion in total) and all growth in these revenues would be deposited into a new criminal justice realignment fund and allocated to three accounts. In so doing, our proposal restores some funding for certain juvenile justice grants that would otherwise be reduced under the Governor’s budget plan.

Juvenile Offender Account—\$765 Million

Under realignment, counties would have full program authority and the corresponding financial responsibility for juvenile offender programs. Counties could use the resources in this account for the juvenile offender programs and services that they determine work best in their communities. Counties would be financially responsible for reimbursing the Division of Juvenile Facilities (DJF), the formal name of the state agency frequently called the Division of Juvenile Justice, for any county youths placed in DJF facilities.

Adult Offender Account—\$638 Million

Under realignment, responsibility for punishment and treatment of certain adult offenders with substance abuse problems would shift to counties. Counties could use the resources in this account to place these individuals in jails or residential treatment facilities, or to supervise them

Figure 1

Governor’s Budget Shifts DMV VLF to Support Local Public Safety Programs

(In Millions)

Program	Current Law/ Funding Source	Proposed 2009-10/ Funding Source
Department of Motor Vehicles (DMV) administrative costs	\$359 (VLF)	\$359 (Registration Fee)
Local Public Safety Programs: COPS, Juvenile Justice Crime Prevention Act, Juvenile Probation and Camps, Booking Fees	\$427 (General Fund)	\$359 (VLF)

Vehicle license fee = VLF; Citizens Option for Public Safety = COPS.

in the community while they attend substance abuse treatment programs. Cities would receive a dedicated portion of the funds in this account under the existing Citizens’ Option for Public Safety (COPS) program.

Mandate Payment Account—\$103 Million

Funds in this account would provide local governments with a steady stream of revenues to reimburse them for long-overdue mandate

claims. Cities and counties also would receive a “per peace officer” reimbursement for one mandate—the Peace Officer Procedural Bill of Rights (POBOR). This simple POBOR payment methodology would replace the current complicated and highly contentious reimbursement for POBOR.

How This Report Is Organized

This report begins with an overview of the

Figure 2
LAO Proposed Criminal Justice Realignment Program Funding by Account

(In Millions)

	Current Law (General Fund)	LAO (VLF)
Juvenile Offender Account		
Shift funding responsibility for Division of Juvenile Facilities to counties	\$379	\$379
Consolidate funding for juvenile justice grants	355	355
Additional resources for facilities and programs	—	30
Account Totals	\$735	\$765
Adult Offender Account^a		
Shift responsibilities drug possession and DUI offenses to counties	\$385	\$385
Additional resources for offender facilities and programs	—	125
COPS	107	96
Booking fees (jail facility funds)	32	32
Account Totals	\$524	\$638
Mandate Payment Account^a		
Mandate backlog	\$92	\$92
POBOR	\$8 ^b	11
Account Totals	\$100	\$103
Total General Fund	\$1,359	
Total VLF		\$1,504

^a For one year as realignment is phased in, \$193 million in the Adult Offender Account transfers to the Mandate Payment Account. Counties receive these funds for mandates and AB 3632 program payments.

^b Department of Finance estimate, amount could be higher.

Vehicle license fee = VLF; driving under the influence = DUI; Citizens’ Option for Public Safety = COPS; and Peace Officer Procedural Bill of Rights = POBOR.

state's experience with realignment, explaining why changing governmental responsibilities for programs and funding can improve program outcomes. We then discuss the programs we propose to realign and how the realignment plan

would work. In the concluding sections, we explain why we finance the realignment plan with revenues from the VLF and discuss several major practical, policy, legal, and financial questions related to our proposals.

WHEN DOES REALIGNMENT MAKE SENSE?

Several times over the last 20 years, the Legislature has achieved notable policy improvements by reviewing state-local program responsibilities and taking action to realign program and funding responsibility to the level of government likely to achieve the best outcomes. In 1991, for example, the Legislature shifted state mental health responsibilities to counties, giving counties a reliable funding stream and the authority to develop innovative and less costly approaches to providing services. While implementation of realignment proposals has been complex, the net result of these changes is that California state and local governments have better ability to implement their programs successfully.

Could the state improve other program outcomes by realigning state-local responsibilities? If so, which programs should the state control and which should local government control? While there is no single answer to these questions, we find that programs tend to be more effectively controlled by local government if (1) the program

is closely related to other local government programs, (2) program innovation and experimentation are desired, and (3) responsiveness to local needs and priorities is important. In addition, assigning full control over program governance and financing to a single level of government has the benefit of reducing fragmentation of government programs and focusing accountability for program outcomes. (The box on the next page lists LAO reports that provide a more extensive discussion of when we believe program realignment makes sense.)

In this report, we review state and local government responsibilities for (1) juvenile offenders, (2) certain lower-level adult offenders with substance abuse problems, and (3) mandate claims. After discussing the current fragmented governance and financing system behind the juvenile offender and adult substance abuse offender programs, we discuss how realignment could improve these programs.

JUVENILE OFFENDER ACCOUNT

Background

Responsibility for juvenile justice programs in California is split between counties and the state. Specifically, county probation departments initially oversee all juveniles entering the criminal justice system and supervise most juveniles determined to be offenders. Counties generally

place these young offenders on probation supervision; in a group home; or in a secure facility such as a juvenile hall, camp, or ranch. The state, on the other hand, supervises the most serious young offenders, housing them in facilities run by DJF. The DJF parole agents supervise these juveniles upon their release.

LAO REALIGNMENT REPORTS

Over the years, our office has published numerous reports (listed below) on the subject of state and local program realignments. With one exception, all of the reports were published in “Part V” of the *Perspectives and Issues* in February of the year shown. *Making Government Make Sense: Applying the Concept in 1993-94* was published separately in May 1993. These reports are available on our website: www.lao.ca.gov.

Report	Years
<i>Parole Realignment and the 2008-09 Budget</i>	2008
<i>Realignment and the 2003-04 Budget</i>	2003
<i>Realignment Revisited: An Evaluation of the 1991 Experiment In State-County Relations</i>	2001
<i>The Governor's 1995-96 State-County Realignment Proposal</i>	1995
<i>Making Government Make Sense: Applying the Concept In 1993-94</i>	1993
<i>Making Government Make Sense: A More Rational Structure For State and Local Government</i>	1993

Responsibility for funding juvenile justice programs is similarly split between counties and the state. Counties use local funds to pay (1) part of the costs to operate their probation departments, halls, camps and ranches and (2) a small share of DJF’s costs. The state, in turn, pays for most of DJF’s costs and supports various county juvenile offender grant programs (each with its own funding formula and requirements).

County Responsibility Has Already Increased. Over the years, criticism of California’s state-run juvenile justice program has mounted, culminating with the *Farrell vs. Allen* lawsuit, which challenged nearly every aspect of the state’s operation of its juvenile institutions. Since the case began, the Legislature has taken steps to shift key juvenile offender program responsibilities to counties, specifying that counties are better suited to providing the needed rehabilitative services for juvenile offenders. These changes, along with a general downward trend in juvenile

crime rates, have resulted in a steep decline in the DJF population from around 10,000 wards in 1995-96 to about 1,700 today. Currently, fewer than 1 percent of juvenile offenders are placed under state supervision each year. The state’s costs to house and rehabilitate these youths exceeds \$200,000 per offender annually, not including parole and capital costs.

Why Realignment Makes Sense

Basic Concept. Under our proposed criminal justice realignment, the Legislature would shift full programmatic and financial responsibility for juvenile offenders to counties and give counties an ongoing funding source to support these programs. This realignment would improve juvenile offender programs in several ways discussed below.

Increases Accountability for Results. A single level of government—the county—would be responsible for all outcomes in the system,

making it easier to identify which juvenile offender programs work and which need change. Moreover, counties would have a significant fiscal interest in promoting positive outcomes for all offenders and in taking steps to prevent low-level juveniles from becoming serious offenders. Under current law, in contrast, the responsibility for preventing juveniles from developing into serious offenders is blurred. Specifically, *counties* run juvenile crime prevention programs, but the *state* pays most of the cost to house and rehabilitate youths who become serious offenders. The state's DJF, in turn, (1) has no responsibility for early intervention or prevention programs and (2) receives its annual budget based on its caseload of offenders, without regard to program success.

Promotes Flexibility, Efficiency, and Innovation. Under realignment, counties would have greater ability to design programs to meet their unique challenges and needs in dealing with serious offenders. For example, one county might determine that actions to decrease gang involvement are most critical to its long-term success, while another might focus more on decreasing juvenile substance abuse, in keeping with that community's priorities. Realignment also would provide counties fiscal flexibility. Some counties might decide, for example, to spend fewer resources on its most serious offenders than the DJF currently spends and reserve some of these resources for juvenile offender prevention programs.

Facilitates Closer Supervision of Offenders. Due to its declining caseloads, DJF has consolidated parole offices, greatly expanding the geographical regions for which each parole agent is responsible. Currently, each DJF parole agent is typically responsible for supervising youthful offenders residing in a territory of more than 2,800

square miles—an area slightly larger than the County of Santa Barbara. These large geographic territories make it difficult for DJF agents to supervise parolees effectively and be knowledgeable about the communities in which their parolees reside—often a key to ensuring public safety. Under realignment, each county would supervise its own juvenile offenders. Because county probation offices oversee all youth entering the justice system, counties often have a long history of contact with these youths—a factor that can be an asset when supervising them upon their release. In addition, county officers are more likely to be knowledgeable about county communities and the availability of substance abuse treatment, education programs, and job placement resources their juvenile offenders might require.

Gives Counties Greater Fiscal Certainty. Under current law, a significant portion of county juvenile offender resources is contingent on annual state budgeting decisions. Under realignment, counties would have greater certainty regarding their juvenile justice budgets, giving them greater capacity to develop long-term plans to improve their facilities and programs.

How Realignment Would Work

Under our realignment proposal, the Legislature would create a Juvenile Offender Account (JOA) in the realignment fund. Counties would use the funds in the account (\$765 million in 2009-10) to carry out their expanded juvenile justice responsibilities. The funding level is based on the following factors:

- ***Offsetting the Cost to Supervise Serious Offenders—\$379 Million.*** This amount is equivalent to the current level of state General Fund support provided for DJF operations, parole, and the juvenile por-

tion of the Board of Parole Hearings, excluding Proposition 98 resources. (Under our proposal, some additional Proposition 98 funds would separately shift from DJF to county offices of education for juvenile offender education.)

- **Consolidating Funding for Juvenile Justice Grants—\$355 Million.** This amount equals the combined current law funding for three block grant programs: the Juvenile Justice Crime Prevention Act, the Juvenile Camps and Probation grant, and the Youthful Offender Block Grant. Our proposal would in effect restore the \$29 million budget reduction for juvenile camps grants proposed in the Governor’s budget, although these monies would then be consolidated with the other two programs.
- **Expanding Juvenile Justice Programs and Facilities—\$30 Million.** We provide this amount in recognition of the increased facility and programming costs counties likely will experience as a result of the program shift. We note that, absent realignment, the state likely would face significant capital outlay costs for renovating or rebuilding its aging juvenile facility infrastructure.

We discuss the major elements of our proposal below.

Counties Become Responsible for All Youth in Juvenile Justice System. Under our proposal, counties would be responsible for housing and supervising all youth in the juvenile justice system, including the 1,700 youths currently under the jurisdiction of DJF. To support these efforts,

counties would have broad flexibility to use the resources in the JOA. These funds include over \$200,000 for each offender currently supervised by DJF, \$355 million from county grant programs, and \$30 million for program expansion.

Managing the Transition. Most counties could not assume the increased responsibility for supervising youths placed with DJF immediately. Accordingly, our realignment authorizes counties to continue to contract with the state to place youths in DJF facilities on a fee-for-service basis. Under our proposed approach, counties could “purchase” beds in state youth correctional facilities for wards from their jurisdiction, similar to the way that counties now have the choice of committing mentally ill individuals from their area, at the county’s cost, to state mental hospitals. Alternatively, the counties could redirect these resources to expand local facilities, community treatment and alternative sanction programs, and juvenile prevention efforts. We note that the state recently provided counties with \$100 million in grants to expand or upgrade local youth detention facilities. Over time, as counties develop alternative facilities and programs for these offenders, this contractual relationship with DJF could be reduced or phased out altogether, freeing the state to use DJF facilities for other purposes—such as reentry facilities for CDCR.

Need for Task Force. Any proposal of this magnitude raises numerous implementation questions. We recommend the Legislature create a task force of stakeholders and experts to give it advice and suggestions regarding the following matters:

- What methodology should guide the allocation of JOA revenues to specific counties? In the near term, a formula

that tracks existing laws and DJF utilization may be appropriate. Over the longer term, allocating these revenues based on county juvenile population, poverty, or crime statistics may be preferable.

- What type of outcome reporting is needed to foster accountability and promote cross-county sharing of successful programs?
- Should counties be required to maintain their current level of county support for juvenile offender programs?
- What actions are necessary to give DJF employees the greatest opportunity to make a smooth transition to positions in adult state prisons or hospitals or to county-level juvenile justice agencies?
- Should counties have some authority to transfer funds between this account and the Adult Offender Account (discussed below)?

ADULT OFFENDER ACCOUNT

Background

Under current law, responsibility for adult offenders convicted of drug possession is split between the state and the counties. Most individuals convicted of drug possession are sentenced to county jail, county probation, drug diversion, or some other penalty. Some offenders convicted of drug possession, however, are sent to state prison, typically because they are ineligible for local programs and sanctions or have failed out of such programs. Although the number of drug possession offenders in county jails is unknown, in excess of 50,000 drug possession offenders are placed on county probation and/or drug diversion programs each year. In contrast, about 11,600 offenders are in state prison for drug possession. The financial responsibility for providing offender drug treatment differs for counties and the state. Specifically, counties use a mix of county, state, and federal funds for this purpose. The state, in contrast, bears the full responsibility for incarceration and drug treatment services for offenders in state prison.

County Responsibility Has Already Increased. Over the last decade, California has assigned counties greater responsibility for drug possession offenders. For example, Proposition 36, approved by the voters in November 2000, established a drug treatment diversion program for certain non-violent offenders convicted of drug possession offenses. Under Proposition 36, about 50,000 offenders each year are placed on county probation and/or drug diversion programs, instead of prison or jail. Similarly, over the last decade, California counties, courts, and the Legislature have collaborated to establish over 200 drug court programs. Under these programs, offenders charged or convicted of various crimes are diverted to county treatment programs instead of incarceration. Drug court participants are subject to monitoring by a court (as well as by probation officers and drug treatment providers) and may also face sanctions if they do not comply with program rules or commit new crimes.

California's County Drug Diversion Programs: Generally Positive Outcomes. Proposi-

tion 36 and drug courts have generally demonstrated positive results. For example, a review of several dozen studies evaluating drug courts in different states found that they reduced recidivism rates by about 11 percent. Similarly, University of California at Los Angeles researchers found that Proposition 36's programs have generated net savings of more than two dollars for each dollar spent.

Program studies note, however, that current funding constraints are one of the key factors that has limited Proposition 36's efficacy. Specifically, although drug and alcohol addiction is a chronic relapsing disorder—frequently requiring residential placement, long-term treatment, and supportive services when relapses occur—Proposition 36 funding is not now sufficient to provide this array of services to all recipients. Instead, counties provide nearly 85 percent of Proposition 36 program participants outpatient treatment services only, typically lasting fewer than 90 days. For example, only 25 percent of persons assessed as being heavy users of drugs received residential treatment.

California's State Inmate Substance Abuse Programs: Generally Poor Results. In 2007, the Office of the Inspector General (OIG) evaluated CDCR's substance abuse programs for state prison inmates. While national studies demonstrate that inmate substance abuse programs can reduce recidivism rates by 6 percent, the OIG found that CDCR's programs were ineffective. The OIG found several reasons for CDCR's poor results, some of which involved how CDCR implemented and managed its programs. For example, OIG found that the department did not adequately monitor its contracts with treatment providers to ensure that program participants received the necessary level of service.

The OIG study and other research, however, also point to inherent difficulties in administering substance abuse programs in prison settings. For example, custodial and security procedures make it challenging to separate offenders in prison treatment programs from the rest of the prison population, thereby compromising the program's ability to create a supportive therapeutic environment. In addition, frequent and lengthy prison "lockdowns" can make it difficult for inmates to receive a consistent substance abuse program and to complete all the necessary components. Finally, fully integrating a community-based aftercare component into a prison-based treatment program can be a challenge, particularly because prisons often are located in areas remote from the communities into which offenders are paroled.

Why Realignment Makes Sense

Basic Concept. Under our proposed criminal justice realignment, responsibility for punishment and treatment of all drug possession offenders would shift from the state to counties. In addition, we propose to shift responsibility for two other groups of offenders likely to benefit from realignment to the county level—civil narcotic addicts and certain driving under the influence (DUI) offenders. Specifically, we recommend the Legislature change sentencing laws so that the crimes listed in Figure 3 would be classified as misdemeanors. Individuals convicted of these crimes could no longer be sentenced to state prison, but could be placed on probation, assigned to residential or outpatient treatment, held in county jails or other facilities, or some combination of the above. The realignment proposal provides counties significant resources to expand their services for offenders with substance abuse problems and gives counties broad flexibility to

determine how these funds are spent on incarceration, alternative sanctions, and drug and alcohol treatment.

The 700 individuals in prison as civil narcotic addicts are offenders very similar to many who participate in drug court programs—typically low-level offenders whose crime is closely tied to a drug problem. These individuals are not felons, however, because they were sent to prison under a civil commitment. The 1,700 offenders convicted of DUI do not include individuals whose offense resulted in bodily injury to another party. Most of these offenders, however, had at least three prior DUI convictions and were previously assigned to a DUI program. Realignment of government responsibility for these offenders would promote better substance abuse and public safety outcomes in the ways discussed below.

Consolidates Program Responsibility and Fosters Innovation. Assigning counties responsibility for these offenders would consolidate program responsibility at a level of government more likely to achieve program success, including reduced offender recidivism. As discussed, the state faces inherent difficulties administer-

ing substance abuse programs in a prison setting. Counties, on the other hand, are the state’s primary providers of public substance abuse treatment services (either directly through county drug and alcohol departments, or by contracting with private treatment providers). They also have extensive experience with different treatment approaches, including residential treatment, methadone maintenance, and community-based aftercare programs. Counties also have greater capacity to design programs that focus on different age groups or cultures, and are better positioned to provide needed aftercare and relapse recovery services after offenders are released from jail or residential treatment facilities. Finally, counties are the primary providers of many other programs that people receiving substance abuse treatment may need, including mental health, social services, and indigent health care programs.

Gives Counties Reliable Revenues to Provide Needed Services. Under this realignment, counties would receive ongoing revenues to support offender treatment programs, including more intensive residential treatment and longer-term aftercare. Counties would have broad discretion

Figure 3
Proposed Population for Realignment

Crime	Inmates	Description
Drug possession	11,600	Includes felony and wobbler drug possession crimes. Excludes all other types of drug offenses, such as possession with the intent to sell, drug sales, drug trafficking, and drug manufacturing. Also excludes drug possession crimes with special circumstances, such as possession in a county jail or state prison, and possession while armed with a loaded firearm.
Driving under the influence	1,700	Includes crimes classified as driving under the influence that did not result in bodily injury to an individual other than the driver.
Civil narcotics addicts	700	Includes non-felon inmates serving time in state prison under a civil commitment for drug addiction.
Total	14,000	

to use these funds for the offenders realigned under this proposal, as well as for the offenders for whom counties already provide treatment. Providing funding for these services is important because evidence suggests that many offenders fail Proposition 36 and other treatment programs because they are not provided the level of treatment that an assessment shows is needed. That is, offenders with heavy addiction problems often fail because they receive limited outpatient treatment rather than residential treatment followed by extended aftercare.

Prioritizes State Prison Space for the Most Serious and Violent Offenders. Realignment would reduce the state's prison population by about 8 percent in the short term and by a greater percentage over time as county substance abuse programs expanded to serve more offenders and became more effective in rehabilitating those receiving treatment. These population reductions would alleviate some of the serious overcrowding in the prison system, while ensuring that the most serious and violent offenders remain incarcerated. It would free up in-prison substance abuse treatment space for these more serious offenders, and could reduce the number of new prison beds that the state would need to build to address the current high level of prison overcrowding. While our proposal would reduce the state prison population by about 14,000 inmates, it is important to note that this realignment does not simply result in a one-for-one transfer from state prisons to local jails. This is because (1) these offenders' maximum sentence in county jails (12 months) would be several months shorter than their average term in state prison (about 17 months) and (2) the counties could divert some of these offenders (or other offenders already in jails that they deem to pose less of a risk

to public safety) into residential treatment or other appropriate community facilities.

How It Would Work

Under our proposal, the Legislature would create an "Adult Offender Account" in the realignment fund with a 2009-10 allocation of \$638 million. This amount is based on the following factors:

- **Shift in Responsibility for Drug and Alcohol Crimes—\$385 Million.** This funding is equivalent to what the state spends incarcerating these drug and alcohol offenders. (In the first year, as the realignment is phased in, \$193 million from this amount is transferred to the Mandate Payment Account, as discussed further below.)
- **Enhanced Supervision and Substance Abuse Services for Offenders—\$125 Million.** Counties could use these resources to provide services or expand facilities for substance abuse treatment and incarceration.
- **COPS—\$96 Million.** This amount is based on the funding for the COPS program proposed in the Governor's budget. Under current law, these funds are split between counties (about \$29 million) and cities (about \$67 million). Under this realignment proposal, the city portion of these funds would be placed in a city subaccount in recognition of the potential for increased local law enforcement responsibilities due to the offender shift.
- **Booking Fees—\$32 Million.** This amount is also based on the funding proposed

in the Governor's budget. Under current law, these funds are allocated to counties with the understanding that county authority to charge cities and other arresting agencies fees when they book individuals into county jail is greatly reduced.

County Authority Over Adult Offender Account. With the exception of funds we propose be set aside in the city subaccount, we envision county boards of supervisors having broad authority to allocate Adult Offender Account revenues to departments and agencies affected by realignment, including drug and alcohol departments, probation, and sheriffs. Because increased support for drug and alcohol departments is integral to the success of this realignment, we envision counties demonstrating annually that a significant amount of funds from the new account were used for that purpose.

First-Year Transition. Our proposal would not result in an immediate shift of offenders in the categories we have identified. Those inmates already in prison for drug possession or driving under the influence, as well as civil narcotic addicts, would remain there until they completed their sentences, and then be placed on parole as they normally would. Instead, our proposal would be *prospective*, applying to offenders convicted of these crimes after July 1, 2009. We

estimate that the number of offenders realigned during the first year would be about one-half of the total affected population. Therefore, during the first year, counties would receive one-half of the associated state savings (\$193 million) and the other \$193 million would be transferred on a one-time basis to the Mandate Payment Account (discussed below).

Task Force to Address Certain Issues. As noted earlier, realignments of this magnitude inevitably raises questions meriting discussion and debate. Accordingly, we recommend the Legislature convene a task force and request its guidance on the following key issues:

- How should funds in the Adult Offender Account be allocated to each county? Should the formula be based on county population, poverty, or a combination of these factors?
- What reporting requirements should be required regarding how Adult Offender Accounts are spent?
- Should there be any changes to the list of offenders included in this realignment?
- Should counties have authority to shift funds between this account and the Juvenile Offender Account discussed earlier?

MANDATE PAYMENT ACCOUNT

Background

The California Constitution requires the state to reimburse local governments when it mandates certain new programs or higher levels of service. In recent years, the state's payment of its mandate obligations has been a source of

considerable state-local friction. This tension has been particularly notable concerning mandate claims (1) dating from before 2005 and (2) associated with the POBOR mandate. (The box on the next page provides information regarding this mandate.) Unlike other mandate obligations, the

Constitution does not specify a date by which the state must pay long overdue claims or mandates—like POBOR—that pertain to employee relations.

Mandate Backlog. The state owes local governments about \$1 billion for claims that have accumulated between the early 1990s and 2004-05. While statutes specify a schedule for the state to pay these obligations over time, the state did not provide funding for this purpose in the current year and the budget does not pro-

pose to make a mandate backlog payment in 2009-10. The state owes most of this \$1 billion to counties.

POBOR Claims. Determining what portion of POBOR's costs are reimbursable as a state mandate is exceedingly difficult. That is because POBOR did not create a distinct new program, but instead requires local agencies to take additional steps at certain stages of sensitive and complicated personnel processes. When the State Controller's Office (SCO) audited city and

PEACE OFFICER PROCEDURAL BILL OF RIGHTS

What Does This Mandate Require?

The Peace Officer Procedural Bill of Rights (POBOR), Chapter 465, Statutes of 1976 (AB 301, Keyser), provides a series of enhanced rights and procedural protections to peace officers who are subject to interrogation or discipline by their employer.

What Activities Are Eligible for Reimbursement?

In 1999, the Commission on State Mandates (CSM) found to be a reimbursable mandate those procedural requirements of POBOR that exceed the rights provided to all public employees under the due process clauses of the United States and California Constitutions. For example, POBOR requires local governments to hold an administrative hearing when they (1) transfer a peace officer as punishment or (2) deny a promotion for reasons other than merit. The due process clauses in the Constitutions do not require such a hearing. Thus, local costs to provide administrative hearings under these specific circumstances are reimbursable. The costs to provide administrative hearings under many other circumstances, in contrast, are not.

What Must Local Governments Do to Obtain Reimbursement?

The CSM detailed the specific elements of POBOR that are reimbursable in its 14-page "parameters and guidelines" (Ps&Gs). Following these Ps&Gs requires detailed and extensive record keeping by local governments. For example, the Ps&Gs permit local governments to claim costs to tape record and transcribe certain police officer interviews, but only if the peace officer commenced his or her own tape recording first. Similarly, local governments may send employees to training to learn about POBOR's requirements. If the training covers other personnel issues, however, the local government only may file for reimbursement for the number of minutes of the training in which POBOR is discussed. All reimbursement claims submitted by a local government must be supported with appropriate documentation.

county POBOR mandate claims over the last several years, SCO disallowed most of the claims, typically by more than 75 percent. Most of these cost disallowances resulted from (1) failures by local agencies to fully document the staff time devoted to each reimbursable activity and (2) claims for costs not eligible for reimbursement. Local agencies, in turn, respond that developing the required paperwork would be unproductive and that the list of costs eligible for reimbursement as a mandate is inappropriately narrow.

Seeking to resolve this controversy, the Department of Finance (DOF) and local agencies agreed that a simple, annual per peace officer payment would be a better way to reimburse local governments for the ongoing costs of this mandate. The administration and local agencies, however, did not reach agreement on the dollar amount of such a reimbursement.

Why Including Mandate Payments in the Realignment Plan Makes Sense

Under our proposal, payment responsibility for the mandate backlog and POBOR shifts from the state's General Fund to the realignment account. Unlike our proposals for realigning juvenile and adult offender responsibilities, funding mandates from the VLF would not improve the organization of government or the delivery of services. We note, however, that the success of juvenile and adult offender realignment depends on having a strong and viable county government partner and a working state-county relationship. Developing a plan for the reliable payment of overdue mandate obligations and simplifying the POBOR mandate claiming process facilitates this objective.

How It Would Work

Under our proposal, the Legislature would create a Mandate Payment Account in the realignment fund with \$103 million in 2009-10. Money in this account would:

- Pay the backlog of mandates claims over the next 10 to 15 years—about \$92 million annually. (After these mandate obligations have been retired, the Legislature could specify another purpose for which to use these funds.)
- Provide a per peace officer reimbursement for the POBOR mandate at about \$140 per peace officer. This amount is based on our review of actual 2004 local government claims and an assumption that roughly one-half of the SCO cost disallowances were for activities that local governments completed as a result of the POBOR mandate. We note that this amount is almost the midpoint between the amounts proposed by the DOF and local agencies during their negotiations.

Additional One-Time Funds for Mandate Payment Account. As discussed earlier in this report, realignment of adult drug offenders would be phased in over two years. During the first year—as these offenders transition from state to county responsibility—needed spending for the Adult Offender Account would be lower than it would be in subsequent years. This means that, in 2009-10, a portion of the funds raised through the VLF tax increase would not have a designated use. We recommend that these funds (\$193 million) be transferred on a one-time basis into the Mandate Payment Account. We propose that the Legislature direct county auditors to use

these funds to pay part of the state's 2009-10 costs for two programs: the Department of Mental Health's "AB 3632" categorical program (\$104 million) and the state's costs for mandate reimbursements (about \$134 million). Allocating this \$193 million of VLF for these purposes reduces 2009-10 state General Fund costs by an equal amount.

Implementation Issues. These mandate changes are nowhere near as complex as the changes proposed for juvenile and adult offenders. The Legislature, however, may wish to request guidance from the State Controller regarding steps needed to coordinate payment of the mandate backlog and POBOR from the Mandate Payment Account.

WHY FUND REALIGNMENT FROM THE VLF?

In our view, the realignment policy changes contemplated in this report make sense regardless of the state's current fiscal condition. If the state's fiscal condition were stronger, the Legislature could realign these additional program responsibilities from the state to local government by shifting *existing* state revenues into the realignment fund. In light of the state's major fiscal challenges, however, we propose a tax increase to raise \$1.1 billion to expand upon the Governor's proposal.

Deciding which tax should support the realignment fund is a difficult policy call for the

Legislature, involving different trade-offs and considerations. After reviewing various options, we propose increasing the VLF rate from 0.65 percent to 1 percent because:

- A 1 percent VLF rate remedies an inconsistency in the state's system of property taxation whereby cars and trucks are taxed at lower rates than boats and business equipment. (For additional information regarding these discrepancies in property taxes, please see nearby box).
- The VLF historically has been a revenue source reserved for local governments.

DISCREPANCY IN CALIFORNIA SYSTEM OF PROPERTY TAXATION

California's property tax system taxes "real property" (land and buildings) and tangible "personal property" (property not attached to land or buildings). The most common types of personal property subject to property taxation are cars, trucks, boats, airplanes, machinery, and office equipment.

Ideally, tax systems are neutral in that they treat similar households and businesses in a similar fashion. This tax policy goal is not evident in California's taxation of property. Specifically, while all other types of property are taxed at a 1 percent rate, cars and trucks are taxed at a 0.65 percent rate.

The lower rate for vehicles is the result of a series of actions taken by the Legislature in the late 1990s to provide tax relief. Increasing the vehicle license fee rate to the same property tax rate as charged for other types of property would eliminate the current inconsistency in state law.

- While all taxes are sensitive to economic downturns, the VLF historically has been less sensitive to economic fluctuations than have many other taxes. This revenue stability is important in a funding system for ongoing public safety programs.
- No constitutional provisions limit the Legislature’s authority to raise the VLF rate or reallocate the new revenues.

KEY QUESTIONS RELATED TO CRIMINAL JUSTICE REALIGNMENT

Realigning responsibility for juvenile offenders and adults with substance abuse problems has the potential to significantly improve program outcomes. Enacting any form of complex realignment, however, raises some overarching practical, policy, and financial questions. This is particularly true given the fiscal challenges facing the state and the Constitution’s many requirements regarding local finance. In this concluding section, we discuss these key questions.

Could the Legislature Choose Substitute Programs or Funding Sources?

Over the years, this office has reviewed many programs and concluded that some would benefit from a realignment of state-local respon-

sibilities. Figure 4 provides a partial list of these programs and identifies the year in which we published our analysis. (Each review is included in “Part V” of the LAO’s *Analysis of the Budget: Perspective and Issues*, published annually in February.) In some cases, programs identified in Figure 4 could be included in a 2009-10 realignment plan as (1) a substitute for the programs we propose to realign in this report or (2) additions to our list of programs that could be shifted to the local level. In other cases, however, we note that federal funding or other constraints might limit the Legislature’s ability to realign these programs immediately.

Different Funding Base Possible. While we think that funding the realignment plan from increased VLF revenues has policy advantages, we recognize the Legislature may wish to use different revenues to support realignment. Various other tax sources also could provide a good fiscal base for realignment, including a quarter-cent sales tax increase or an alcohol tax increase. We note that the 1991 realignment plan included two funding sources: revenues raised from a new one-half cent sales tax and a change in the VLF depreciation schedule.

Figure 4
Programs Appropriate for Realignment

	Year
Parole of lower level state prisoners	2008-09
AB 3632 program	2006-07
Adult Protective Services	2003-04
Medi-Care long-term care	2003-04
Public health	2003-04
Substance abuse programs and drug courts	2003-04
Mental health managed care	2003-04
Child care	2003-04

Does the Constitution Limit the Legislature's Authority Over the VLF?

Proposition 1A, approved by the state's voters in 2004, amended the Constitution to reduce the Legislature's authority over local finance. Nothing in the Constitution, however, limits the Legislature's authority to enact this realignment plan. Specifically, the Constitution does not (1) set a maximum VLF rate, (2) limit the Legislature's authority to raise the VLF rate or to reallocate DMV's share of VLF revenues, or (3) prohibit VLF revenues from being used to pay state mandates.

How Could Counties Gain More Confidence in the Realignment Plan?

Implementation of this criminal justice proposal would require extensive work and cooperation by state agencies and counties. To make the changes necessary to achieve improved program outcomes, counties likely will want assurance that the realignment plan will not change substantially without their agreement. Building state-local trust and stability into this realignment plan is thus critical to its success.

How could the Legislature give counties the confidence to implement realignment? While the Legislature has successfully implemented other state-county program shifts without going to the state's voters, the most direct way to provide this assurance probably would be for the Legislature to propose a constitutional amendment that commits the new VLF revenues to these realigned programs.

Would Realignment Impose A State Mandate?

Proposition 1A, approved by the voters in 2004, amended the Constitution to include provisions that recast as a state-reimbursable mandate certain actions by the Legislature that increase a city or county's net costs for required programs. In our view, this provision of Proposition 1A would not limit the Legislature's ability to implement this realignment proposal because it (1) contains more than sufficient revenues to offset the increase in county juvenile and adult offender costs and (2) state law exempts changes in criminal sentencing from the definition of a reimbursable mandate.

Would Increasing the VLF Affect The Proposition 98 Guarantee?

California voters enacted Proposition 98 in 1988 as an amendment to the Constitution, establishing a minimum annual funding level for K-12 schools and California Community Colleges. While calculating Proposition 98's minimum funding level is complex, the funding level tends to increase when the Legislature increases taxes and the resulting revenues are available each year for appropriation by the Legislature for general purposes.

Under this realignment plan, the increased VLF revenues would be dedicated to and controlled by local governments. The funds would not be available for state general purposes on an annual basis. For this reason, we do not think that the increase in the VLF would affect the Proposition 98 minimum funding level.

CONCLUSION

The best way to increase public safety is to prevent crimes before they are committed. Research indicates that well-run juvenile offender and adult substance abuse offender programs reduce the likelihood of offenders committing future crimes.

California's success in administering these offender programs suffers under its current fragmented governance and financing systems. Although these offender programs typically are better suited to county administration and control, current law assigns significant responsibility for them to the state. This division of governance and funding responsibilities does not promote program innovation or accountability for program results.

To address these shortcomings in the governance system, we recommend the Legislature realign to counties state juvenile offender and certain adult substance abuse offender responsibilities. In addition, to improve the state-county relationship (important to the implementation of realignment), we recommend the Legislature establish an ongoing funding source to reimburse local governments for about \$1 billion of long overdue mandate claims.

We recommend the Legislature finance this realignment plan by increasing the VLF rate to 1 percent and by redirecting existing VLF revenues currently allocated to the DMV. Under this financing approach, the Legislature could improve public safety while reducing state General Fund costs by nearly \$1.4 billion annually.

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