The Face of the First 30

A Look at Santa Clara County's Newly Realigned Population and the Challenges They Will Present

DRAFT FOR COMMENTS

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Summary

On October 1, 2011, A.B. 109 was implemented in California. This reform known as "realignment" has become widely considered the most comprehensive criminal justice reform in California in decades. Enacted in response to the Supreme Court mandate that California substantially reduce their state prison population, A.B. 109 transfers responsibility for a sector of California's prison population from the state government and to the individual counties.

Specifically, under A.B. 109 California counties are responsible for two new types of offenders. First, of those who would previously have been sent to state prison, offenders deemed to have committed only non-violent, non-serious, and non-high priority sex offenses are now sentenced and incarcerated in the county jail where they committed their current offense. Second, offenders sentenced to terms of probation will now be supervised individual counties.

This new responsibility delegated to counties by A.B. 109 is sure to significantly impact the landscape of the criminal justice system in California. Counties will have to, and have already begun to, make substantial changes in order to serve this new population. In particular, the population of offenders who previously would have been sent to state prison represent a host of challenges that California counties have never been responsible for addressing before. In preparing their county plans for implementing realignment reforms and allocating the funding associated with A.B. 109, counties were largely forced to guess what needs would be represented in this new population and how to adequately prepare.

However, now that A.B. 109 has gone into effect this past October, counties have an opportunity to take inventory of this new population and become aware of the needs represented within it. Information on the characteristics of this population will enable counties to evaluate whether their county plans effectively address the needs that they are now responsible for, and to adapt their county plans if necessary.

The Santa Clara County Community Corrections Partnership is Santa Clara County's body charged with the implementation of A.B. 109's realignment reforms. In order to allow them to evaluate the Santa Clara County plan for realignment, adopted September 27, 2011, this report analyzes the first 30 offenders who would have gone to state prison, but who have been sentenced and are now serving their sentences in Santa Clara. Specifically, this report examines two elements:

1. Whether security and programming needs are presented by this population, and whether Santa Clara County's spending plan adequately addresses those; and
2. Whether this population is made up of non-violent, non-serious and non-high priority sex offenders as envisioned by A.B. 109.

This report finds that Santa Clara County correctly anticipated many of the needs of this incoming realigned population such as security, mental health, substance abuse, and housing issues. However, in some areas such as education and employment, Santa Clara County failed to address these recidivism related needs in their spending plan. In other areas such as high security housing units, the County allocated increased amounts of money, but did so without knowing the actual amount of money that this new population would require based on the security classification level assigned to individual offenders. Additionally, the data demonstrates that two individuals who fall into a category specifically excluded from the realignment-eligible population under A.B. 109 were nevertheless realigned to Santa Clara County jail.

As such, this report advocates for three key recommendations:

1. A continued monitoring of this population to track their needs, particularly those related to upper security-level housing.
2. An increase in the portion of the Santa Clara county budget that is allocated for in-custody adult education programming as well as for in-custody services related to preparing inmates for and helping them to obtain employment release; and
3. Implementation of a screening system by the county or the state to ensure that inmates who were not part of the population intended by A.B. 109 (violent, serious or sex offenders) are not realigned to Santa Clara County jails.

Chapter 1
Research Overview

The characteristics of this newly realigned population are important for both evaluating and shaping the reform of crime policy in California for three reasons. First, as discussed above, taking stock of the needs represented in this population is essential in preparing Santa Clara County to address those needs and informing the county's implementation and future revisions to their county plan. For example, if the population is comprised of individuals who have violent offense convictions, the county may have to bolster the security within their jails and adjust their budget accordingly. Similarly, if mental health or substance abuse issues are common within the population, Santa Clara County must ensure that they have effective services to address these issues, or else the county will likely again be financially responsible for incarcerating these individuals when they recidivate as a result of untreated mental health problems or addiction.

Second, understanding the characteristics of this population are also vital to the evaluation of A.B. 109. In particular, in the legislative language and in the press, A.B. 109 promised that those offenders sent to county jail in lieu of state prison would be non-violent, non-serious, and non-sex offenders. An analysis of the conviction history of these offenders will allow this provision of A.B. 109 to be evaluated in terms of whether these offenders now incarcerated within the county, are truly what the public envisions as non-violent, non-serious and non-sex offenders. If this new population does not embody the intentions of A.B. 109, then revisions to the law may be necessary,

Third, looking specifically at the length and type of sentence assigned to offenders within this newly realigned population is important in order to evaluate

whether A.B. 109 has had any unintended consequence; namely, whether sentencing

offenders within the county that they will serve their time in is correlation with

offenders receiving more or less punitive sanctions than had these individuals been

sentenced to state prison.

Chapter 2
Methodology

In order to collect and assess information regarding the characteristics of the new population that would have been sent to state prison, but who under A.B. 109 will receive and serve their sentences within the county of their offense, I worked with the Santa Clara County Public Defender. The Public Defender's office provided me with their client files for each the first 30 individuals realigned to county jail after A.B. 109 was implemented on October 1, 2011. These files contain data including demographic information, conviction history, description of current offense, sentence type and length, education level, mental health status, and other notations by the attorney that range from observations that the offender has a drug addiction to observations that the offender does not suffer from substance abuse, but is a drug dealer. As may be expected, the range of data contained within each file differed considerably. For example, some files contained minimal or no demographic information or incomplete conviction histories. As a result of this missing information, the data results for each variable represent the minimum number of individuals within the population possessing that characteristic.

I compiled the information contained in the Santa Clara Public Defender's client files into a data set. For each offender, I collected 56 variables of data. In addition to the categories of data listed above, these variables included information such as age at first conviction, substance abuse related convictions, whether homeless, employment status,

prison priors, probation revocations, and more.[1] I entered this information in an excel

spreadsheet, and analyzed it with the help of pivot tables.

[1] For a full list of the data variables collected, please see the horizontal axis of the spreadsheet in Appendix 1.

Chapter 3
Findings

a. Demographics

      Demographic information was missing for many of the first 30 offenders realigned to county jail. For example, only 12 individuals were identified as being a certain ethnicity. Of these, half are Latino, one quarter are Asian, and one quarter are white.

      i.   Immigration Status

      Over 16% of this population was identified as an immigrant. Of these, three individuals had been identified as being either undocumented or having an expired Visa.

      ii.   Housing

      Of the 14 individuals whose housing status was listed, four individuals reported that they were homeless.[2] Although four may not seem like a high number, if this proportion is reflected in the population of all those who are realigned to county jails, more than 28% of these individuals will be homeless.

      Of the four homeless individuals, three were convicted of property offenses, which may suggest their criminal activity being related to need, and one was convicted of a drug offense. Similarly, the most recent prior convictions for these four individuals were also three property crimes and one DUI respectively.

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[2] Of the ten individuals who reported that they were not homeless, six of them reported living with one or more of their parents.

Three of these individuals also had between two and 13 substance abuse-related convictions on their record. Each of these individuals additionally had more than four prior convictions, with an average of 17.75 prior convictions. The high number of prior convictions and the histories of substance abuse-related convictions suggests that homeless individuals represent an area of extreme need. Without intervention to reduce recidivism within this population through substance abuse programming, transitional housing placement help, or other services, it appears likely that these individuals may end up repeatedly cycling through the Santa Clara county jails over the years.

   iii.   Age

The average age of offenders in this newly realigned population is 33.65 years old.[3] The average age at first conviction was 23.5 years old for the 22 individuals for whom this information was available. Of these, three individuals had juvenile records noted in their client files.

Offender age and age at first conviction are factors that will help Santa Clara County determine the level of challenge that will be presented by this population because young age and age at first conviction are strongly correlated with rates of recidivism.[4] For instance a study done by the Florida Department of Corrections found that for males, each additional year of age reduced the likelihood of recidivism by 3.2%. If the population of realigned individuals are younger or were younger at their first conviction than other individuals that Santa Clara County has previously been

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[3] This is the average age of the 26 individuals for whom an age or birth date was included in the client files at the public defender's office.
[4] Eva Mulder, Eddy Brand, Ruud Bullens, and Hjalmar van Marle, <u>Risk Factors for Overall Recidivism and Severity of Recidivism in Serious Juvenile Offenders</u>, International Journal of Offender Therapy and Comparative Criminology 118, 126 (2011).

responsible, than this new population is likely to recidivate at a higher degree unless they are targeted with evidence-based recidivism reducing programs.

b. Criminal History

The first 30 realigned individuals appear to have relatively lengthy criminal histories. Additionally, while the present offense that these individuals were convicted of is consistent with that of non-violent, non-serious and non-sex offenders, the previous convictions on some of their records do not appear consistent with this categorization.

i. Present Offense type

Most of the individuals in the data set (18) were convicted of a property crime as their most recent conviction. Of the 18 individuals convicted of a property crime, two were simultaneously convicted for a probation violation, one for a drug crime, and one for misdemeanor battery. 12 individuals in the data set were convicted solely of non-property crimes: six were convicted of probation violations, four were convicted of DUI's, and three were convicted of drug crimes.

These conviction types appear relatively benign, and none of them represent a violent, serious or sex offender, which should have been excluded from the group of those individuals realigned to county jail. Also, because the vast majority of the convictions are for property crimes, which are not necessarily correlated with any type of need that should be addressed in jail (e.g., substance abuse issues, need for greater security), it does not appear that Santa Clara County will need to reevaluate their county plan based on the offense type data.

ii.   Prior Convictions

The prior records of this new population also belie a level of seriousness that is not evident when solely looking at their present offense convictions. The realigned population had an average of 6.93 total prior convictions. While some individuals had no prior convictions, others had as many as 32 prior convictions. Four individuals had no prior convictions. Among the 25 individuals who had one or more prior convictions, the average number of prior convictions was 8.
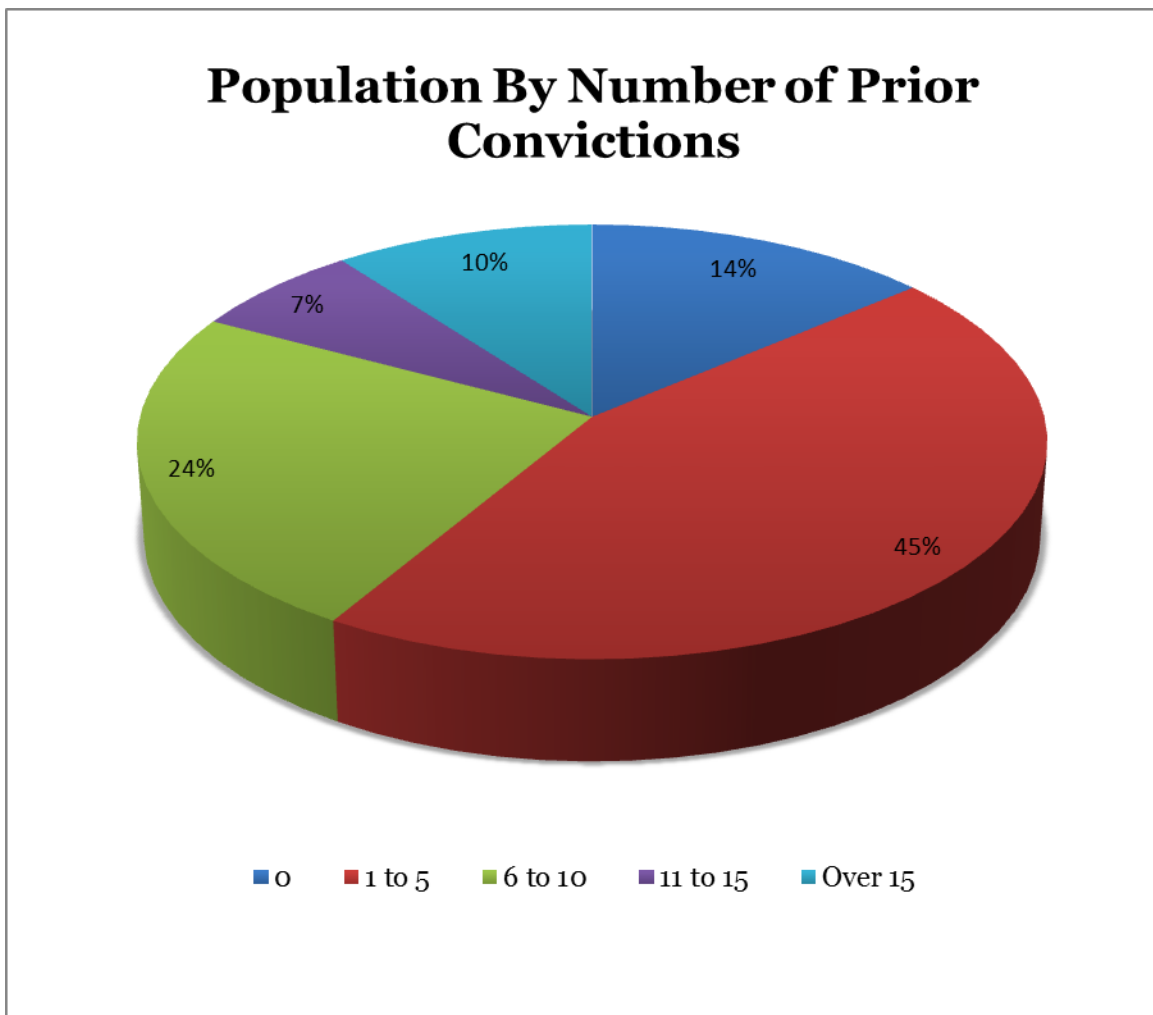
Seven individuals also had at least one prison prior, meaning that they had previously been sentenced and served time in state prison. This is just over 23% of the population. Among these individuals with priors, they had an average of 3 prison priors, with some having only one and others having up to seven prison priors.

In addition to having relatively lengthy criminal histories and a number of individuals with prison priors, the many of the 30 members of the realigned population examined here also have past convictions that include violent and sex offenses. Property crimes were still most prevalent in these individuals' prior convictions, with 22 individuals having at least one prior conviction for a property crime. On average, the 30 individuals in this data set had been convicted of 2.4 property crimes per person. However, eight individuals, representing 27.6% of this population, had prior convictions for a violent offense. In one of the more extreme examples, Offender Number 21 had at least six violent prior convictions. His first conviction was for assault to commit rape, which he committed at the age of 22. Additionally, two individuals had been convicted of a sex offense (unlawful sex with a minor and indecent exposure).

c.   Programming Needs
   i.   Mental Health

In this population, six of the 30 individuals (20%) had been identified as mentally ill. Among these individuals, four have been diagnosed with depression and one attempted suicide twice while awaiting trial. Four of these individuals live with their parents, one is homeless, and one declined to report his living situation. Four of these individuals also have histories of drug or alcohol abuse. The average number of prior

convictions among them is 4.84. All six of these individuals were convicted of a property crime for their current offense, and one also was convicted of misdemeanor battery.

Overall, these individuals represent a clear need for programming. Although it is not clear whether there is a causal relationship between these individuals' mental health issues and their convictions or substance abuse, it is likely that one exists. Either way, it is the duty of Santa Clara County to be equipped to provide mental health services, and to take action to prevent further suicide attempts.

The one challenge in transitioning to treatment of those within the newly realigned population might be that those individuals will be present in jail for longer amounts of time than the previous population in Santa Clara County jails. For instance, in 2011, the average length of stay for men who had been sentenced for a felony conviction was 120.3 days, and was 53.6 days for men who had been sentenced to a misdemeanor.[5] In contrast, this new population has been sentenced to an average of 532 days of incarceration. While, they will most likely not have to serve their full sentences, even if they get out early, this population will still remain in county jail for much longer than those in the original population. Due to this fact, the cost of providing mental health services for the new population may increase. However, apart from this, Santa Clara County appears to have prepared as well as possible for the mental health needs of the realigned population.

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[5] Huskey and Associates, and the University of Cincinnati Center for Criminal Justice Research, <u>Recidivism Study of the Department of Correction's Inmate Programs Preliminary Report</u>, Santa Clara County Department of Correction, 4 (2011), http://www.sccgov.org/keyboard/attachments/Committee%20Agenda/2011/ February%202,%202011/203365142/TMPKeyboard203374162.pdf.

ii.   Substance Abuse

As one might expect, a large number of the realigned population also have a history of substance abuse reflected in their records. Seven individuals, representing 23% of the population sample had been identified as having a present addiction to drugs or alcohol. Additionally, at least 23 individuals are or were users of either drugs or alcohol as reflected by their criminal records (i.e., convictions for DUI's or use of narcotics). 15 individuals, 50% of the population sample had used drugs specifically. In addition, the vast majority of the 15 individuals who engaged in drug use appeared to focus their use on methamphetamines. Finally, 19 of these individuals, more than 63% of the population sample, had been convicted of a substance abuse-related crime, meaning that their substance use was directly linked to their criminal behavior.

iii.   Education

Of the 15 individuals for whom their highest completed education year was available, over half (eight individuals) graduated or earned their GED. One of these individuals was also attending college. Interestingly, none of those who completed 12th grade or beyond had a substance abuse problem as reflected in the public defender files. Seven of these 15 individuals did not finish high school, dropping out at the 9th, 10th, and 11th grades. If these rates are reflected in the rest of the population realigned to county jail, almost half of the population that Santa Clara County will be now responsible for will lack a high school diploma or equivalent, making it more difficult for them to find a job and transition to a stable lifestyle upon release.

iv.   Employment

Employment status was only available for 11 of the 30 individuals. Seven reported being employed, and four reported being unemployed. It is important to mention, that on the forms used by the public defender's office, there is no box where clients are directed to report if they are unemployed. There are only boxes where they are directed to answer what their job is and who their employer is. The four individuals who reported that they were unemployed, volunteered this information in those boxes. It is also likely that many of the 19 individuals who declined to include their employer or job did so because they are also unemployed, but did not volunteer that status without being asked about it directly.

d. Sentence Type and Length

The sentences represented in this population sample confirm that this new population of realigned offenders will remain the responsibility of Santa Clara County for much longer than the county's previous offender population. The average length of sentence of the 29 individuals for whom it was available is 23.38 months. The sentences ranged from five months (for probation revocation) to 52 months (for possession of meth for sale). The most common sentence length was 16 months, which corresponded to offenses ranging from petty theft to vehicle theft to probation revocation. These sentence lengths, however, include both jail sentence and length of mandatory supervision where individuals were given a blended sentence.[6]

Despite predictions that many individuals would receive blended sentences, the majority of this population sample received a sentence only including incarceration. All

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[6] A blended sentence refers to a commitment for a period of incarceration followed by a period of supervised release, such as probation.

individuals received a sentence to incarceration, and only ten individuals, 34.5% of the population, were additionally sentenced to mandatory supervision (similar to probation). Of the nine individuals whose mandatory supervision sentence was available, the average length of mandatory supervision sentence was 22.9 months.

Perhaps the most impactful and costly change for Santa Clara County is the increase in incarceration sentence length associated with the realigned population. The average incarceration sentence in the population sample was 17.4 months, with sentences ranging from five months (for probation revocation) to 36 months (for vehicle theft with priors). This presents a stark contrast to the previous incarceration terms in the county. In fiscal year 2011 (extending to November 2010), the average length of stay for male felons sentenced to county jail terms in Santa Clara was 120.3 days, roughly 4 months.[7] This new population has been sentenced to jail terms of nearly 4 times the average stay of Santa Clara County's previous inmate population. This disparity will diminish somewhat given that almost no individuals serve their entire sentence, and most of the realigned population will be released much earlier due to good time credits. However, even if the realigned population serves only half of their sentences, they will still be incarcerated on average for more than double the time served by Santa Clara County's non-realigned population. This will place a substantial burden on Santa Clara County's budget for offender housing and in-custody services and programming.

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[7] Huskey at 4.

Chapter 4
Data-Based Policy Recommendations

a. Does Santa Clara County's Plan Effectively Target This Population's Needs?

    i.   Security Needs

This data concerning the characteristics of this realigned population sample can be used to evaluate Santa Clara County's plan for implementation of A.B. 109. Although the county did not have access to any information regarding what needs and challenges this new population would present because their county plan had to be completed before the implementation of A.B. 109, it appears that the county accurately anticipated most of their new responsibilities in their county plan. Specifically, the county predicted and allocated portions of the budget in the Santa Clara County's spending plan to some of the most distinct areas of need that are represented in this sample of the population: security, homelessness, substance abuse and mental health issues. However, Santa Clara's plan did not address either lack of employment or education, which are factors that are linked to recidivism and that are prevalent within this population.

One of the primary areas of need according to this population sample is the need for increased security in the form of increased capacity in the medium and high-level security housing. At least nine individuals, 30% of the population sample, had one or more prison prior (one having at least seven prison priors), and the average number of prior convictions among this population was 6.93. Additionally, although most of the individuals in the data set had been convicted of a property crime as their current offense, over 27% of them had prior convictions for a violent crime. For the purposes of analysis, this report categorizes all crimes involving the intent to cause bodily harm to

other persons as a violent crime. Some legal definitions of "violent crime" may differ, but this categorization represents the popular perception of what is "violent." The violent crimes present in this population by this definition were misdemeanor battery, battery on a police officer, assault, assault to commit rape, inflicting corporal injury on a spouse, and violation of protective order that resulted in physical injury.

From this information regarding past crimes, it is still unclear whether these individuals will represent a security risk while incarcerated. For instance, the most common prior violent crime conviction among this population was for inflicting corporal injury on a spouse. Although domestic violence is a very serious issue, it is not necessarily linked to violent or detrimental behavior during incarceration. Similarly, an individual having multiple prison priors for property offenses may not represent any institutional security threat.

However, due to the security classification process dictated by the California Code of Regulations Title 15 and Board of Correction Standards, factors such as lengthy criminal history, prison priors, and record of violence generally dictate that an individual is classified as medium or maximum security and that they are required to be incarcerated in a maximum-security facility.[8] For instance, in order to obtain a "low-medium" classification, an inmate should have "little to no jail experience," and an inmate having a "high degree of institutional experience and sophistication" corresponds with a "high-medium classification." Maximum-security classification is based on factors such as a "history of criminal charges and infractions." With an average of 6.93 prior convictions per individual in this population sample and with two-thirds of

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[8] Report on Inmate Classification and Associated Costs, County of Santa Clara Department of Correction, Santa Clara County Department of Correction, 3-4 (2004) http://www.sccgov.org/SCC/docs/SCC%20Public%20Portal/attachments/keyboard/593681TMPKeyboard20082703 3.pdf.

the population having 3 or more prior convictions, it is likely that the majority of the realigned population will be found to have a history of criminal charges and infractions, which will require them to be classified as maximum-security or potentially high-medium.

Those inmates who are classified as maximum or medium-security will then be required to be incarcerated in a housing unit of the corresponding security level. This is associated with increased costs, which are primarily due to the need for more staff in higher security level housing units.[9] A 2004 report by the County of Santa Clara Department of Correction provided the estimated annual cost of a high-security inmate as either $126,600 at the men's facility or $114,209 at the women's facility. This is $102,551 more than the cost of a minimum-security inmate, and at least $74,785 more than the cost of a medium-security inmate in the men's facility.[10] Because the realigned population will largely be exempt from minimum-security classification, Santa Clara County will have to devote a larger portion of the corrections budget to security in order to account for the significantly increased costs of housing a population that largely does not qualify for minimum-security classification.

In creating the county plan prior to October 1, 2011, Santa Clara County did accurately predict and budget for this increase in need for higher-security housing. The county allocated 17.12% of the budget to offender housing.[11] Specifically, the county budgeted $1,700,244 for increasing the security staff (e.g., Sheriffs Correctional Deputies for custodial supervision, Custody Support Assistants for facility security) and

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[9] Id. at 2.
[10] Using estimated annual inmate costs from 2004. Id.
[11] County Plan PG NUMBER

the facilities capacity (e.g., facility maintenance, laundry).[12] Representing just over 11% of Santa Clara County's total budget from the identified funding sources for realignment, this substantial allocation of funding will hopefully cover the full cost of housing inmates who are classified to higher-security housing units at higher rates. However, in the spending plan, the county made no specific predictions about the numbers of inmates who will require higher-level security housing and for how long. In particular, because inmates in the realigned population will be serving sentences that are more than four times the average length of stay of other inmates in Santa Clara County, unless Santa Clara County was able to predict this level of increase in sentence length compared to their previous population, further adjustments may have to be made in order to provide for the increased cost of not only housing more inmates in more secure housing units, but also for longer amounts of time.

  ii.   Recidivism-Related Programming Needs

     There are several different needs prevalent in this population sample that have been linked to increased risk of recidivism. Santa Clara County will need to address these needs in order to reduce the recidivism rates of this population and ensure that realigned individuals do not simply cycle through the Santa Clara County Corrections system. The County has accurately predicted and accounted for most of these in their county plan and budget allocations. Specifically, the high rate of substance abuse and mental health issues within this population and the homeless status of a portion of this population poses a high risk of recidivism that Santa Clara County has taken steps towards reducing by allocating funding to address these issues. However, both lack of

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[12] Santa Clara County Plan, County of Santa Clara Office of the County Executive, Office of Budget and Analysis (2011) at 3.

education and employment are also factors that have been linked to recidivism and that are prevalent in this population sample.[13] Santa Clara County has not included programming or services to address education or employment issues for those incarcerated in its spending plan.

First, substance abuse represents a significant area of need within this population given that, as discussed above, more than 63% of this population has been convicted of a substance abuse-related crime and over 23% have been confirmed to have a present addiction to drugs or alcohol. Santa Clara County successfully anticipated this need, predicting in the county realignment plan that "an overwhelming majority of these individuals have substance abuse issues."[14] The plan recommends that an allocation of $1 million be divided between outpatient and residential treatment programs.[15]

However, within the spending plan itself, it is not clear where this money will be allocated. Substance abuse programs are not specifically mentioned within the budget and instead there are only line items such as "Services and Supplies for Self Help and Peer Support (Specific programs TBD)" under Programs and Services and the addition of one rehabilitation officer under Sheriff/DOC Programs that could address substance abuse issues.[16] The combined amount of these allocations is less than $250,000, so it is unclear how the full $1 million allocation to substance abuse treatment will be spent. One key issue will be whether realigned individuals with substance abuse issues will qualify for the treatment programs, and whether the in-custody programming will have enough capacity to serve the total need. If, for instance the majority of this $1 million

[13] Stephen J. Steurer and Linda G. Smith, Education Reduces Crime: Three State Recidivism Study, http://www.ceanational.org/PDFs/EdReducesCrime.pdf.
[14] Santa Clara County Plan, at 8.
[15] Id.
[16] County Plan, Attachment A - Spending Plan, at 3-4.

allocation for substance abuse is put towards treatment programs where inmates are disqualified if they have a criminal history of a certain length or serious prior convictions, or if the treatment programs are mainly focused on those on probation who have already been released, then the majority of the realigned offenders will not be able to access these programs given their lengthy criminal histories. In addition, given the fact that more than two-thirds of them will not serve probation or mandatory supervision upon release from county jail, and thus will only be eligible for treatment while in the county jail.[17]

If Santa Clara County is vigilant in ensuring that this $1 million is allocated to effective substance abuse programs that are available both in and out of custody to members of the realigned population, then hopefully, the 63% of the population who have committed substance-abuse related crimes will avoid any recidivism stemming from addiction or over-intoxication.

Second, mental health issues are another area of need demonstrated by the data and linked to recidivism,[18] and Santa Clara County has expressed attention to this need in both its county plan and in the budget allocations. Prior to the implementation of A.B. 109, in September 2011, Santa Clara County reported that 1/3 of their inmate population suffered from mental health issues.[19] Estimating that this percentage would carry over into the new population of those realigned to county jail,[20] the county's spending plan allocated $853,678 to fund the addition of five new mental health positions as well as

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[17] Only eight individuals of the 30 in the population sample were sentenced to a blended sentence (a sentence including both incarceration and mandatory supervision upon release), and none were sentenced only to mandatory supervision.

[18] John E. Cummings, The Cost of Crazy: How Therapeutic Jurisprudence and Mental Health Courts Lower Incarceration Costs, Reduce Recidivism, and Improve Public Safety, 56 Loy. L. Rev. 279, 310 (2010).

[19] Santa Clara County Plan at 7.

[20] In fact, in this population sample only 20% of the individuals were identified as suffering from a mental health issue.

the cost of related services and supplies.[21] The county also plans to add an additional $187,500 to the budget for their Self Help & Peer Support and Faith, Family and Community Support Service Partnership Programs.[22] These programs focus on mentorship and ministry with a holistic approach to rehabilitation. This allocation of money will ensure that the programs have enough capacity to be made available to the realigned population.

Third, the need for housing and the problems that accompanied the lack thereof was represented in this population sample. Four of the 14 individuals, 28%, who reported their housing status were homeless. These same individuals also struggled with unemployment and substance abuse issues. Transitioning from incarceration to a stable and crime-free life is made much more difficult when an individual has no place to sleep at night and lacks the resources to get back on their feet (e.g., lacking clean clothes to wear to job interviews).

Fortunately, Santa Clara County has anticipated this area of need in their county plan and has allocated $2.5 million of A.B. 109 funding to increasing the capacity of their transitional housing unit program.[23] Whether or not these individuals with the greatest need (those who were homeless before serving their sentences) are able to qualify for this transitional housing may present an issue, because many of them have more lengthy criminal records, substance abuse issues, and will likely struggle with finding initial employment. Yet, if they do qualify, Santa Clara County might be able to substantially reduce recidivism among this population through their transitional housing program.

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[21] Id. at 8.
[22] County Plan, p 9 .
[23] County plan, p. 9.

Fourth, lack of education and employment are challenges that appear to be prevalent within this population, according to this population sample. Although only a portion of the population sample reported their highest education year completed and employment status, of those who did, 46.67% did not graduate from high school or possess a GED, and 36.36% reported that they were unemployed.

It is widely accepted that lack of education contributes to recidivism rates.[24] More recently, studies have also found adult correctional education programs to be promising in addressing this risk factor and reducing recidivism.[25] Additionally as one multi-year study of inmates across three states found, those inmates who had not completed high school, who participated in adult correctional education programs had statistically significant lower re-arrest rates of 48% compared to 57% re-arrest rates of those who do did not participate. This correlation is also present in the data set for realigned individuals. For the four individuals who dropped out in the 9th grade, their average number of total convictions was 16.5. In contrast, those individuals who earned a GED had an average of only 3.3 total convictions. Given that nearly half of this realigned population will lack a high school diploma or equivalent, the county will need to address this lack of education in order to help this population transition to stable employment and to reduce recidivism.

Similarly, employment is a key factor that can reduce recidivism, and studies have demonstrated this throughout the years. As was found in a 1995 meta-analysis of almost 400 studies conducted over a 40-year period, "the single-most effective factor in reducing reoffending rates was employment."[26] This correlation between employment

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[24] Steurer at 18.
[25] Id.
[26] Joan Petersilia, *When Prisoners Come Home: Parole and Prisoner Reentry*, (Oxford University Press, 2003), 112.

and reduced recidivism is also present in the data set. The four unemployed individuals had an average of 11.14 total convictions, while the seven employed individuals had an average of 7.78 total convictions.

However, Santa Clara County's plan for realignment does not provide any education or employment assistance-related funding for those incarcerated. Santa Clara's spending plan only provides education and employment-related services through probation and reentry centers in the community, which probation officers are supposed to direct their probationers to.[27] These services will not be accessible to individuals until their release, at which time they will already be searching for the jobs that education and employment training services are supposed to help them obtain. Additionally, as discussed above, since a large portion of realigned offenders are not being sentenced to mandatory supervision, these individuals will not have access to these educational services. The lack of education and the related prevalence of unemployment within this population will present a challenge to the county that it will need to address with programming, or else will have to pay for when individuals recidivate and return to Santa Clara's county jails.

b.   Is the Realigned Population Made Up Of Those Individuals Intended by A.B. 109?

A.B. 109 contemplated that those offenders who would have been sent to state prison, but who are now sent to county jail as part of A.B. 109 are non-violent, non-serious, and non-sex offenders. Public messaging in particular emphasized that this legislation would not lead to "dangerous" offenders serving their sentences in the community. For example, the 2011 Public Safety Realignment Fact Sheet published by the California

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[27] Santa Clara County Plan at 9-10.

Department of Corrections stated that "All felons convicted of prior serious or violent offenses, sex offenses, and sex offenses against children will go to state prison."[28] Similarly, Governor Brown's press release excerpting his signing message after he signed A.B. 109 into law included this same promise, that under A.B. 109, "All felons who are convicted of a serious or violent offense—including sex offenders and child molesters—will go to state prison."[29]

However, as the data set from the first 30 individuals realigned shows, there are individuals within this realigned population who have been convicted of a prior crimes that are commonly considered violent or sex offenses. For instance, one individual was convicted of assault to commit rape; something that the public would no doubt consider constitutes a violent crime. Another individual was convicted of unlawful sex with a minor, which many members of the public would consider a sex offense, and which some might consider a sex offense against a child, which is supposed to bar an offender from being sent to county jail under A.B. 109. In all, two individuals (6%) had been conviction of a sex crime, and eight individuals (26.7%) of the population sample had been convicted of a violent crime, using the definition of violent crime as all crimes involving the intent to cause bodily harm to other persons.[30] This data would suggest that those individuals realigned to county jail under A.B. 109 are not the "non, non, non's" contemplated by the legislation and promised to the public.

The primary reason for this discrepancy between the presence of individuals in this population with what seem to be violent and sex convictions is likely that the

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[28] California Department of Corrections and Rehabilitation, "2011 Public Safety Realignment Fact Sheet" (2011), 2.
[29] Office of Governor Edmund G. Brown Jr. Newsroom, Governor Brown Signs Legislation to Protect Public Safety and Empower Local Law Enforcement, (2011) http://gov.ca.gov/news.php?id=16964.
[30] As discussed earlier, the violent crimes present in this population by this definition were misdemeanor battery, battery on a police officer, assault, assault to commit rape, inflicting corporal injury on a spouse, and violation of protective order that resulted in physical injury.

language of A.B. 109, contrary to how it has been construed by Governor Brown and the CDCR, excludes from realignment offenders who have committed a violent felony, specifically (and not felons who have committed a violent crime). Specifically, the legislation defines a "violent felon" as one of the crimes listed under Penal Code § 667.5, subsection c. Among others, these include murder, robbery, and assault with the intent to commit a felony specified under section 220. Notably, many of the individuals on our list who are felons and have committed a crime that the public would likely deem as violent, did not receive their felon status from their violent or sex conviction (e.g., battery against a police officer, or inflicting corporal injury on a spouse, or unlawful sex with a minor), but from a separate crime. Those individuals are not considered to fall within the category described by Governor Brown as "all felons convicted of a serious or violent offense" and excluded from realignment.

However, there are also individuals in this data set whose records show that they have been convicted of offenses that § 667.5 specifically defines as a violent felony, and thus who A.B. 109 directed would not be realigned to county jail. First, § 667.5(c)(15) defines as a violent felony "Assault with the intent to commit a specified felony, in violation of Section 220."[31] Section 220 includes assault to commit rape, which Offender Number 21 in the data set was convicted of at the age of 22-years old.[32] Second, § 667.5 also defines "any robbery" as a violent felony, however Offender Number 20 was convicted of 2nd degree robbery (Penal Code § 211-212.5(c)) as his present offense. Similarly, A.B. 109 defines a "serious felony" as those included in § 1192.7(c), which includes both robbery and intent to commit rape, meaning that individuals convicted of

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[31] Cal. Penal Code § 667.5 (West).
[32] Cal. Penal Code § 220 (West).

these offenses should not be realigned to county jail.[33] It could possible that these two individuals who seemingly should have been excluded from realignment by the terms of A.B. 109 had mistaken notations on their rap sheet of prior convictions. However, from the data included in the public defender files, it appears that at least two individuals out of the first 30 realigned are those that Governor Brown, the CDCR and A.B. 109 promised would not be sent to county jail in lieu of state prison under this legislation.

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[33] Cal. Penal Code § 1192.7 (West).

Chapter 5
Final Policy Recommendations

The data provided by this sample of the realigned population shows that the population and the needs that must now be served by Santa Clara County jails will substantially change. Santa Clara County has done an impressive job of accurately predicting the different needs and portion of individuals in this new population having specific needs, and allocating resources in their spending plan accordingly. In addition to these productive allocations, there are also a few areas that the County may need to address in further budgets. Similarly, due to the presence of certain factors within this population sample, it would be prudent for the state government to begin to monitor and consider addressing certain issues. To this effect, this report suggests three policy recommendations.

a. *Implement a system to monitor the security classification level assigned to inmates that are realigned to county jail under A.B. 109.*

The data suggests that the members of the realigned population will largely require medium or maximum-security level housing due to their criminal histories. Because there is a limited capacity of this type of housing and because it is much more costly than minimum security-level housing in Santa Clara County jails, the more individuals that are assigned to this housing will put an increasing amount of strain on Santa Clara's budget. As such, it is important that Santa Clara closely monitor the security classification level assigned to inmates in the realigned population to determine the impact on upper level security housing capacity and to allow the county to adjust its

budget accordingly. It is important that Santa Clara monitor all areas of need presented by this new population as it changes and grows over time. However, monitoring security needs is of particular importance because of the increased consequences of not budgeting enough funding for secure housing. Although the county has already allocated an increased portion of its budget to increasing capacity of more secure housing units, if regular monitoring is not done and the population of inmates requiring such housing exceeds the capacity, Santa Clara County could end up in a dire situation where either it must create a security risk by placing higher classification inmates with minimum-security ones, or it must risk facing a budget deficit by spending more money on secure housing unit services (which are primarily staffing costs) than was budgeted in the spending plan.

b. *Add funding to in-custody education and employment-related services.*
Although Santa Clara County allocated relatively large amounts of money to address recidivism-related needs present in the population realigned to county jails (e.g., mental health, substance abuse issues, and housing), the county did not include education or employment-related services for in-custody individuals in its spending plan. Both lack of education and unemployment are factors that are strongly correlated with increased recidivism. Incarcerated adult education programs and employment training have also both been established to be evidence-based programs for decreasing recidivism. As such, Santa Clara should strongly consider allocating a portion of their spending plan to reducing recidivism in the realigned population by offering education and employment programming to the many individuals in this population that have those specific needs.

c. Implement a system to more effectively screen candidates for A.B. 109 realignment.

In this data set of 30 individuals, two had been convicted of crimes, which made them ineligible to be realigned to county jail under A.B. 109. Yet, these individuals been identified as part of the realignment population and are now the responsibility of Santa Clara County. If the same proportion of individuals who are legally ineligible for realignment because of violent, serious or sex-offense convictions but are realigned anyway continues, then 6% of the individuals sent to Santa Clara will be those who they should not legally be required to take responsibility for. It is possible that housing any non-eligible individuals who slip through the cracks will not negatively impact the security of either the jail or the county. However, if these misallocated individuals were not accounted for in the division of realignment resources between the counties done by the state government, which may put unexpected and unfair strain on Santa Clara County's budget. Thus, it is imperative for both Santa Clara's budget and in the interest of honesty in implementation of the law, that a mechanism be implemented to more thoroughly screen potentially eligible individuals for realignment to county jails.

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