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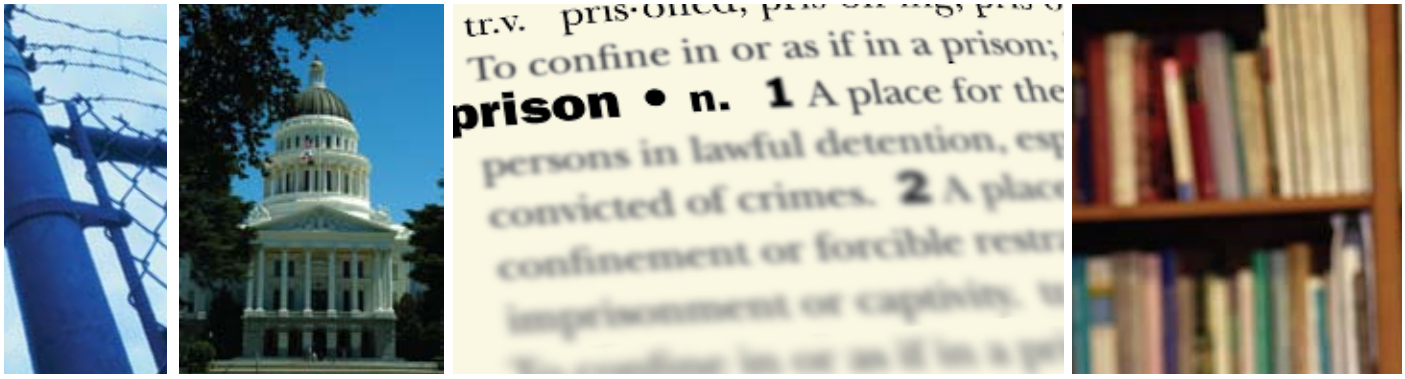
The Stanford Executive Sessions on Sentencing and Corrections

California Corrections Reform: State/Local Partnerships



Findings and Analysis

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Executive Summary

On June 8, 2007, criminal justice experts, researchers, policymakers, and other stakeholders convened at the Stanford Law School for the second meeting of *The Stanford Executive Sessions on Sentencing and Corrections*, a forum for developing concrete strategies to reform the California sentencing and correctional systems. The meeting, entitled, "California Corrections Reform: State/Local Partnerships," focused on the issue of fiscal and administrative collaborations between different governmental entities in the area of California sentencing and corrections.

Professor Robert Weisberg, Stanford Criminal Justice Center

In the last year, policymakers and other stakeholders have repeatedly pointed to tensions between the state and county governments as a significant contributor to California's current corrections crisis. Indeed, while questions remain with respect to several proposed strategies – e.g., the creation of a sentencing commission – there appears to be little debate surrounding the need to improve the relationships between the state and local government entities responsible for corrections services in California. Therefore, we decided to devote an entire meeting of the Executive Sessions to this subject, and focused the meeting around four topics: the current status of California corrections reform, especially in the wake of Assembly Bill 900, "The Public Safety and Offender Rehabilitation Act of 2007"; the establishment of state-local funding partnerships to control crime and corrections costs; the importance of fortifying rehabilitation services, probation, and jails; and the prevention of recidivism through the establishment of reentry facilities and community partnerships.

We began the Session with a discussion regarding AB 900 because of its role in shaping the current public debate about California corrections reform and because of its proposals for innovative types of state/local partnerships. The discussion of AB 900 generated lively debate, with some participants proclaiming its virtues and others decrying both the circumstances surrounding its enactment and its questionable ability to resolve our corrections crisis. Participants were able to agree that regardless of whether AB 900 is ultimately successful in repairing our corrections system, its secure reentry facilities present an interesting opportunity to rethink our approach to structuring the relationship between the state and local governments. A key issue to emerge from the second discussion was the need to include city government in discussions regarding state/local partnerships. Municipalities are responsible for providing all of our front line law enforcement and have substantial interactions with county probation and state parole officers. They are, therefore, key players in the provision of corrections services. Over lunch, we heard from community corrections expert Mary Shilton, who provided an overview of Community Corrections Acts across the country and some suggestions for how California might look to these states in structuring community corrections programs. Our third discussion session addressed the need to fortify probation, rehabilitative services, and jails. Participants argued that more investment in rehabilitation and crime control at the front end of the system might result in improved outcomes at the back end and noted that AB 900 contains no provision for front-end investment, although as a separate measure in his 2007-08 budget, the Governor has proposed $25 million in funding for a new adult probation program. Finally, the last discussion session focused on reentry and recidivism reduction, emphasizing the need to view the planned reentry facilities more as secure treatment centers than as mini-prisons.

Following are some general themes that emerged throughout the discussion, consisting of broad suggestions for changing our thinking on how we conceive of the ways in which the state, county, and municipal governments relate with each other in the corrections context. First, California policymakers should consider the corrections system as a continuum with a front end and a back end, rather than as a series of unrelated parts, and think creatively about the kinds of policy decisions that might flow from this reconfiguring. For example, lawmakers at the state level do not tend to think of themselves as responsible in any way for probation administration. This is understandable, because probation has never formally been a state responsibility and, of course, overseeing probation is not currently part of CDCR's mandate. Nonetheless, this does not mean that the state could not play some role in shaping probation policy, even without enacting major structural changes. The point here is not to suggest a particular course of action, but rather to note that the front end of the system is really not all that far from the back end of the system and to encourage policymakers to keep both in mind in developing corrections policy.

Second, California ought to realize that the boundaries between jurisdictions are blurry, not distinct. This is true of the distance

between the front end and the back end, discussed above, but also of the lines between state and local government, between supervision and rehabilitation, and between law enforcement and service provision. Viewing the boundaries between jurisdictions and institutions as flexible opens up tremendous opportunities for forging partnerships. For example, one participant of the Executive Sessions suggested a partnership between probation and local police. This is an innovative suggestion, and one which can only be implemented if the distinction between city government (the police) and county government (probation) is viewed more flexibly. Maintaining rigid views regarding jurisdictional boundaries keeps California stuck implementing policies that have already been shown not to work.

Third, California should rethink the definition of what it means for someone to successfully complete a sentence condition, especially in the context of treatment. One participant of the Session emphasized that part of the reason so many people fail their Prop 36 program is that administrators have too rigid a view of what it means to succeed in treatment – for example, in labeling every relapse a "failure." Relapse is common in recovery – it does not necessarily signal a refusal to comply or a lack of interest in success. This is true outside of the Prop 36 context as well. California sends an extraordinarily high number of people to prison for violating conditions of probation and parole, and might send fewer it responded to violations with graduated sanctions and enhanced treatment rather than with a quick return to prison.

As these themes emerged, some participants made the following helpful suggestions as actions that may be undertaken in an effort to improve state/local partnerships in California:

- In the probation context, the Governor could create a task force to put together a set of standardized probation revocation guidelines. The state might also consider creating fiscal incentives for counties to retain custody of low-level offenders and probation violators, the way it has done successfully with the sliding fee scale in the juvenile system. If the state believes that formal restructuring is what is called for, it could expand the CDCR's mandate to include probation administration or create standardized probation and revocation guidelines.

- Participants were virtually unanimous in their support for California's creation of a state-wide risk-needs assessment tool. Currently, the California Department of Corrections and Rehabilitation assesses inmates who enter the system, but the assessment tool that it uses is not particularly useful outside its immediate application, which is determining inmates' institutional security level. California needs a standardized risk-needs assessment tool for the relevant actors to consider at all stages of the criminal process – beginning prior to sentencing and continuing through release from prison and termination from state supervision. Assessing risks and needs is key to ensuring public safety – it can tell us whom to treat, whom to supervise, whom to incarcerate, when, and for how long. This responsibility should not fall to individual county probation departments, which often lack the resources to accomplish the task effectively. Rather, the state could take the lead by, for example, expanding and fully funding Senate Bill 618. As noted above, we do not currently know, and have no way to measure, the effect on public safety of our failure to adequately assess offenders.

- California's Community Corrections Act has never been taken seriously, to our detriment. We know that Community Corrections Acts have helped other states reduce crime without expanding their prison populations, and we could follow their lead. One option would be a commitment to funding the CCA for five years. This would demonstrate a genuine intention to work collaboratively with local and county governments, to encourage supervision at the front end of the corrections system, and to bring prison populations to acceptable – and constitutional – levels.

- California has invested time and money into reforming the juvenile justice system, and has seen results. Commitments to the California Youth Authority (now the Division of Juvenile Justice) have gone from ten thousand to three thousand. The Juvenile Justice Crime Prevention Act (JJCPA) has helped counties tailor sentences to juveniles' risks and needs by investing in the front end of the system. The state should use this experience as a foundation for developing similar programs for adults. The Governor has proposed a program similar to the JJCPA for eighteen to twenty-five year old offenders. Many analysts believe that the $25 million he has proposed is a good start, but may not be sufficient to implement the types of adult probation programs that California needs to succeed.

- Finally, as the state and counties begin to implement AB 900, it is critical that the secure reentry facilities created by the legislation be thoughts of as secure treatment facilities, not as mini-prisons. There is potential for these facilities to ease the transition from prison to the community, to improve the relationship between state and county governments, and to involve local treatment providers early in the reentry process. It would be extremely unfortunate if these facilities fail to promote public safety by helping offenders succeed in staying crime- and drug-free when they leave.

In sum, the second Executive Sessions meeting achieved its goals of opening up channels of communication among a broad range of state and local stakeholders and identifying some broad themes and specific recommendations for further exploration. We hope that participants learned as much from the meeting as we did, and that readers will find this document helpful in forging next steps for California corrections reform. Finally, we are extremely grateful to the California State Association of Counties for co-sponsoring the meeting and for their tremendous input and advice during the planning and throughout the meeting.

Introduction

For a variety of reasons, the state of California has a somewhat tense relationship with its 58 counties. The California Legislative Analyst's Office (LAO) attributes this tension to a "poor 'sorting out' of many program duties." The tension is particularly marked in the public safety arena, where well-intentioned policy-makers at all levels of government attempt to construct and administer sound policies and programs that will keep the public safe without breaking the bank.

In the last several months, the issue of the tense – and frequently confusing – nature of fiscal and administrative partnerships between California and its 58 counties has frequently arisen as a factor contributing to the fractured state of our state's sentencing and correctional systems. For this reason, the Stanford Criminal Justice Center chose state/local partnerships as the topic for our second meeting of the Stanford Executive Sessions on Sentencing and Corrections.

This Executive Session addressed the following subjects:

1. The current status of California corrections reform, especially in the wake of Assembly Bill 900, "The Public Safety and Offender Rehabilitation Act of 2007";
2. The establishment of state-local funding partnerships to control crime and corrections costs;
3. The importance of fortifying funding of rehabilitation services, probation, and jails; and
4. The prevention of recidivism through the establishment of reentry facilities and community partnerships.

At the beginning of each session, a facilitator invited designated speakers to offer remarks to lay the groundwork for discussion. Each discussion session was followed by an informal question-and-answer period and general group discussion. The following report provides descriptions of the discussion sessions, tracing the sequence of conversation and describing the exchange of information. Areas of consensus are noted, as are issues on which opinions diverged.

Session participants strongly agreed on the importance of addressing the relationships between government entities as part of developing long- and short-term solutions to California's corrections crisis. One participant characterized California's complex web of corrections programs and institutions as "insanely out of control." Many participants spoke of the need to demand accountability of organizations and programs, and to ease transitions and partnerships between them. Participants urged each other to not think too rigidly about state-county distinctions, i.e., to conceive of programs as successful or unsuccessful, rather than as state or county-operated.

> "[AB 900's] mandates for the development of new rehabilitation and reentry programs suggest opportunities for improved partnerships between the state and counties in the future."

Assembly Bill 900, the Public Safety and Offender Rehabilitation Act of 2007, represents California's most concrete and comprehensive response to its prison overcrowding crisis to date. AB 900 was the focal point during the first discussion group, but emerged as a salient discussion topic during subsequent discussion groups as well. Participants noted throughout the Session that AB 900's mandates for the development of new rehabilitation and reentry programs suggest opportunities for improved partnerships between the state and counties in the future.

The report is divided into sections corresponding with the topic areas explored during each of the discussion sessions.* Also included is a brief summary of an address delivered by Mary Shilton, Executive Director of National TASC (Treatment Accountability for Safer Communities), on the subject of Community Corrections Acts across the country. Throughout the report are snapshots of some of the state/local partnerships that California has explored in the past; these have been culled from a working paper entitled State/County Criminal Justice Partnerships In California: An Abbreviated History, prepared as background material for this Executive Session.

> "One participant characterized California's complex web of corrections programs and institutions as 'insanely out of control.'"

* The report that follows is designed to capture the nature of the Executive Sessions – the points that were raised and debated, the questions that were asked, and, where possible, the conclusions that were reached. Participants were reminded at the beginning of the meeting that the Session was closed to the public and the press, and that statements would be not be attributed to individuals. This was necessary to encourage a free and open exchange of ideas and viewpoints. This report summarizes discussions and highlights certain points. A list of participants is included, but no statement is attributed to any individual participant.

Discussion Session 1:
Setting the Context for Corrections Reform in California — Where Do We Stand?

Assembly Bill 900, which dramatically altered the public discourse about current corrections reform efforts in California, emerged as an ideal framework through which to discuss, debate and analyze some of the intergovernmental and institutional dynamics of state/local partnerships. Because of the interesting implications that AB 900 raises for county and local governments, participants felt that it merited serious consideration at the outset of the meeting.

One participant characterized AB 900 as a "program performance bill," meaning that continued funding is conditioned on successful implementation of the law's initial stages. Several participants suggested that AB 900 is not exclusively about building beds, as some critics have argued, but is rather a major program change designed to effect widespread reform throughout the state. AB 900 calls for the construction of 16,000 in-fill beds in current prisons to alleviate the need to place inmates in classrooms, program rooms, and other public areas not suitable for beds. An oversight board and two strike teams have been established to monitor implementation of the legislation and ensure that its goals are being met. Participants generally agreed that AB 900 is going to require careful planning to implement correctly.

Several participants were optimistic about AB 900's prospects for success. Before the enactment of AB 900, the state lacked a comprehensive plan to address overcrowding, and the corrections system itself was characterized by breakdowns, miscommunication, and inefficiency. Parts of the system were not performing together; the intersection between entities was largely broken. One high-

"Several participants suggested that AB 900 is not exclusively about building beds, as some critics have argued, but is rather a major program change designed to effect widespread reform throughout the state."

ranking official characterized California's prison situation as "pretty dire." Several participants who spoke about the state's plans for implementing AB 900 were adamant that even if AB 900 alone cannot solve California's corrections crisis, the legislation represents a positive step in California corrections reform.

Others were less optimistic. One participant stated bluntly that AB 900 was not about policy, but about politics – a "Hollywood prop" the Governor needs as a stopgap measure to prevent the imposition of a federally-imposed prison cap. Several agreed that AB 900 does not represent an honest effort to address the state's prison crisis and that it will not provide true rehabilitation or sentencing reform. It was suggested that some legislators voted in favor of the law not because they agreed with its policies and mandates, but because they were confident that its benchmarks would not be met and it would therefore never be fully implemented.

Some felt that legislators enacted the law in order to place responsibility for California's corrections crisis on the Governor's office and allow the legislature to avoid blame. One participant noted that AB 900 never received a full policy hearing in the Assembly and was therefore not subjected to intense debate. That participant also questioned the timing of AB 900's enactment,

The California Probation Subsidy and County Justice System Subvention Programs

In 1903, the state of California enacted a probation system, delegating the administrative responsibilities to county government and directing county courts to appoint the state's first probation officers. Until 1945, the counties administered and funded their probation programs in isolation, independent of each other and of the California state government. In 1945, the state government began providing counties with a 50 percent match subsidy to maintain and operate components of their probation systems. Even with these subsidies in place, however, there were no statewide standards governing probation programs; counties operated largely independently. In 1965, the legislature enacted the California Probation Subsidy Act, providing counties up to $4,000 for each adult or juvenile offender not committed to state prison. The probation subsidy program was ultimately responsible for the diversion of more than 45,000 adult and juvenile offenders from state institutions to local probation and rehabilitation-oriented programs. Between 1965 and 1978, when the program ended, California spent $145 million in probation subsidies.

In 1978 the state replaced the Probation Subsidy Program with the County Justice System Subvention Program, which provided counties with grants to cover a variety of local justice programs. By 1982, the County Justice System Subvention Program had served 35,200 adults and juveniles who were at risk of being committed to state facilities. However, the program later became a block grant with no strings attached, and had little impact on state commitments. By 1992, the state was providing $34.2 million to counties for probation through the subvention program, representing only 7.5 percent of county probation expenditures statewide.

The County Justice System Subvention Program still exists, but deals only with probation services for juveniles. The state of California does not currently fund probation services for adults. In his FY2008 budget, Governor Schwarzenegger has proposed providing $25 million in local assistance grants to support adult supervision services for offenders between the ages of 18 and 25.

suggesting that freshman legislators felt pressured to vote in favor of it without understanding its context or implications. Another participant stated that AB 900 will likely exacerbate crowding in prisons and noted that only around $50 million of the law's mandated $7.7 billion will be allocated to rehabilitation programs. Several felt that AB 900 contains some antiquated approaches to dealing with the substance abuse and mental health needs of inmates. One went so far as to say that the legislature and executive branch will not be able to bring about meaningful reform in the state and that it is now up to the judiciary.

The issue of post-release came up during this Session, generating lively debate. Several participants felt that the most important aspect of AB 900 relates to its reentry provisions because the vast majority of prison inmates (nearly 98%) will, at some point, leave prison and return to their communities. Programs must be put in place before inmates leave prison and continue through the transition to life in the community. One participant stressed the fact that California's correctional system has been lacking in effective post-release programming and that this lack has had a measurable detrimental effect on public safety. Participants noted that several counties recognize this and are now eager to provide post-release programs to former inmates in an effort to improve public safety. There was widespread agreement among Session members that California's post-release programs need more structure and that inmates need to be given incentives to participate in them. Participants generally felt that the public is beginning to grasp the reality of the need for effective reentry programs.

One participant spoke favorably of "earned release," whereby inmates are given day-for-day credit for participating in job training programs, apprenticeships, and other educational opportunities while they while they are incarcerated. The participant described recent success stories of inmates fighting fires for the U.S. Forest Service and learning trades as construction workers under the supervision of local unions. In some cases, inmates have been released with the skills to earn as much as $18 an hour or more in skilled trades.

Session participants discussed California's recidivism problem at length. One participant cautioned the group about drawing comparisons between California and other states because the definition of recidivism varies considerably from state to state. That participant suggested it would be helpful for the states to have a common definition of recidivism to facilitate fair comparisons.

Nonetheless, it is clear that California has a problem with recidivism, and participants agreed that bringing it under control is key to reforming our correctional system. One participant described

Carol D'Elia
Project Manager, Little Hoover Commission

recidivism as primarily a "reaction to the prosecution process" – individuals who commit crimes while on parole are frequently incarcerated administratively through a parole violation rather than being charged criminally. All participants seemed to agree that stemming the flow of recidivists into prisons will go a long way toward alleviating some of California's overcrowding issues and that AB 900 can help accomplish this if it is implemented correctly.

Members also addressed California's mental health system in this Session, referring to the state prison system as "the largest mental health services provider in the state." One noted that while mental health treatment is of the utmost importance with respect to the prison and jail populations, we should not depend upon it as the solution, as access to education, jobs and substance abuse treatment remain pivotal. Participants discussed the proportion of cases in which mental health disorders are linked with or exacerbated by co-occurring substance abuse issues, noting that concentrating solely or disproportionately on mental health is ineffective. Several participants also noted that brain damage and developmental issues are chronically under-diagnosed among inmates. There was widespread agreement that mental health and substance abuse

> "One [participant] went so far as to say that the legislature and executive branch will not be able to bring about meaningful reform in the state and that it is now up to the judiciary."

programs must be coordinated at an operational level if they are to be effective.

One overarching theme of the first discussion session was the fact that the California sentencing and correctional systems currently operate as a conglomeration of disparate parts, with little coordination or communication between them. Participants agreed that there must be more interaction between the parts, and that the system should function more as a continuum than as a set of distinct components. One participant emphasized that the key to AB 900's success may be its potential for encouraging stakeholders to think of it as an opportunity to create this continuum.

James Tilton, Secretary,
California Department of Corrections and Rehabilitation

Booking Fees

Before 1978, California's counties paid the costs of booking and processing arrestees booked into county jails out of general funds generated from property taxes. In 1978, Proposition 13 was enacted, limiting counties' ability to provide many kinds of services, including booking services. In 1990, the legislature enacted Senate Bill 2557, which authorized counties to impose a fee for reimbursement of actual costs incurred when arrested persons were brought to the county jail for booking or detention.

Booking fees have been a continual point of contention between cities and counties since the legislature granted counties the authority to collect them in 1990. California's cities have taken the position that booking fees are merely a way for the state to shift its fiscal burdens to cities via the counties and that they have resulted in the bleeding of local police resources. Counties have consistently maintained not only that booking fee collection is an important source of county revenue, but also that booking fees have resulted in the avoidance or reduction of unnecessary arrests, mitigated the pressure on local facilities operating under population caps, and fostered the development of local alternatives to deal with nonviolent offenders.

Subsequent legislation related to booking fees include:

• AB 1662 (1999). Established a continuous funding stream of $38.2 million annually to reimburse cities and qualified special districts for the costs associated with paying county booking fees.

• SB 1102 (2004). Preserved county authority to charge booking fees through the 2004-05 fiscal year but limited booking fee rates to those in place on January 1, 2004. Beginning July 1, 2005, eliminated reimbursements to cities and special districts of the costs incurred in paying county booking fees. Beginning July 1, 2006, limited county booking fees to one-half of the actual costs associated with booking and processing arrestees.

• AB 1805 (2006). Preserved existing county authority to charge booking fees through the 2006-07 fiscal year and appropriated $35 million to reimburse cities for 2005-06 booking fees. Effective July 1, 2007, the law provides for $35 million, subject to state appropriation, to be paid directly to newly-established local detention facility revenue accounts; repeals county authority to charge booking fees in any year in which the state appropriates the entire $35 million; preserves county authority to charge booking fees, at the rate established in June 2006, in any year in which the state fails to appropriate the entire $35 million, in proportion to the level of under-appropriation; and provides county authority to charge jail access fees for low-level offense arrests (i.e., municipal code violations and misdemeanors other than DUI and domestic violence), where a jurisdiction's arrests for such violations exceeds its prior three-year average.

Governor Schwarzenegger's 2007-08 budget provides $35 million to be paid directly to local detention facility revenue accounts.

Discussion Session 2:
Establishing State-Local Funding Partnerships to Control Crime and Corrections Costs

In this session, participants discussed the history of funding partnerships between the state and local governments, as well as the need to improve these partnerships in order to manage the costs associated with crime and corrections. Participants reviewed the California Probation Subsidy Act, which provided counties up to $4,000 for each adult or juvenile offender not committed to state prison; the County Justice System Subvention Program, which provided counties with grants

> "The only topic concerning state-local funding partnerships that engendered more controversy than Prop 36 or AB 900 was booking fees – a topic generally sidestepped throughout the Session in order to avoid too heated a discussion."

to fund a variety of local justice programs; the Citizens Option for Public Safety (COPS) program, which has appropriated approximately $100 million per year to counties for local law enforcement administration; and Prop 36 (the Substance Abuse and Crime Prevention Act of 2000), which allowed qualified first and second-time defendants charged with nonviolent drug possession crimes to receive probationary substance abuse treatment

Elizabeth Howard, Legislative Representative, Administration of Justice, CSAC

Citizens Option for Public Safety (COPS)

In 1996, the California legislature created the Citizen's Option for Public Safety (COPS) Program. This law appropriated $100 million to counties and cities to be allocated as follows: $75 million for "front-line" law enforcement, $12.5 million for sheriffs and jail operations, and $12.5 million for district attorneys. It also charged counties with summarizing and reporting to the State Controller the funding decisions made by their local agencies. The law provided no penalties for failure to comply with these reporting requirements. The statute contained a sunset provision, rendering the program inoperative on July 1, 2000.

Almost from the program's inception, the LAO has questioned its efficacy and efficiency. In its 1997-98 budget analysis, the LAO found that the program did not compare favorably with other public safety programs in that it: contained no ongoing mechanism for evaluating the effectiveness of its expenditures or for sharing information with local government; allocated funding to local governments on a per capita basis rather than on the program's merits; and was not oriented towards achieving any specific statewide objective. The LAO recommended that if the purpose of COPS was to augment local public safety policies, the legislature should spend the $100 million on an existing program with demonstrated effectiveness and that if the purpose was simply to provide fiscal relief to counties, the legislature should do so in a way that gave counties flexibility in how to use the money. The LAO further recommended that receipt of COPS funding be conditioned on compliance with the law's reporting requirements.

In his 2000-01 budget, as the program was about to sunset, the Governor proposed to increase the General Fund COPS allocation to $121.3 million and to extend it for five years. The LAO recommended that the legislature reject the Governor's proposal and take the opportunity of the original program's sunset provision to implement significant improvements in the areas of targeting, accountability, and oversight. The final 2000 Budget Act appropriated the $121.3 million contained in the Governor's budget and extended the COPS program to continue through July 1, 2002. The 2001 budget appropriated $116.3 million, a decrease of $5 million from the amount allocated the previous year.

In 2003, the LAO recommended that the state eliminate the COPS program and shift the funding that would have been appropriated for the COPS program to the counties for the development of new community-based criminal justice programs. Instead, the legislature enacted, and the Governor signed, a budget bill that included $100 million for the COPS program. In 2004, the LAO again recommended eliminating the program entirely, noting that the program "lacks a specific measurable statewide objective," that the relatively small amount of funding for it raises questions "about the potential impact of the program on public safety," and that "a significant amount of COPS expenditures is not used for direct services". The state again disregarded this recommendation and appropriated $100 million dollars for the COPS program in 2004, 2005, and 2006.

The Governor's original and revised 2007-08 budget proposals include a $119 million appropriation to continue the COPS program.

at licensed and/or certified drug treatment programs in lieu of incarceration.

The value of Prop 36 was a controversial topic among participants, who debated its effectiveness throughout the Session. Many argued that Prop 36 diverts nonviolent criminals out of woefully overcrowded facilities and saves the state much needed money, while others lamented its failure rate. The only topic concerning state-local funding partnerships that engendered more controversy than Prop 36 or AB 900 was booking fees – a topic generally sidestepped throughout the Session in order to avoid too heated a discussion.

Throughout this Session, participants highlighted a number of issues that, for various reasons, have historically complicated the operation of state/local partnerships:

• Because of Prop 13, counties are limited in their abilities to raise revenue at the local level; thus, they often must look to the state to help finance programs that have historically been considered county functions.

• Because of the strained history between counties and the state government, county administrators are often skeptical that funding partnerships with the state can be effective.

• Counties vary in size and composition; such differences are often not taken into account in attempting to develop effective state wide policies that affect county administration.

• Although they are key players, providing 75% of frontline law enforcement with roughly 32,000 police officers, cities are frequently left out of discussion regarding state/local partnerships.

Notwithstanding these historic obstacles, participants encouraged each other to think creatively about the future and in general, participants successfully resisted the temptation to be too cynical about future partnerships on the basis of past failures. In this regarding, one participant noted the loose governance structure articulated in AB 900 and suggested that this may present an opportunity for innovation in structuring an effective state/local reentry facility partnership.

Joyce Hayhoe, Assistant Secretary, Office of Legislation, California Department of Corrections and Rehabilitation

Participants then moved on to explore the importance of risk-needs analysis. All participants agreed on the virtues of risk-needs assessments as effective tools in corrections management, noting the importance of assessing defendants based not only on the crimes they have committed but also on complete sociological and psychiatric profiles. Most were adamant that assessment must consider needs in addition to risk, explaining that offenders may be low-risk but high-needs and still present a danger. We currently do now know, and have no way to measure, the costs – both in terms of resources and in terms of public safety – of the system's failure to adequately assess offenders.

Community Corrections Acts Across the Country

Mary Shilton,
Executive Director, National TASC (Treatment Accountability for Safer Communities)

The SCJC was honored to host Mary Shilton, Executive Director of National TASC, as our lunchtime speaker. National TASC, a membership association, represents over 200 substance abuse and criminal justice programs dedicated to the professional delivery of assessment and case management services to substance involved criminal justice and court population. As its Executive Director and in her many other professional capacities, Ms. Shilton has spent decades facilitating discussions among stakeholders on the purposes, obstacles, and accomplishments of community corrections movements across the United States, and advising states on how to construct Community Corrections Acts.

Ms. Shilton's address focused on the potential for community-based programs to effect positive change, nationally and in California, specifically in the areas of pretrial diversion programs, relief of prison and jail overcrowding, and implementation of reentry initiatives. She urged Session participants to think of corrections as an inherently intergovernmental enterprise, one that can be operated most effectively by multiple layers of government working in collaboration. Many states have enacted Community Corrections Acts, having determined that devolution of corrections administration to local government agencies can be accomplished most effectively when done pursuant to one overarching statutory framework. Approximately 30 states have enacted Community Corrections Acts and nearly every state has a law that refers to community corrections in some form.

Her address was followed by a group discussion regarding the California Community Corrections Act, which was enacted in 1994 and has been largely ignored. Ms. Shilton encouraged participants to take a hard look at the California Community Corrections Act. She underscored that while that there may be pitfalls in implementing the program, every state that has attempted to develop a community corrections program has encountered obstacles. Those that have proven to be the most successful have tried different models, determined the most appropriate model for their jurisdictions, and then funded it fully. She stressed that there is enormous potential in California to develop an effective community corrections program and urged California to consider community corrections now, when there are so many opportunities for reform before us.

Discussion Session 3:
Fortifying the Front Lines – Rehabilitation Services, Probation, and Jails

A persistent theme throughout this Executive Session was that understanding the relation of various levels of government requires a broad and holistic view of the various stages of criminal justice. Different levels of government play take turns playing key roles at different stages – i.e., the state legislates the criminal laws, the municipalities and counties do the arrests, the counties generally prosecute the crimes, the counties run probation, the counties share incarceration duties with the state, while the state handles parole, and so on. In this third discussion section, participants noted that the overall system is a hydraulic one, with inefficiencies or pressures at one stage creating problems at another, and they specifically emphasize that concern over and funding for the "back-end" – i.e., imprisonment and parole – should really be directed at the "front-end" stages. Indeed, participants noted pejoratively that the state would not need $7.7 billion for construction and reform at the back end of the system if it were dedicated to investing in crime control and prevention at the front end.

When the "front-end" starts is subject to a various interpretations, but one specific focus of this session was on probation, One participant referring to probation as "the stepchild of the justice system." California is unusual in completely separating the administration of probation from parole, and in providing no state oversight over the probation system. There are approximately 225,000 probationers in the state and roughly 120,000 parolees, although there is some double counting of the numbers because some individuals are on both probation and parole simultaneously. Both juvenile and adult probation are chronically under-funded, although the state provides some fiscal relief for juvenile probation administration. The average caseload for a California probation officer is 250 cases. AB 900 contains no funding for probation services, although the Governor has proposed a $25 million grant to counties to improve services and supervision for 18-25 year old

Steve Szalay, Executive Director,
California State Sheriff's Association

Sliding Scale: Fiscal Incentives to Manage Placements of Juveniles in State Facilities

Until 1941, when the legislature enacted the California Youth Act, delinquent and criminal youth in California were sent either to prison, one of several state reform schools, or county juvenile halls. The Act mandated acceptance of all commitments under 23 years of age and appropriated $100,000 to run the Authority for two years. In 1943 the word "corrections" was dropped, resulting in the creation of the California Youth Authority. In 1961 the legislature substantially revised its juvenile court law, placed the Youth Authority under the newly formed Youth and Adult Corrections Agency, and enacted a provision requiring counties to pay $25 per month per youth commitment. The $25 fee remained in place for thirty-five years.

In 1996, the legislature enacted Senate Bill 681, which established new fee schedules for youth committed to CYA. Under SB 681 counties are charged $150 per month per commitment to account for thirty-five years worth of inflation. The legislation also created a sliding fee scale. Under the sliding fee system, counties pay 100 percent of the cost of wards imprisoned for the least serious crimes, and less for wards imprisoned for more serious crimes. The purpose of the sliding scale was to discourage counties from sending low-level offenders to the CYA, while encouraging the development of locally based placement alternatives.

The same year, the legislature enacted Assembly Bill 2312, which explicitly recognized that SB 681 would have major financial and public safety consequences for the counties. The law appropriated $33 million in financial support for local juvenile camps and ranches, revised the payment schedule based on county population, and specified that the payment requirements would not apply with respect to parolees. The purpose of the bill was to mitigate the negative impacts of SB 681, while continuing to require counties to assume more financial responsibility for juvenile offenders.

The fees counties pay to CYA do not reflect – and, indeed, have never reflected – the actual costs incurred for treatment, training, and supervision of lower level wards. Counties pay $36,500 per year per ward committed for the lowest level offenses, and less for wards committed for more serious or violent offenses. In 2004, the actual annual cost per ward ranged between $66,000 and $80,000. To date, rates remain what they were in 2003, with adjustments made to allow for changes in the Consumer Price Index.

probationers.

In addition to funding, another striking irony about the front/back end relationship emerged: A common criticism of the parole revocation process is that when a parolee commits a new crime, the state often finds it easier to treat this crime as a technical parole violation and thereby hasten his return to prison through a quick hearing. One participant noted that an additional motivation for this

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end-run around regular adjudication is that the county where the new crime would be tried might be overly inclined to give the violator a sentence of probation because of crowding in the county jails—and that crowding might in turn be in part due to the county's having to receive the overload from the state prisons.

In regard to the hydraulics of the overall process, participants also stressed that absence or inadequacy of treatment or supervision at one stage might manifest itself at another. Thus, for example, parolees often ended up charged with and sentenced to county jail or probation for new crimes because they were ill-prepared by the state for reentry. At least one participant felt that providing in-custody job training was key to helping offenders reintegrate into their communities. Several believed that inmates should leave the institution ready and eligible to work. One suggested that eligible inmates be guaranteed two years of employment upon release from prison.

A recurring theme throughout this session was that mismatches of offender and treatment/supervision often made programs not only wasteful but even perversely counter-productive—that is, treatment and supervision misapplied to very low-risk offenders can increase their recidivism, perhaps by inducing in them a perpetual self-conception as offenders. Thus, participants argued for a sensible triage system, whereby the key to reentry success is supervising those

Honorable Isabel Gomez
Executive Director, Minnesota Sentencing Guidelines Commission

individuals most in need of treatment and supervision, i.e., those with high levels of both risk and needs. Again, it was reiterated that proper assessment of offenders is indispensable in achieving this goal.

Finally, most participants agreed that neither front-end nor back-end rehabilitation programs receive the resources necessary to provide appropriate treatment to all those in need. Furthermore, operating costs in general are significantly higher now that they have been in the past and appear to be growing. In many cases, core services are being cut. One participant, citing the D.A.R.E. program among others, stated bleakly that the state tends to keep funding programs that sound or look good but that do not actually work.

Several participants emphasized that reentry facilities ought to be operated locally, where networks of social and institutional support can be readily supplied by family and local agencies. Indeed, many municipalities and neighborhoods seem ready to embrace former inmates in ways not previously observed; for example, several counties have approached the state asking to have a reentry facility sited there because they appreciate that with the inevitable return of parolees it is in their long-term, self-interest to do so. Californians are beginning to realize that the overall correctional system does not currently work and that new approaches will benefit everyone.

Discussion Session 4:
Preventing Recidivism – Reentry Facilities and Communities

One of more dramatic aspects of AB 900 is its creation of secure reentry facilities – secure facilities that will be funded and operated largely by the state, but in partnership with local and county mental health and substance abuse service providers. This new concept for the provision of reentry services provides a platform for testing out new partnerships between previously disconnected entities.

Thomas Renfree, Executive Director,
County Alcohol and Drug Program Administrators Association of California

Many counties have already committed to receiving a reentry facility, and many are experiencing a new level of support for aiding in the reintegration of former inmates. Of course, counties must be able to demonstrate that they are capable of serving a reentry facility before siting decisions can be made, and not all counties are prepared to do this. Participants emphasized that whichever counties do receive reentry facilities must ensure that treatment providers work with county sheriffs offices to ensure proper siting of the facility and to ease transition issues for offender. Participants spoke about reentry in general with a sense of urgency, possibly predicting the imposition of a federally-imposed cap on prison populations. One participant stated that "reentry is the reform," suggesting that at least during this legislative session, California is putting all its reform eggs into the reentry basket.

The need for changes in the provision of substance abuse treatment was a focal point of the fourth discussion session. Roughly 70% of inmates have substance abuse problems, and many inmates who are not convicted of drug-related offenses are convicted of crimes that are directly related to substance use or abuse. From a reentry perspective, therefore, well-funded community-based treatment programs are critical to reducing recidivism. However, if treatment is to be effective, it must be based on a chronic-care model that takes into account the highly addictive nature of many substances and recognizes that relapse is a frequent component of recovery. Again, offender assessment is critical in making the determinations of who is likely to benefit from which types of treatment. One participant commented that it is critical for service providers to be culturally competent and, if possible, bilingual. Another suggested that services provided in connection with post-release supervision be coordinated with (or entirely administered by) that California Department of Alcohol and Drug Programs (ADP).

> "[I]f treatment is to be effective, it must be based on a chronic-care model that takes into account the highly addictive nature of many substances and recognizes that relapse is a frequent component of recovery."

Participants also discussed the physical nature of reentry facilities. There was widespread agreement that reentry facilities should be secure, hospitable environments, not mini-prisons. Several members of the Session addressed the impact that environmental conditions can have on inmate attitudes and their effect on inmates' progress in treatment – not surprisingly, inmates respond positively to more collegial, comfortable, and less prison-like facilities. While these are secure facilities, treatment must be a primary concern. An excessive emphasis on security could be detrimental to goals of treatment, and to the entire reentry endeavor.

After discussing post-release and reentry, participants returned to some of the more general topics that had not been adequately covered earlier. One of these was data and the importance of using reliable information to make empirically based determinations of which programs are most successful in preventing recidivism. One participant noted that we already have most of this information, but that the information has not been collected or analyzed systematically. Several participants noted that California is woefully behind in cultivating and using evidence-based practices. It is critical that the state construct a mechanism for evaluating the success of its reentry facilities in enhancing public safety.

CDCR is in the process of establishing a core philosophy and a management style that embrace reentry principles. It has also revamped its research department, which will immediately begin to make assessments regarding the kinds of information that must be collected in order for it to implement performance measures for its reentry initiatives. There appears to be greater acceptance, both in the state and among counties, that past practices have not worked and that community-based reentry programs administered jointly by both levels of government may lead to greater public safety.

Honorable Sally Lieber
California State Assembly

State Trial Court Funding

In the mid 1990's, California's counties faced a fiscal and planning crisis in running their trial courts: under long-standing practice, the counties were responsible for two-thirds of the funding for their courts. Reliant on the vagaries of local finances, they lacked a stable predictable funding basis to deal with and anticipate litigation, and they often were forced to return to the Legislature for emergency funding merely to keep their courthouses open. The State responded with the Lockyer-Isenberg Trial Court Funding Act of 1997 (AB 233). Lockyer-Isenberg called for the State to assume full responsibility for funding trial court operations and established the Trial Court Trust Fund as the main source of funding for trial court operations. In consolidating all court funding at the state level, Lockyer-Isenberg provided long-term fiscal relief to counties and a stable, consistent source of funding for trial courts.

The core component of Lockyer-Isenberg was to cap the financial responsibility of counties at the FY 1994-95 level and to require the state to fund all future growth in court operations costs. The legislation further required the state Judicial Council to submit an annual trial court budget to the Governor for inclusion in the state budget that meets the needs of all trial courts. The clear goal of the legislation was to remove disparities resulting from the varying ability of individual counties to address the operating needs of the courts and to provide basic and constitutionally mandated services.

Over half of the money that flows into the Trial Court Trust Fund comes directly from the annual appropriation of the State General Fund. Second, the counties contribute the equivalent of their 1994-95 levels in the form of Maintenance of Effort (MOE) payments to the state, though very small counties are exempt from MOEs. Third, civil filing fees collected by trial courts are remitted to the Fund.

Lockyer-Isenberg was mainly aimed at requiring the state to fund court operations. The approach to funding the physical facilities of the court system involved more of shared responsibility. The 1997 law created the Task Force on Court Facilities to review and report on the status of court facilities, and to make recommendations for specific funding responsibilities regarding court facilities maintenance and construction. Lockyer-Isenberg also required counties to "continue funding court facilities and those court-related costs that are outside the definition of court operations as defined in statute and the California Rules of Court, including indigent defense, pretrial release, and probation costs." A few years later, the Trial Court Facilities Act of 2002 established the governance structure and procedures for the transfer of responsibility for trial court facilities from counties to the state and established the State Court Facilities Construction Fund.

Conclusion

The second meeting of the Executive Sessions on Sentencing and Corrections was fruitful in that it opened up channels of communication and provided a forum for the airing of concerns. Participants reported that the meeting was educational, and expressed confidence and optimism about prospects for reform in California state/local criminal justice partnerships. We are hopeful that 2007 can be a turning point in the ways in which state/local partnerships are conceived in California and glad to play a role in encouraging that shift.

The Substance Abuse and Crime Prevention Act of 2000 (Prop 36)

Proposition 36, or the "Substance Abuse and Crime Prevention Act of 2000," changed California state law to allow qualifying first and second-time defendants of nonviolent, simple drug possession charges to receive probationary substance abuse treatment at licensed and/or certified drug treatment programs instead of incarceration. Proposition 36, sometimes referred to as the state's "treatment-instead-of-jail program," was passed by 61% of California voters on November 7, 2000, and went into effect on July 1, 2001. More than 35,000 Californians enter drug treatment annually through Proposition 36, and more than 12,000 have successfully completed substance treatment during each year of the program's existence.

On January 10, 2007, Governor Schwarzenegger proposed cutting funding for Proposition 36 from $145 million (FY 2006-07) to $120 million (FY 2007-08), and diverting half of those funds would be diverted to the Substance Abuse Offender Treatment Program (OTP), a program established in FY 2006-07 to aid and further the aims of Proposition 36 programs. The California State Association of Counties (CSAC) has opposed Governor Schwarzenegger's proposal to reduce funding for Proposition 36 programs, contending that $209.3 million is needed to adequately fund the ongoing operation of Proposition 36.

The LAO takes the position that Proposition 36 investments result in savings in prison spending—roughly $2 for every dollar invested—and that a reduction in Proposition 36 funding would likely result in increased prison costs proportional to the amount of the reduction. Since the inception of Proposition 36 in 2000, the number of Californians incarcerated for drug possession has dropped by 32%. The LAO has estimated that the state's $120 million annual investment in Proposition 36 resulted in net savings of $205 million in 2002-03 and $297 million in 2004-05. Furthermore, the Justice Policy Institute has conducted a study showing that Proposition 36 may be successful in reducing imprisonment of drug offenders and diverting drug users to treatment centers.

In 2006, Senator Denise Ducheny (D-San Diego) introduced SB 1137, which sought to toughen Proposition 36 by allowing judges to sentence offenders who relapse into drug use to up to five days of "flash incarceration." The bill passed the Senate and State Assembly on June 27, 2006. Opponents immediately filed suit, claiming that the bill violated the state constitution in that it was inconsistent with Prop 36's terms. The plaintiffs in that suit moved for a preliminary injunction, which the court granted in September 2006.

A June 2004 study conducted by the Field Research Corporation showed that a larger proportion of Californians (73%) supported Prop 36 four years after its inception than did so when it was first enacted. Many drug court judges and police groups, however, have opposed Proposition 36. Nearly one third of offenders fail to complete their court-ordered treatment under Proposition 36, and police say they are spending more time arresting drug offenders. Furthermore, nearly one third of offenders receiving treatment under Proposition 36 are arrested for drug charges within a year of treatment. Many judges contend that the drug-court model is more successful and more appropriate than the options offered under Proposition 36.