WESTERN CRIMINOLOGY REVIEW

http://wcr.sonoma.edu

Journal of the Western Society of Criminology

Volume 13, Issue 2 • August 2012

Western Criminology Review

Official Journal of the Western Society of Criminology

http://wcr.sonoma.edu

The Western Criminology Review (WCR) is a forum for the publication and discussion of theory, research, policy, and practice in the rapidly changing and interdisciplinary fields of criminology and criminal justice. The Journal is intended to reflect local (Western), national, and international concerns. Historical and contemporary perspectives are encouraged, as are diverse methodological approaches. Although manuscripts that rely upon text and tables are invited, authors who use other resources permitted on the Internet — e.g., graphics, hypertext links, etc., are also welcome. The publication and distribution of articles will also be accompanied by electronic commentary and discussion. The Journal is made available exclusively on the Internet at the Western Criminology Review website (http://wcr.sonoma.edu/). The goal of WCR is to provide an attractive and meaningful outlet for academic and policy related publication and dialogue in a wide variety of substantive areas in criminology and criminal justice. Please direct any inquiries to one of the co-editors listed below.

The Western Society of Criminology and the staff of the *Western Criminology Review* are grateful to Sonoma State University Library Faculty for their willingness to house and support the WCR. The WCR is also grateful for the support of Dean Joyce Gattas, College of Professional Studies and Fine Arts, San Diego State University.

ISSN 1096-4886

Online citation: Owen, Barbara, and Alan Mobley. 2012. "Realignment in California: Policy and Research Implications." *Western Criminology Review* 13(2):46-52. (http://wcr.sonoma.edu/v13n2/Owen.pdf).

Realignment in California: Policy and Research Implications

Barbara Owen
California State University, Fresno

Alan Mobley
San Diego State University

Keywords: California criminal justice policy, mass incarceration, prison reform, realignment

INTRODUCTION

Corrections policy in California is undergoing an historic shift in response to a variety of pressures--budgetary, operational and judicial. In April, 2011, the California legislature passed the Public Safety Realignment Act (Assembly Bill 109). This law shifted responsibility for specific categories of low-level convicted felons from the behemoth California Department of Corrections and Rehabilitation (CDCR) to the 58 individual counties. Under this legislation, low-level drug and property offenders committing their crimes after October 1, 2011 will be sentenced to county facilities and programs. State prisoners in these same categories will be released to their county of commitment under a version of county probation called post-release community supervision (not state parole). This commentary will briefly outline the background of this historic legislation and detail selected consequences of the Act. A discussion of research and policy implications will follow, and an invitation to consider broader social justice concerns will conclude the essay.

This commentary will only summarize the complications of the Act and its implementation. Interested readers are referred to various publications and websites for more detail and discussion. The reports, *Public Safety Realignment: California at a Crossroads*, by the ACLU of California (aclunc.org), and *Rethinking the State-Local Relationship: Corrections* by Misczynski (2011) of the Public Policy Institute of California (ppic.org) are must-reads. The CDCR website contains basic information on the Act and various statistical reports that convey some of its impact (cdcr.ca.gov). The Center for Juvenile and Criminal Justice (cjcj.org); the Stanford Criminal Justice Center (stanford.law.org) and the Warren Institute on Law and Social Policy (warreninstitute.org) have developed several policy papers on the issue. The Partnership for Community Excellence (cafwd.org/pce) and the website for the Chief Probation Officers Organization (cpoc.org) act as repositories of documents related to Realignment. For a detailed overview of the legislation, Byers' (2011) statute review is instructive. Additionally, most counties have developed a section within their probation website to post Realignment information, including copies of their Country Plans and notice of related meetings.

BACKGROUND

Since the 1970s, the California prison system has expanded exponentially across several dimensions: population size, budget, staffing, and number of facilities. With some of the highest incarceration rates in the United States (which itself has some of the highest rates in the world), California has the dubious distinction of producing some of the highest recidivism rates as well. Overall, two-thirds of all inmates released from the CDCR returned to prison within three years, many of them for technical parole violations rather than new convictions

(cdcr.ca.gov). Despite attempts at rehabilitation programs, and a name change in 2005 to highlight this new direction, recidivism rates remained high and few programs demonstrated any measurable result. At the same time, a shrinking California budget and decade-long lawsuits set the stage for significant policy change. While many observers see litigation as only one of many pressures, the lawsuit in question deserves some detail here. Following many challenges to state prison conditions of confinement in terms of medical, mental health and dental services, one lawsuit was ultimately decided by the US Supreme Court. *Brown v. Plata* found that overcrowding in California prisons did in fact constitute "cruel and unusual punishment."

As a consequence, the State was directed to reduce the state prison population by about one-third by May, 2013. At the time of this writing (mid-2012), CDCR has made progress toward this mandate. According to the Center for Juvenile and Criminal Justice (CJCJ), the first eight months of Realignment has seen a 41% reduction in new prison admissions and a drop of 28,300 inmates (Males, 2012, p. 1). The parole population has also been reduced by about half as well. More specifically, the CDCR Weekly Population Report from July 4, 2012 shows that the in-state[1] custody population was reduced by about 17% between July 2011 and July 2012. Like all criminal justice measures, there was a significant difference in the rates for women and men: the male population was reduced by just over 16% while the female population has been reduced at 33%, double the rate for men. Note also that the incoming prison population has been reduced because parole violators- -for the most part-- are now sanctioned in the county rather than by return to state custody.

Krisberg and Taylor-Nicolson (2011) argue that three factors underlie the change: cutting state spending, reducing prison over-crowding, and improving the system. Critical to all three is the idea that local counties can be better equipped to develop innovations in rehabilitation and reentry. The budget matrix for realignment dollars is also specific but one thing remains clear: although county custody costs (county jail) may be somewhat lower than state prison costs, shifting the custody and supervision costs of selected offender groups to the county will only cut spending in state prisons, and may not reduce correctional costs for California overall. While state prison populations have been reduced and appear to be on track to meet the Court's mandated goal, this measure is short-sighted and somewhat deceiving. A corresponding rise in county jail populations will continue California's overreliance on custody: it is possible that too many offenders will still be locked-up, regardless of the location. As will be discussed below, there are significant implications for conditions of confinement and rehabilitation in county jails ill-equipped to manage the influx of more prisoners, and for longer periods of time, as well as provide "evidence-based" rehabilitative programs. Finally, the goal of improving the system again assumes counties are willing and able to provide a wider range of rehabilitation and reentry options at the community level than that provided by CDCR. Joan Petersilia has recently stated, "So far, only 10 percent of that money is going to treatment programs, with the bulk going to sheriff's offices, local jails, probations staff, and court services. That bodes ill for keeping ex-inmates from returning to crime" (Cited in Gest 2012).

Public Safety Realignment[2], then, is based on the notion that overall, fewer offenders will be placed in lower-cost custody beds in the counties for shorter time periods. The assumption is that counties will develop a greater emphasis on "evidenced-based" programs in local corrections, and importantly, in community supervision practices. AB 109 is specific on the kinds of "evidenced-based correctional sanctions and programming other than jail incarceration alone or traditional routine supervision" that should be pursued at the local level. These include but are not limited to: day reporting centers, drug courts, residential multi-service centers, mental health treatment programs, electronic and GPS monitoring programs, victim restitution programs, counseling programs, community service programs, educational programs, and work training programs. "Risk assessment" is also implied in this process. The theory is that lower custody costs and better rehabilitation outcomes, including reducing recidivism, will both save money and improve public safety.

CONSEQUENCES OF AB 109

The legislation has multiple consequences for criminal justice operations at the local policy level. Sentencing, custody and supervision will be changed significantly. Most immediately, the Act increases the number and length of sanctions that result in county jail sentences and creates new categories of "post-release community supervision" (PRCS) for local probation departments. As of October 1, 2011, many felonies are "redefined" as punishable in jail for 16 months, 2 years, or 3 years instead of state prison as previously legislated. These felonies are informally known as "non-non-non"- felonies that are non-serious, non- violent, and non–sex offenses (defined as "not PC-290 Registerable"). Byers (2011) notes the presence of a fourth "non" – an offense that is not enhanced under Penal Code §186.11, but that this is rarely used. Enhancements are typically used to increase sentence length when the offense is seen as exceedingly violent, or when past offenses increase the penalty. Section 1170 (h) of the California Penal Code describes the sentencing options, with section (5) outlining the "county jail only" and the "split sentence" or "mandatory supervised release" options.

Judges have two general options for sentencing felons to county jail. A "county jail only" sentence means just

that: an individual is sentenced to county jail and, after discharge, is not under any form of supervision. Mandatory supervised release (MSR) is a form of "split sentence," whereby an individual serves some portion of a sentence in county jail custody and is released to community supervision and/or programs. Byers' statute review also examines many unanswered questions about the Act and lists the "hundreds" of offenses that conceivably fall under this new sentencing structure.

The law also specifies certain offenses as "County Jail Ineligible" or "State Prison Eligible" which excludes defendants who must serve an executed felony sentence for a County Jail Felony in the state prison because of having a current or prior serious or violent felony, or some sex offenses (Byers 2011, p. 9).

This realignment of specific categories of felons to local sentencing is increasing local jail populations--and, equally important, the time served in local custody--as it decreases state prison populations. Prior to the Act, many jails in California were grappling with crowding, court-ordered caps on their populations, antiquated facilities and few programs. Budget cuts at the county level have also limited the ability of counties to respond to these problems. In 2007, AB 900 funded new jail construction in many counties, but financial responsibility for operating these facilities remains with local government.

The Act also has major consequences for state parole and county probation supervision. The assumption here is that county probation is better equipped to provide rehabilitative and reentry services than state parole for these released low-level offenders. Those state prisoners who fit the "non-non-non" definitions would have been released to state parole supervision prior to October 1, 2011. By creating "Post Release Community Supervision"(PRCS)", these individuals are now released to county probation supervision for a period not to exceed 3 years. Mirroring the metric of custody population, state parole populations are decreasing while county probation caseloads are increasing. CDCR provided estimates of the number of "non-non-nons" that the counties should expect, but in the first six months CDCR has under-estimated the number of individuals flowing into each county. County probation officers are now supervising former state prison inmates in ever larger numbers while the program and services designed to provide rehabilitation are being developed.

There are additional provisions under the Act that shift responsibilities from the state to the individual counties. Revocations for individuals on Post Release Community Supervision and state parole will change. The Courts will hear revocations of post release community supervision while the Board of Parole Hearings will conduct parole violation hearings. If revoked, both types of offenders will serve their time in county custody. There will also be changes to custody credits ("good time"). Jail inmates will be able to earn four days of credit for every two days served. Time spent on home detention (i.e., electronic monitoring) is credited as time spent in jail custody.

Although there has been less attention to pretrial populations, there are also significant changes to how these populations will be managed. For example, Penal Code Section 1203.018 authorizes electronic monitoring for inmates being held in the county jail in lieu of bail. Eligible inmates must first be held in custody for 60 days post-arraignment, or 30 days for those charged with misdemeanor offenses.

WOMEN AND REALIGNMENT

There is a growing body of evidence that demonstrates that the majority of female offenders can be more effectively managed in community settings that provide gender-responsive services and programs to reduce recidivism. Addressing women's pathways to offending and structuring a safe and productive rehabilitative environment are critical to reducing recidivism and improving post-release outcomes. This approach emphasizes community placement where relationships and social support are prioritized. Confinement or other custodial settings are not the first choice in this model. When custody is necessary, it is invoked in the short term and as a step toward more community-based supervision and programming. Given the nonviolent nature of most women's crimes and their low level of risk to public safety, community-based and non-custodial placements should be the primary objective of realignment planning. Gender issues are seldom mentioned in the county Realignment plans, however, even though women will be over-represented in the "non, non, non" population.

RACE AND REALIGNMENT

Advocates for the rights of racial minorities have been especially alarmed by mass incarceration in California and elsewhere. Many argue that prison overcrowding and racial segregation have worsened living conditions, both in prisons and in minority neighborhoods. The life chances of African-American and Latino males are severely diminished by their frequent interaction with the criminal justice system. Some critics of the prison-industrial complex make the claim that mass incarceration is far from anomalous, but merely the latest punitive twist in America's hot and cold running fascination with race-based social engineering. Will Realignment change this? Racial issues are seldom mentioned in Realignment plans, in spite of their obvious importance.

IMPLEMENTATION OF THE ACT

The responsibility of realizing Realignment at the county level falls on the Community Corrections Partnership (CCP). Managed through an Executive

Committee, the CCP typically includes the Chief Probation Officer as chair, the District Attorney, the Public Defender, a Judge, the Sheriff, the Police Chief, and the county directors of mental and behavioral health, and other social service programs. Most counties have established subcommittees that address the mechanics of realignment. The CCP is required to submit a Plan and a budget to the state each year that details their approach to Realignment. These county Realignment Plans have been analyzed by The Stanford Criminal Justice Center, the Partnership for Community Excellence, and the ACLU. Common to these analyses is the conclusion that most money is devoted to ramping up jail space, expanding probation to supervise the PRCS population, and further prosecution efforts, with lower funding for expanding programs and services. To be fair, such an enormous shift of responsibility demands improvements and enhancements to county criminal justice infrastructures. It is too soon in the process to conclude that treatment and services will continue to be lower priorities as reflected in the first year budgets and plans.

RESEARCH AND POLICY IMPLICATIONS OF PUBLIC SAFETY REALIGNMENT

The section above can only review the basic outline of Public Safety Realignment in California. While many critical questions remain about the Act and its implementation, this next section frames selected questions relating to consequences of this policy shift.

The State Prison System

As the California prison system shrinks, doing time in these facilities is undergoing a parallel change. As the previously sentenced lower-level offenders leave CDCR custody and new "non, non, nons" remain in the county criminal justice system, the composition of the state prison population will lean toward those serving longer prison terms and, in most cases, those convicted of more violent or serious offenses. The implications for managing these more distilled populations are varied. What kinds of programming and services can be designed for this population? Given that "evidence-based practice" recommends providing services nearer to release, what are the implications for longer-termed prisoners? CDCR has struggled with providing medical and mental health care in the past. Will the population reduction better equip the California prison system to provide services to these aging and long-term inmates? How does prison culture and "doing time" change under these conditions? What about staff: what will staffing patterns look like under this decreased population scenario? How will recidivism rates be changed by this modified prison system?

County Probation and Jails

As probation systems and county jails take on the responsibility for this influx of "non, non, nons," there are operational as well as outcome questions surrounding Realignment. How will counties plan and implement Realignment? How does the intention of the law play out in its actual implementation? How does managing a new type of released offender change local probation? Can local criminal justice systems develop and administer rehabilitative services that the state stumbled in trying to provide?

In terms of recidivism, can counties provide the necessary services and programs to improve outcomes? Will counties embrace the intent of the law: to provide reentry and related rehabilitation services necessary to improving outcomes? Or will counties continue the reliance on incarceration that has shaped criminal justice policy in California? What will this cost?

As offenders travel through the local criminal justice system and receive a county jail sentence, how do these overcrowded systems cope? In facilities that typically have held pre-trial populations, how will programming, staffing and services evolve to serve more sentenced prisoners who are likely to stay much longer than prior to AB 109? How will court mandated services, such as mental and physical health care, be provided?

Funding and Budgets

County officials and professional organizations have questioned the funding of realignment responsibilities from its inception. In general, how will counties modify the local criminal justice system with less money than CDCR was provided? Is the current funding system fair? Can counties "do better with less?" Does realignment shift the burden to counties without fair compensation?

Equity: 58 Counties, 58 Criminal Justice Systems?

There is also concern about fairness. California is politically diverse, with wide differences that play out in criminal justice philosophies. With variations in punishment philosophies and punitive sanctioning, will California fracture into 58 different systems? Will some counties develop alternatives to custody while others rely on jail time? What are the legal questions that underpin this potential inequity? How will the courts and the legislature respond to such potential unfairness?

Litigation

California and many other states have been subject to litigation for multiple issues related to conditions of

confinement and provision of constitutionally-mandated services. How will this litigation translate into the 58 counties? Are the local jails equipped to follow these decisions and provide a constitutional environment? Will individual counties be sued and tie up even more funds in fighting lawsuits?

Research and Evaluation

So how will we know? Although the Public Safety Realignment Act stresses "evidence-based practice" with its core principle of measuring process and outcomes, there was no mention or fiscal support for the necessary evaluation. There are many questions related to this fundamental policy change. How will we know whether or not counties do a better job at incarceration or post-release supervision? If local strategies produces better outcomes than state prison? If recidivism rates change? Several counties are supporting data collection efforts from their local budgets, but, as of mid-July 2012, there is little evidence that the state is coordinating any common data collection. Most jail systems lack research staff. How will these outcomes be measured?

Various state agencies, professional organizations and other researchers are beginning to develop some common measures. While this is a step in the right direction, the question remains: how will we know if realignment is having the intended effect?

While most agree that community corrections should be grounded in non-custodial sanctions and alternatives to incarceration, how will we know if such programs as drug treatment, day reporting centers and the like do, in fact, produce better outcomes?

JUSTICE IN TRANSITION: TRANSITIONAL JUSTICE AND THE "BIG QUESTIONS"

The past 200 years and more have provided much evidence both for the harmful effects of prisons and for their utility to democratic societies. Few today, however, consider them to be much more than necessary evils. Is incarceration a *necessary* evil? We know that the penitentiary was birthed with great optimism. From Jeremy Bentham onward, adherents of a rehabilitative philosophy advocated for the prison and championed its redeeming potential. Indeed, the prison was designed to lead its inhabitants to salvation. Far from saving souls, however, the prison may have become a leading mechanism of social insecurity. As the era of mass incarceration begins its apparent decline, a key question might be to ask how we can make progress on achieving justice equitably.

In discussing the future, experience shows it is especially important to remember the past, and to acknowledge the harms and pains of people hurt by justice operations. In recent years, it has become common to hear residents in poor, minority communities in California speak of criminal justice as genocide. Whether or not you agree with this characterization, it is impossible to deny the devastating effects of crime and society's response to crime in these places. Many find it difficult to look forward with hope and empowerment without a deep recognition of the past, and its casualties and survivors.

Global examples of justice reformation have included, as integral elements, public hearings known as truth and reconciliation processes, where expressions of trauma and victimization have been offered as catharsis and as necessary to reconciliation. Criminologists have recently come to categorize the work of truth and reconciliation commissions as valuable tools of transitional justice, a framework most commonly applied to nation-states seeking to recover from political revolution and civil war.

Transitional justice asks many questions, one of which is why the need for the transition? In penal policy the apparent answers may be insufficient. If overcrowding and onerous resource expenditures are the "triggers" for transition in California, we might ask what has brought about these conditions? Addressing questions of such complexity might lead us in many directions, but transitional justice suggests we keep our attention on the actions of the state, arguably the key actor in transition, but doing so without losing sight of the human beings most directly involved in state actions.

Restructuring state justice bureaucracies may lead to altered perceptions of justice, self, and other. Important policy choices might revolve around honest conversations that ask questions such as to what extent are the convicted of public concern? Do the families and communities of felons, for example, deserve more than simply serving as dumping grounds for "social junk" and "social dynamite"? Are felons deserving of our investment even when non-felons face cutbacks in social services? Do local community members care more than state-level bureaucrats?

Finally, along with justice systems, felons in California find themselves in transition also, from close custody to perhaps more open arrangements, and from operating within an environment of an ever active state shaping and responding to their conduct to one in which an ever shrinking state reduces its footprint on the pathways of their lives. Is this for the best? We especially invite the perspectives of restorative justice, community justice, convict criminology, and other scholars and practitioners of alternative justice strategies.

CONCLUSION

Many important questions surround the policy change. What does realignment say about our contemporary approach to crime and punishment? Will California

continue to invest in a punitive criminal justice system, albeit at the local level, at the expense of needed social services? Will this touted reform change how offenders are treated and create rehabilitative and reentry services that do, in fact, reduce recidivism? Or, as many advocates fear, will this new system of punishment repeat the mistakes of the state prison system and continue the practice of "mass incarceration" that has affected mostly poor and minority communities? California, through its 58 local counties, has an opportunity to do something different: to examine the purposes and rationale for punishment and address criminal offending in alternative ways, breaking the dependence on incarceration. We await answers to these questions-- and many others—as Realignment and its consequences play out in the communities and people of California.

Notes

[1] As of July 2012, about 9000 men were housed in out-of-state facilities in three other states (Arizona, Mississippi and Oklahoma). Most observers agree that these out-of-state placements will end in the near future.

[2] Realignment has occurred in other public service sectors; health care is one example. The principle of realignment involves shifting responsibilities previously administered by the state to the counties.

References

Brown v. Plata, No. 09-1233 (2011)

Byers, Garrick. 2011. *Realignment.* Fresno, CA: Public Defenders Office.

Gest, Ted. 2012. "Can America Reduce its Prison Population?" *The Crime Report*, June 20. Accessed August 9, 2012.

http://www.thecrimereport.org/news/inside-criminal-justice/2012-06-petersilia-at-nij

Hopper, Allen, Margaret Dooley-Sammuli, and Kelli Evans. 2012. *Public Safety Realignment: California at a Crossroads.* San Francisco: ACLU of California.

Krisberg, Barry and Eleanor Taylor-Nicholson. 2011. *Realignment: A Bold New Era in California Corrections.* Berkeley, CA: Warren Institute on Law and Public Policy.

Males, Mike. 2012. *UPDATE: Eight Months into Realignment: Dramatic Reductions in California's Prisoners. Research in Brief.* San Francisco, CA: Center on Juvenile and Criminal Justice. June 19.

Misczynski, Dean. 2011. *Rethinking the State-Local Relationship: An Overview.* San Francisco: Public Policy Institute of California.

Williams Danielle and Mai Yang Vang. 2012. *County AB 109 Plans: Analysis & Summary.* Sacramento, CA: Partnership for Community Excellence.

About the authors:

Barbara Owen is a nationally-known expert in the areas of girls, women and crime, gender issues in the criminal justice system, women's prison culture, with extensive experience in conducting, ethnographies, large-scale surveys, policy studies and program evaluation. A Professor Emerita of Criminology at California State University, Fresno, she received her Ph.D. in Sociology from UC Berkeley in 1984. Prior to returning to academia, Dr. Owen was a Senior Researcher with the Federal Bureau of Prisons. The author of 20 articles and chapters, and numerous technical reports, her books include *In the Mix: Struggle and Survival in a Women's Prison* (SUNY Press, 1998). Along with Barbara Bloom and Stephanie Covington, she has co-authored a major report, *Gender-Responsive Strategies: Research, Practice, and Guiding Principles for Women Offenders* (2003). More recent projects include an analysis of women's recidivism, research and policy work on Realignment in California., co-authoring the policy report "Unlocking America", an NIJ-sponsored four-state study that investigated the context of sexual assault in women's prisons and jails and ethnographic work for the US Census Bureau. Her PREA work continues through an NIC-supported validation project to develop an instrument to assess the safety and violence climate in women's facilities. In Fall 2010, Dr. Owen worked with the Kingdom of Thailand on international policy issues regarding women offenders. A monograph on women & prison drug treatment is also underway.

Alan Mobley is an associate professor of Public Affairs and Criminal Justice at San Diego State University. He teaches courses in law and society, community-based service learning, and restorative justice. His research explores the contours of privatization and the security dimensions of global interconnectedness and social sustainability, particularly as they affect the size and composition of "corrections" populations. He has a deep commitment to experiential education, participatory action research, and peer-driven communicative strategies. Alan is a founding member of the Convict Criminology group and All Of Us Or None, a national nonprofit organization working to restore full civil rights to the formerly incarcerated. He is a Carrier of Council at the Ojai Foundation, and currently a practitioner in residence at the Sweetwater Zen Center.

Contact Information: Barbara Owen, Ph.D., Professor Emerita, Department of Criminology, California State University Fresno, Fresno, CA 93740; Phone: (559) 278-5715; Fax: (559) 278-7265; Email: barbarao@csufresno.edu.

Alan Mobley, Ph.D., School of Public Affairs, San Diego State University, 5500 Campanile Drive, San Diego, CA 92182-4505. Phone: (619) 594-2596; Fax: (619) 594-1165; Email: alan.mobley@sdsu.edu.

CALL FOR PAPERS

The *Western Criminology Review* invites your responses to Realignment in calling for papers addressing this shift in criminal justice policy and practice in California. Please submit manuscripts to editorwcr@gmail.com. Submission guidelines can be found at www.wcr.sonoma.edu. Research studies, policy analyses and commentaries will be considered for publication.