Study 100 March 10, 2020

First Supplement to Memorandum 2020-4

Alternatives to Incarceration Generally: Overview and Panelist Materials

Memorandum 2020-4 gave an overview of alternatives to incarceration, the topic for the March 12–13, 2020, meeting.

This supplement presents nine written submissions from panelists who are scheduled to appear before the Committee on March 12. There is a brief staff-prepared summary before each submission. Those materials are attached in the Exhibit as follows:

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In some cases, the panelists also provided attachments to their submissions. Brief attachments (five pages or fewer) have been reproduced in the Exhibit, along with the submission. Longer attachments were not reproduced in this supplement, but are available for download from the Committee's website, on the agenda page at <http://clrc.ca.gov/Meetings/Agenda.html>.

Respectfully submitted,

Thomas M. Nosewicz
Senior Staff Counsel

Staff Summary of Submission of Hon. Nancy O'Malley

Nancy O'Malley is the District Attorney for Alameda County. DA O'Malley is also the current president of the California District Attorneys Association (CDAA).

- Taking into account the severity of an offense, "those entrusted with authority in the criminal justice system [should] reduce reliance on incarceration, [and] invest in programs that address core causes and/or core needs" of people involved in the criminal system.
- Many prosecutor-created diversion programs do not follow any Penal Code provisions. In some circumstances, the Penal Code could provide clarity that "avoids confusion, injustice, or unnecessary disputes." In other situations, the silence of the Penal Code is a good thing because it allows prosecutors "to be progressive and proactive to ensure a safer community and fewer victims of crime" in creating diversion programs that are not defined in the Penal Code.
- DA O'Malley outlines four diversion programs from her office:
    - A low-level misdemeanor diversion program that 2,600 people have completed since 2016 — a 91% completion rate.
    - A "3-D project" that uses certified Peer Support Specialists to divert people "engaging in lower level criminal behavior" who have mental health or substance issues.
    - Early Intervention Court for young people who have committed some felonies, including grand theft and non-violent robbery. EIC creates a tailored Plan of Action that tries to address "root causes or life circumstances that led to the criminal behavior."
    - Alameda County Justice Restoration Program (ACJRP) — which "contradicts what the Penal Code outlines" — applies to "repeat offenders who commit new serious crimes." ACJRP links them with a community-based professional advocate. ACJRP is currently being evaluated, including by comparison to a control group.
- Two suggested Penal Code revisions:
    - "[R]ecognizing the legitimacy of certified Peer Support Specialists, including declaring that their time is eligible for Medi-Cal billing." A Peer Support Specialist has "lived experience with the criminal justice system and/or mental health" and supports people in some of the programs mentioned above
    - Providing alternative ways to pay restitution, perhaps by forming a "working group that includes the voices of victims of crime and those who have been justice involved, [that] could create recommendations including and beyond restorative justice circles."
- DA O'Malley also provided a booklet describing the alternatives to incarceration programs offered by her office.

Statement of Nancy E. O'Malley
Alameda County District Attorney
3/12/20

Thank you for the opportunity to speak to the Committee today. I would like to speak about Diversion, both pre-charging and post-charging diversion or deferral of criminal proceedings under certain circumstances. With the programs about which I will speak today, there are few or no Penal Code Sections that dictate the parameters of the Programs. My comments today are grounded in my practice, as District Attorney of Alameda County, and upon my belief as President of the California District Attorney's Association. There are several examples of impactful programs that provide alternatives to incarceration with dismissal or deferred judgment at the conclusion of the program being initiated in County District Attorneys throughout California. These programs do not follow nor fit in the Diversion Sections nor are they included in the Penal Code.

I do believe that an important goal of all of us involved in the criminal justice system, is to prevent crime from happening. When crime is prevented, there are fewer victims of crime and society is stronger. But when a crime occurs, depending on the severity, of course, it is in the best interest of those entrusted with authority in the criminal justice system to reduce reliance on incarceration, to invest in programs that address core causes and/or core needs of an individual who is alleged to have committed the crime. Reducing recidivism reduces future crime. Ensuring that individuals have an opportunity to be productive and engaged in society is a goal I believe we should and for many have, adopted.

Penal Code Section 1000.1 et seq., sets forth the criteria and processes for pre-charging diversion, mainly of misdemeanor level crimes, but including some felony level crimes as well. P.C. Sect. 1000.1 was enacted in 1972 and has been amended minimally. The Code includes outcomes for positive participation.

For certain crimes, it is important for the Penal Code to articulate the parameters of processes, such as diversion to ensure the individual and justice partners understand the "rules of the game" so to speak. For many, that clarity avoids confusion, injustice or unnecessary disputes as it pertains to performance of the individual. But the Penal Code has grown considerably over the years and in some places, may contradict other sections. I will give an example in my comments.

I want to give focus, however, to programs where the Penal Code is silent which I believe is a strength in many respects. Why? Because it gives District Attorneys, with the consent of the court, the ability to create programs that are not defined in Code. It allows District Attorneys to be progressive and proactive to ensure a safer community and fewer victims of crime whose lives would be impacted by the crime. For those who are criminal justice involved and are prepared to engage, it also recognizes their potential.

My Office has created programs that have reduced or eliminated reliance on incarceration. But, I want to make the point that our programs are more than creating alternatives to being jailed. The programs are investments – investments into the future of those who find themselves in the criminal justice system as accused individuals.

I have presented to you a booklet that outlines Collaborative Courts I have implemented. Very few of these courts are outlined in the Penal Code. That is an interesting observation but I think it speaks volume to what Prosecutors are doing across California and across the country.

We have implemented two "diversion" programs, neither defined in the Penal Code for which an individual is eligible before charges are filed. Both are highly effective with positive outcomes for the individuals. Program 1 deflects the individual – by agreement of the parties and not order of the court – to a program that allows the individual to reflect on the criminal conduct and perhaps provide insight into why the individual engaged in the conduct. To be eligible, the individual has committed a low level misdemeanor, and the crime did not involve an injury to another, there were no weapons used, no driving under the influence, no sex assault or 647(b)(2), no domestic violence, child abuse or battery on a peace officer. Since 2016, more than 2,600 people have participated with a 91% completion successful. The program participation is completely voluntary. Currently, there are more than 100 actively participating. This is significant in terms of criminal history. If an arrest occurred but no charges filed, the law under Penal Code Sect. 849.5 deems the arrest a detention only. It is an important Code Section, resulting in barrier removals. The duty is on law enforcement to adjust the record.

The second program is relatively new and again, outside of the Penal Code. It is referred to as "3-D Project." And engages certified Peer Support Specialists, individuals with lived experience with the criminal justice system and/or mental health. An important step would be for the Penal Code to recognize the legitimacy of certified Peer Support Specialists, including declaring that their time is eligible for Medi-Cal billing. All of the Peer Support Specialists work with me – we are "DIL" or "Developing Impacted Lives." They have taught and enlightened me and my staff and either work in my Office or are funded by grant funding we provide. The programs demonstrate the importance of involving those with lived experiences in the restoration process for youth and other individuals in the criminal justice system, which is critical to the success of the 3-D Program.

If an individual is engaging in lower level criminal behavior, and the individual has mental health or substance abuse challenges, rather than be arrested and taken to jail, the individual is taken to a respite site or a Navigation Center, depending on the City. A team, made up of a Deputy District Attorney, a Mental Health Specialist, the Officer and a certified Peer Support Specialist, will triage and

create a plan with the individual. Again, this project – 3-D Project—is outside of a Penal Code Section and relies on the commitment of all involved to address root causes of criminal behavior. Committed professionals and the individual can come together to adopt and adapt processes that are appropriate for a situation.

Penal Code Section 1000.7 was created to address young adult offenders with the goal of rehabilitation rather than incarceration. Alameda County is one of six (6) Pilot Counties. The law requires the young individual charged with certain low level felony crimes to plead guilty (or no contest) to the crime. Entry of the judgment is deferred during the duration of participation in a program that is detailed in the Code. The individual stays in Juvenile Hall, not to exceed one year. Upon successful completion, the individual's case is dismissed.

In Alameda County, very few young offenders have agreed to participate in the PC Sect. 1000.7. However, a young offender who has committed a felony crime as serious as Grand Theft Person, or non-violent Robbery, can participate instead in Early Intervention Court (EIC). EIC was created by the Alameda County District Attorney's Office in 2017 but implemented in 2018. It is an extension of Mentor Diversion Court, created by my Office more than 20 years ago. In both programs, a young adult who is charged with a felony crime is referred to EIC or Mentor Diversion Court. An individualized assessment of the individual is done with the individual. The support team looks at root causes or life circumstances that led to the criminal behavior. It could be lack of employment, perhaps lack of High School diploma, growing or grew up living below the poverty level, peer pressure, any number of circumstances. The Team, with the individual, create a Plan of Action. Mentor Diversion, revolutionary at its creation, recruited adult men in the community to serve as mentors. For more than 20 years, the recidivism rate of Mentor Diversion is below 20%. With EIC, more than 150 young adults have participated with 75 currently enrolled. The program is designed to create an individualize Plan. Less than 10 participants have left the program. EIC also includes Peer Support Specialists who play a different role than the professional.

I highlight these two programs to emphasize that the success of programs is often the structure of the program – individualized programs, addressing the individual's need and the role of mentors or peer support specialists with lived experiences. These types of program cannot be codified but are successful.

The third program I will highlight contradicts what the Penal Code outlines. I reviewed recidivism data from 2013-14-15 from Alameda County individuals on Felony Probation. The last three year review revealed that more than 53% of the young adults committed new, more serious crimes, *within the first year* of Probation. We looked at those with serious and violent felony crimes. Under the Penal Code, that individual would be excluded from a program. We created the Alameda County Justice Restoration Program (ACJRP). The eligibility criteria is an individual who has a felony conviction and is charged with a new felony.

Because this is a “Pay-For-Success” program, we began with a benchmark of 70% recidivism rate. Success of the program is reducing recidivism. While Penal Code Sections may exclude repeat offenders who commit new serious crimes from diversion or deferred prosecution programs, ACJRP welcomes those individuals. The Program is being evaluated to determine improved outcomes. Selection into the program is random among all participants are similarly situated. The program evaluates if there is a better, more effective way to engage individuals with the goal to decrease or stop recidivism. Currently, 150 individuals are participating, with a control group of 150 individuals who are supervised by Probation. ACJRP links a participant with a community-based, professional advocate. Every participant is connected to a Peer Support Specialist. All programs and plans are individualized and the individual is completely supported through his or her journey to success. To learn more about ACFJC, listen to the “Second Chances” series on the Alameda County District Attorney Podcast “Justice for All” on Spotify or at ALCODA.org.

Recently, the California District Attorney’s Association honored several District Attorney Offices with an “Excellence in Innovation” Award. Programs, such as Los Angeles County District Attorney’s creation of its Mental Health Division and Mental Health Diversion Program that is far more than the mandates under AB 1810 (2018). Or, Santa Clara County District Attorney’s Office who created the “Parent Project” which is designed to reduce juvenile crime by empowering parents of at-risk youth and improving familial communication and engagement.

What is important to this conversation is the commitment by District Attorneys, Courts and other justice partners to implementing effective Initiatives that will result, not only in reducing recidivism, but will empower those justice involved individuals to lead a hopeful, productive and safe life. What the success of programs has demonstrated is that the success of programs need not be institutionalized. For District Attorneys, having the discretion to build collaborations and implelment programs that produce positive rehabilitative results will lead to a better society.

Reforms have had an impact on victims. The Penal Code (and the California Constitution) clearly articulate the rights and protections of victims of crime. There is a “real cost” to crime and in far too many cases, the victims are the ones bearing that cost, both emotionally, sometimes physically and generally financially. The duties of communicating the rights afforded under the laws falls on the District Attorney and we do so with empathy and humanity. This lack of restitution for those who suffer from the crimes is challenging. My Office secures more than $10 million in restitution orders each year. That represents actual loss to victims of crime and includes the expenditures by the Victims of Crime Program for victims without means, for services such as medical care and mental health. The Penal Code could be strengthened with actual options to recognize and ensure the restoration of victims of crime. Specifically, if the individual cannot actually pay his or her restitution to the victim, the Code could include

alternatives. A working group that include the voices of victims of crime and those who have been justice involved, could create recommendations including and beyond restorative justice circles.

Not every crime can be adjudicated through alternatives to incarceration, diversion, deferment or dismissal. However, access to programs that address root causes and criminogenic circumstances leading to crime, are still impactful even for those who are incarcerated. We can look no further than San Quentin programs, such as “No More Tears” that engages individuals who are incarcerated, yet will return to the community with support and safety.

Staff Summary of Submission of Hon. Daniel J. Lowenthal

Judge Daniel J. Lowenthal, of Los Angeles County Superior Court, describes his experience with a pilot misdemeanor diversion program that operated in Los Angeles from 2015 to 2017.

- Unlike other states — including Texas, Tennessee, Georgia, and Hawaii — California judges cannot offer diversion without specific authority from the legislature. This is because Penal Code section 1385 — which purports to grant judges broad powers to dismiss matters in the interests of justice — cannot be used for rehabilitative purposes. See People v. Marroquin, 15 Cal.App.5th Supp. 31 (App. Div. 2017) (reversing Judge Lowenthal's dismissal of misdemeanor charges for possession of nunchaku and drug paraphernalia); People v. Municipal Court (Gelardi), 84 Cal.App.3d 692 (First Dist. 1978).
- The pilot diversion program in Los Angles resulted from the failure of AB 2124 in 2014, which would have granted judges statewide the authority to offer diversion in misdemeanor cases. Instead, a pilot project in Los Angeles was authorized for two years from 2015 to 2017.
- The Los Angeles pilot required a guilty plea — but if the participant completed the program, the plea was vacated and the case was dismissed. Among other restrictions, diversion could not be offered to someone with a prior felony conviction or a misdemeanor conviction in the last ten years.
- Roughly 5,600 people participated during the pilot and more than 95% successfully completed diversion.
- "The pilot program entailed no cost to the county or state. Participants who were ordered to complete obligations (i.e. community service or counseling) were responsible to cover the entailed costs, if any, on their own."
- "The pilot program was immensely successful. It alleviated courthouses crowding, reduced costs, and spared the successful participants from a lifetime of disabling collateral consequences. It is highly recommended that the program, as either pre-plea or post-plea diversion, be made permanent. It is a common-sense approach to handling low-level cases that will bring us in line with other states."
- Judge Lowenthal also includes three draft revisions to the Penal Code:
    - a pre-plea misdemeanor diversion program,
    - a post-plea diversion program, and
    - an amendment to Penal Code section 1385 that would allow a judge to dismiss a case for rehabilitative purposes — in other words, a legislative overruling of the appellate decisions mentioned above.

Judges may only offer diversion when authorized by the legislature. *People v. Marroquin* (2017) 15 Cal.App.5th Supp 31*; People v. Gelardi* (1978) 84 Cal.App.4th 692. Except for narrowly drawn, population-specific cases, the legislature has not vested judges with the discretion to divert.[1]

The majority of other states have, in fact, conferred their courts with the discretion to offer general-population diversion.[2] In Hawaii, for instance, courts may divert virtually all types of cases for persons with no prior felony conviction record. *See* Haw. Rev. Stat. §§ 853-1, 853-4. Diversion in Hawaii is authorized when "[i]t appears to the court that the defendant is not likely again to engage in a criminal course of conduct," and "the ends of justice and the welfare of society do not require that the defendant shall presently suffer the penalty imposed by law." §§853-1(a)(2), (3). The Hawaii statute was enacted because:

> *"in certain criminal cases, particularly those involving first time, accidental, or situational offenders, it is in the best interest of the [prosecution] and the defendant that the defendant be given the opportunity to keep his [or her] record free of a criminal conviction…. [For certain offenders]….a trial and conviction would serve no purpose other than to impair the offenders' educational, employment, and professional opportunities and ability to function as a responsible and productive member of the community. Additionally, the….procedure . . . has the . . . benefit of saving time and money for the criminal justice system without adversely affecting the public interest." State v. Shannon*, 185 P.3d 200, 205 (Haw. 2008).

Even for relatively minor offenses, the barriers and stigma that are caused by a conviction are often debilitating and have no expiration date. Diversion spares participants from such draconian collateral consequences. Additional benefits to diversion are cost savings to the system and a reduction in recidivism.

A bill was introduced in 2014 (AB 2124) to confer judges with discretion to offer general-population diversion. Because of opposition from prosecutors, the bill was

[1] Population-specific diversion programs exist for defendants charged with child abuse (§1000.12); defendants with cognitive developmental disabilities (§§1001.20-1001.34); defendants with mental disorders (§1000.35); defendants suspected of writing bad checks (§§1001.60-1001.67); defendants charged with drug offenses (§1001.1); and defendants who suffer from service-related mental health issues (§1001.80).

[2] Among the states that authorize judges to administer diversion to the general population are: Hawaii (§853-1); Idaho (§19-2601); Nevada (AB 470); Texas (Code §42A.101); Iowa (§907.3); Maryland (§6-220); Connecticut (§54-56e); Tennessee (Tenn. Code Ann. §40-35-313); Maine (Sec 1348-A); Montana (46-18-204); Georgia (§42-8-60); Deleware (§4218).

changed to a pilot program in Los Angeles County. The AOC Directors from several states wrote letters in support of the bill, referencing the efficiencies achieved, by general-population diversion statutes, in their respective states. The bill passed and judges in Los Angeles County, from 2015-2017, were able to offer diversion, over a prosecutor's objection, in most misdemeanor cases.[3]

Participants were required to comply with the terms, conditions and programs specified by the diverting court. The pilot program employed a "post-plea" model. Post-plea diversion is leveraged by an upfront guilty plea. In a post-plea diversion scenario, the court accepts the defendant's guilty plea but withholds judgment, subject to the defendant's satisfactory completion of specified conditions. If the defendant successfully completes the conditions, the court dismisses the charges and vacates the plea. Because there is no "conviction" until sentence is imposed and judgment entered, a successful participant leaves his or her encounter with the justice system without a criminal record.

The Los Angeles County Superior Court created a code within the Trial Court Information System to track the results of these cases. During the pilot program, diversion was granted to roughly 5600 participants. Over 95% (roughly 5400) of the participants successfully completed the diversionary conditions, and had their cases dismissed.

The pilot program entailed no cost to the county or state. Participants who were ordered to complete obligations (i.e., community service or counseling) were responsible to cover the entailed costs, if any, on their own.

The pilot program was immensely successful. It alleviated courthouse crowding, reduced costs, and spared the successful participants from a lifetime of disabling collateral consequences. It is highly recommended that the program, as either pre-plea or post-plea diversion, be made permanent. It is a common-sense approach to handling low-level cases that will bring us in line with other states.

[3] Courts were precluded from offering diversion to a defendant with a prior felony conviction, or a misdemeanor conviction within the previous 10 years. Diversion could not be extended to a defendant charged with a violation of Section 186.22, 273.5, 23152, for a charge involving violence against a peace officer, or for a change involving a deadly weapon.

Attachment to Submission of Hon. Daniel J. Lowenthal — Pre-Plea Diversion Statute

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Chapter 2.96 (commencing with Section 1001.95) is added to Title 6 of Part 2 of the Penal Code, to read:

CHAPTER 2.96. Misdemeanor Diversion

1001.95. (1) A judge in the superior court in which a misdemeanor is being prosecuted may, at his or her discretion, and over the objection of a prosecuting attorney, offer diversion to a defendant pursuant to these provisions.

(2) A judge may continue the case for a period not to exceed 24 months and order the defendant to comply with terms, conditions, or programs that the judge deems appropriate based on the defendant's specific situation.

(3) If the defendant has complied with the imposed terms and conditions, at the end of the period of diversion, the judge shall dismiss the action against the defendant.

(4) If it appears to the court that the defendant is not complying with the terms and conditions of diversion, after notice to the defendant, the court shall hold a hearing to determine whether the criminal proceedings should be reinstituted. If the court finds that the defendant has not complied with the terms and conditions of diversion, the court may end the diversion and order resumption of the criminal proceedings.

(5) Upon successful completion of the terms, conditions, or programs ordered by the court, the arrest shall be deemed to have never occurred. The defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested. A record pertaining to an arrest resulting in successful completion of the terms, conditions, or programs ordered by the court shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Chapter 2.96 (commencing with Section 1001.95) is added to Title 6 of Part 2 of the Penal Code, to read:

CHAPTER 2.96. Deferral of Sentencing

1001.95 (1) A judge in the superior court, at his or her discretion, and over the objection of a prosecuting attorney, may defer sentencing a defendant who has submitted a plea of guilty or nolo contendere pursuant to this chapter.

(2) Sentencing may be deferred for a period not to exceed 24 months, and the judge may order the defendant to comply with terms, conditions, or programs that the judge deems appropriate based on the defendant's specific situation.

(3) If the defendant, during the period of deferral, complies with all terms, conditions, and programs the judge shall, at the end of the period, strike the defendant's plea and dismiss the action against the defendant.

(4) If it appears to the court that the defendant is not complying with the imposed terms and conditions, after notice to the defendant, the court shall hold a hearing to determine whether to impose judgment. If the court finds that the defendant has not complied with the imposed terms and conditions, the court shall enter judgment and sentence the defendant.

(5) Upon successful completion of the terms, conditions, or programs ordered by the court, the arrest upon which sentencing was deferred shall be deemed to have never occurred. The defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or granted deferred entry of judgment for the offense. A record pertaining to an arrest resulting in successful completion of the terms, conditions, or programs ordered by the court shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

Attachment to Submission of Hon. Daniel J. Lowenthal — Revision to Penal Code Section 1385

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

Section 1385 of the Penal Code is amended to read:

1385.

(a) The judge or magistrate may, either of his or her own motion or upon the application of the prosecuting attorney, and in furtherance of justice, including for rehabilitative purposes, order an action to be dismissed. The reasons for the dismissal shall be stated orally on the record. The court shall also set forth the reasons in an order entered upon the minutes if requested by either party or in any case in which the proceedings are not being recorded electronically or reported by a court reporter. A dismissal shall not be made for any cause that would be ground of demurrer to the accusatory pleading.

(b) (1) If the court has the authority pursuant to subdivision (a) to strike or dismiss an enhancement, the court may instead strike the additional punishment for that enhancement in the furtherance of justice in compliance with subdivision (a).

(2) This subdivision does not authorize the court to strike the additional punishment for any enhancement that cannot be stricken or dismissed pursuant to subdivision (a).

Staff Summary of Submission of Anthony Adams

Anthony Adams is a Deputy Public Defender in Mendocino County and served as a member of the Assembly from 2006 to 2010. Mr. Adams addresses his work with his County's Behavioral Health Court, which "provide[s] an alternative to jail or prisons to those who, as a result of mental health condition or conditions, have committed crimes."

- Mendocino County's Behavioral Health Court is a team effort — made up of a judge, deputy district attorney, deputy public defender, jail medical staff, probation officer, county-contracted psychotherapist, and cases mangers from local non-profits. The team meets weekly to, among other matters, "develop appropriate wrap-around services for the participants."
- Despite the team approach, some local agencies, such as Mental Health and Health and Human Services, will not participate.
- Identifying possible participants for Behavioral Health Court is "often left to the attorneys who represent them," and not systematically screened during earlier stages of a prosecution.
- This court does not operate under Penal Code section 1001.36, which created mental health diversion, because "in smaller rural counties where fewer services are available," indigent people do not have access to a qualified mental health expert as required under the statute.
- Mr. Adams's submission includes an evaluation of the Mendocino County Behavioral Health Court which shows that, from 2015 to 2017, 131 people took part in Behavioral Health Court, including 32 people who completed the program. "[T]here were no new offenses in 75% of program graduates."
- Mr. Adams makes three recommendations:
    - "Where a Cooperative Court has been established through the Superior Court and the Board of Supervisors for that County has adopted a Resolution in support of that Cooperative Court, require that each County Agency with responsibility for Mental Health, Transitional Assistance, or Housing, designate a liaison to be available to coordinate with the Cooperative Court."
    - "Provide for an opportunity during the intake of any individual into the county jail who is accused of committing a crime to have jail staff note or flag individuals who appear to be suffering from some mental health condition. Mandate that the list of those so flagged be provided to the Cooperative Court where such courts have been Adopted and Convened."
    - "Grant the courts the ability to designate a qualified mental health expert and to provide for the cost of an examination where the court is satisfied that a prima facie showing has been made pursuant to the eligibility requirements of 1001.36."

Submission of Anthony Adams

Honorable Chairperson and Members of the Committee:

Opportunities for Diversion in criminal prosecutions are a major tool in creating just and equitable outcomes for those accused of crimes, the victims of crime, and for their respective communities. As well, Diversion in criminal prosecution reduces recidivism and lowers incarceration rates in both jails and prisons.

One such "Diversion" tool is the Cooperative Court. Cooperative Courts can be convened in many different ways, e.g. Adult Drug Court, Veteran's Court, Transitional Assistance Courts, Pre-Plea Diversion Courts, etc. In Mendocino County, we have created what we call the Behavioral Health Court (BHC). The BHC is intended to provide an alternative to jail or prison to those who, as a result of a mental health condition or conditions, have committed crimes.

The BHC seeks to identify criminal defendants with serious mental illness or cognitive impairment and to address their underlying conditions through wrap-around services. The goal is to stabilize these individuals and to correct behaviors that have led to criminal conduct in the past, attempting to reduce criminal conduct going forward. This also furthers our collective ability to reduce the number of people in our jail and in prison.

The BHC is a Cooperative Court in that the BHC team is composed of a team consisting of a Superior Court Judge, a Deputy District Attorney, a Deputy Public Defender, a member of the Jail Medical Staff, a Probation officer, a county contracted psychotherapist, and Case Managers from locally available non-profit agencies dedicated to serving people with behavioral health challenges and the unhoused. The team meets weekly for case-conferencing and works collaboratively to:

- develop appropriate wrap-around services for the participants;
- address matters of medication management;
- secure housing for participants where needed;
- consult with probation regarding compliance with court orders
- identify areas of concern or obstacles to rehabilitation for each participant
- coordinate with Substance Use Disorders Treatment specialists for participants with co-occurring mental health and substance use disorders

As is the case with many other Cooperative Courts, the BHC does not benefit from the statutory participation of its team members, including the participation of our very own mental health providers and transitional assistance providers like County Mental Health, the Health and Human Services Agency, the Regional Center, etc. These already existing resources can provide a direct link to services that are often the cornerstone of stabilizing people with untreated or undertreated mental health conditions. Existing funding within these agencies having already been directed to serve the very same participants we have in BHC, linking these agencies with the Cooperative Courts would facilitate a more holistic and cost-saving model for treatment and care.

As well, the identification of those accused of crimes that might be concurrently suffering from a mental health condition is often left to the attorneys who represent them. While this model is workable, the identification of individuals who may be suffering from mental health conditions at the earliest possible stages of criminal prosecution creates added opportunities to engage those individuals in a Diversion program or Cooperative Court.

Finally, a word about 1001.36 Mental Health Diversion. There is no doubt that 1001.36 is a wonderful and appreciated tool. However, in smaller rural counties where fewer services are available, the 1001.36 diversion is most employed by those with private counsel and the financial resources to secure a qualified mental health expert. Under 1001.36, an agency that may have qualified mental health experts also has the right under 1001.36 to not provide an opinion or render services. With less access to qualified mental health experts, indigent criminal defendants (of which the overwhelming majority of criminal defendants are) have a far greater possibility of being denied the opportunity to avail themselves of 1001.36 Diversion.

PROPOSALS FOR THE COMMITTEE'S CONSIDERATION:

1. Where a Cooperative Court has been established through the Superior Court and the Board of Supervisors for that County has adopted a Resolution in support of that Cooperative Court, require that each County Agency with responsibility for Mental Health, Transitional Assistance, or Housing, designate a liaison to be available to coordinate with the Cooperative Court.
2. Provide for an opportunity during the intake of any individual into the county jail who is accused of committing a crime to have jail staff note or flag individuals who appear to be suffering from some mental health condition. Mandate that the list of those so flagged be provided to the Cooperative Court where such courts have been Adopted and Convened.
3. Grant the courts the ability to designate a qualified mental health expert and to provide for the cost of an examination where the court is satisfied that a prima facie showing has been made pursuant to the eligibility requirements of 1001.36.

The Committee has requested to know what, if any data, supports the proposals addressed. I do not have statewide data concerning the numbers of people who might be eligible for Diversion opportunities, but I have attached a Report that was created as an audit of our BHC program that outlines a number of our key objectives and metrics.

Thank you to the Committee for providing us with this opportunity to help you in achieving your stated goals. I look forward to making myself available to answer any questions you may have.

Sincerely,

Anthony T. Adams, Esq
Deputy Public Defender
County of Mendocino

Staff Summary of Submission of Hon. Richard A. Vlavianos

Judge Richard Vlavianos, of San Joaquin County Superior Court, is Chair of the Judicial Council's Collaborative Justice Courts Advisory Committee.

Judge Vlavianos oversees a multi-track DUI Court for high-risk DUI cases that has documented a 32% reduction in recidivism and 50% reduction in collisions with repeat offenders with almost 5,000 individuals having participated over eleven years. Based on the success on the DUI Court, he started a Community Supervision Court that triages supervision violations, screens them for risk and needs, and uses evidence-based sentencing practices to obtain greater compliance with supervision and a reduction in recidivism.

Judge Vlavianos's submission is already presented in summary form. It includes an attachment diagramming Community Court Supervision.

PENAL CODE REVISION COMMISSION MARCH 12, 2020

Judge Richard A. Vlavianos

Superior Court of California, County of San Joaquin

- **Introduction/opening remarks**
  - The remarks by myself an my colleagues are not an official view of the Judicial Council and instead are intended to provide informal feedback to the committee from on the ground experts who deal with the issues the committee is considering every day.

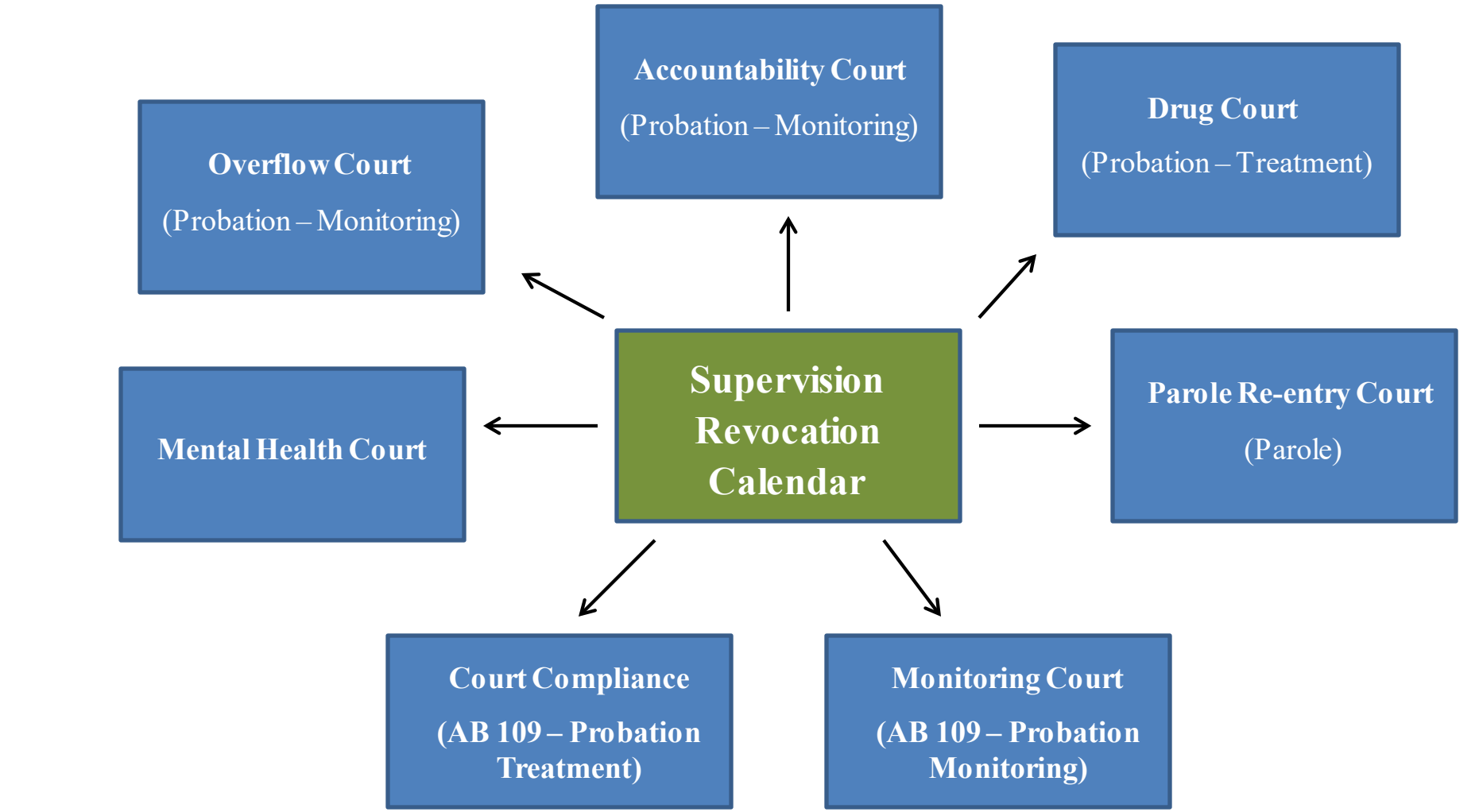
- **Collaborative Courts as a strategic approach to system change**
  - Collaborative Courts were created by the Judicial Branch.
  - Over 400 in California
  - Every County but two
  - Change of focus from punishment to behavior change and effective supervision
  - Use evidence based behavior modification principles
  - Shown to reduce recidivism; reduce costs; increase public safety

- **Can be used in Diversion or Part of Probation**

- **Courts as ER triage**
  - Screen and assess
  - Refer
  - Use leverage of court to encourage participation

- **Setting up an organized system of delivery of services**
  - Intake
  - Opportunity to address problem
  - Use of programming through Probation and Parole
  - Court supervision to address non-compliance
  - Law enforcement assistance to Court in compliance

- **Results**



Homeless Court | Veterans Court | DUI Court Track 1 | DUI Court Track 2 | Dependency Prop 1 | Dependency Prop 2

Staff Summary of Submission of Hon. Lawrence Brown

Judge Lawrence Brown, of Sacramento County Superior Court, presides over multiple collaborative courts. He is Vice-Chair of the Judicial Council's Collaborative Justice Courts Advisory Committee.

- The hallmark of collaborative courts is that they truly get to know their participants. This approach is different from much of the criminal legal system because of the massive number of cases resolved by plea agreement.
- Collaborative courts "can produce remarkable results": a study completed in 2017 of Judge Brown's mental health court showed a "statistically significant reduction in recidivism and an overall reduction in hospitalizations." (The study and an associated presentation are attached to Judge Brown's submission.)
- Mental health courts are growing. From 2007 to 2012, Sacramento's mental health court averaged 25 participants. Today, there are two mental health courts that have over 200 participants.
- This growth is, in part, caused by greater buy-in from the prosecutor and public defender, which has allowed more serious and violent crimes into the court. It may also be caused by "the passage of AB 1810, Mental Health Diversion in July 2018, which unlike mental health court, does not require a change of plea nor result in formal supervision" — which may make Mental Health Court more acceptable to prosecutors handling felony cases.
- Diversion has limitations, but it serves as a useful outlet for policy-makers to gives focus to areas of particular concern. It also provides relief to collaborative justice courts and incentive to expand those courts.

Penal Code Revision Commission

March 12, 2020

Judge Lawrence Brown, Sacramento County Superior Court

Mr Chair, members, thank you for the opportunity to address you today. Given the scope and complexity of our Penal Code, you have a task not for the faint of heart.

My name is Larry Brown. I am in my tenth year as a judge on the Sacramento Superior Court and have spent my entire tenure in the criminal courts, to include the past several years presiding over several collaborative justice courts, including the Adult Drug Court, Proposition 36 Drug Court, two Mental Health Treatment Courts, Reentry Court and just recently, the Veterans Treatment Court and the DUI Treatment Court.

I consider myself fortunate to work in a jurisdiction in which there is true stakeholder buy-in with these courts, to include the Public Defender, District Attorney and Probation Department

While certainly AB 109 Corrections Realignment was groundbreaking in terms of restricting which felony offenses could be sentenced to state prison, it also contained sometimes overlooked but important legislative intent language codified in Penal Code section 17.5:

> Realigning low-level felony offenders who do not have prior convictions for serious, violent, or sex offenses to locally run community-based corrections programs, which are strengthened through community-based punishment, evidence-based practices, improved supervision strategies, and enhanced secured capacity, will improve public safety outcomes among adult felons and facilitate their reintegration back into society.

This language, along with other provisions in the section reflects aspirational policy that the criminal justice system should not just focus on *what* a person is alleged to have done, but also on *who* they are- what criminogenic needs they have- whether mental illness, substance use disorders, lack of job skills- and what can be done to address them.

And while it makes good sense in the abstract, applying this approach is a much greater challenge than one might think. Our criminal courts handle massive numbers of cases each and every day, with the vast majority of cases resolved by plea agreement in a large calendar court. There is a high premium on equal protection, that the going-rate for an offense, whether misdemeanor or felony, should be the same for each person, with the only true variable being criminal history.

But in point of fact, no two persons are alike. And the system needs to slow down and embrace the need for more individualized justice.

This type of approach has been the hallmark of collaborative justice courts over the past several decades. We truly get to know our participants. They may be part of our courts for 8 months to two years, and their trials and tribulations, whether relapses, lack of employment or stable housing, problems in their home lives, resistance to taking their medications, questionable friends and social circle, become well known by our multi-disciplinary teams.

The collaborative courts, with their focus on both accountability and treatment, can produce remarkable results. In 2017, my Mental Health Court was studied by professors at San Jose State University under the auspices of the Center for California Studies and their findings were that among those going through our court program, there was a statistically significant reduction in recidivism and an overall reduction in hospitalizations.

As to mental health courts, a few words. Our numbers have grown exponentially in recent years. In our first five years, from 2007-2012, our court averaged but 25 participants. I have had the court since 2013, and today, we have two such courts, are planning a third one, and we currently have over 200 participants. While these numbers might pale in comparison to my mentor to my right, they reflect a growing commitment by our jurisdiction to identifying those with serious mental illness who should be treated rather than incarcerated and placed on a path of sustained insight into their need for treatment and medication.

Our numbers have grown for two key reasons, as I see it. One, there has been greater and greater buy-in over the years, both by the DA and the Public Defender, with a much greater willingness to allow more serious and violent crimes into the court. And two, with the passage of AB 1810, Mental Health Diversion, in July 2018, which unlike mental health court does not require a change of plea nor result in formal supervision, my mental health court looks that much better to the District Attorney, particularly as to felonies.

That's not to say we don't have a robust mental health diversion program; we do. We have scores of persons on diversion, though only a handful for felony offenses. And I think it largely a result that judges are far more comfortable having a felony case referred to the Mental Health Treatment Court.

My own view is that diversion does in fact have limitations, but it is an excellent means that gives focus to areas of concern to policy makers, whether mental illness, primary caregiver or veteran status, or drug addiction, and provide both relief to related collaborative justice courts and incentive to expand those courts to allow greater numbers to participate.

I am honored to speak here today, would invite staff or members to visit any of my courts as schedules permit, and would gladly answer questions.

Staff Summary of Submission of Hon. Stephen Manley

Judge Stephen Manley, of Santa Clara County Superior Court, is Supervising Judge of all felony and misdemeanor mental health and drug cases in his court's criminal division. In 1998, he established one of the first Mental Health Courts in the United States. He serves on the Judicial Council's Collaborative Justice Courts Advisory Committee.

- "We are at a time when the Courts in my view are far more willing than at any time in the past to utilize alternatives to incarceration, and we should make every effort to encourage that major change."
- Collaborative courts "adopt[] strategies that go outside of the Penal Code in an attempt to obtain better outcomes."
- The Penal Code should give judges "more discretion" to "create and implement strategies to obtain good outcomes in situations that call for alternatives." This is particularly true for strict statutory mandates such as parenting and domestic violence classes. These classes "are expensive and of questionable value to offenders who are mentally ill or have cognitive deficits or who do not speak English and come from a cultural background that calls for a different approach than these standard programs offer."
- There are more people in the criminal system with mental illness than ever before. This population "spend[s] more time in jail than offenders with similar cases who are not mentally ill, and are often repeat offenders, cycling back and forth from the streets to Emergency Rooms and, always, to jail." (Judge Manley's submission includes a report from California Health Policy Strategies L.L.C. from February 2020 that provides data about this issue.)
- But there are not enough treatment and services resources to meet this need in a meaningful way. For example, even with substantial funding in Santa Clara County, there are currently 130 people awaiting release from jail into a treatment program. The wait time continues to grow. Without sufficient resources, "collaborative courts will continue to only be able to address a small percentage of the need."
- The Committee should also give attention to creating alternatives to incarceration at the time of arrest and booking. For example, in Santa Clara, a new facility with 20 recliners and a full Behavioral Health staff offers an alternative to law enforcement for diverting people under the influence of methamphetamine, among other situations.
- The Committee should also focus on bench warrants, which issue by the thousands each year when people fail to appear in court. But people with mental health issues and developmental disabilities have a hard time navigating the system and there should be an alternative that would allow someone to return to treatment instead of going to jail.

Penal Code Revision Commission

March 12, 2020

Judge Stephen Manley, Santa Clara County Superior Court

Good Afternoon:

I am Judge Stephen Manley and I serve at the Santa Clara County Superior Court.

I have worked with Collaborative Courts, Mental Health Courts and Drug Courts for 25 years. In the context of the work of this Committee, I think that it is important to understand the reason for the development of all of these Collaborative Courts. They all began with a recognition by Judges that the processes under the existing Penal Code are not working in terms of producing good results, and, therefore, each Collaborative Court that was created adopted strategies that go outside of the Penal Code in an attempt to obtain better outcomes.

In my personal view, the greatest assistance that any reform of the Penal Code may provide is to give more discretion to the Courts to create and implement strategies to obtain good outcomes in situations that call for alternatives.

This discretion is most critical for offenders who have the least ability to conform to strict statutory mandates. Specific examples are the multitude of education programs that defendants are mandated to complete if convicted, including parenting, and domestic violence that are expensive and of questionable value to offenders who are mentally ill or have cognitive deficits or who do not speak English and come from a cultural background that calls for a different approach than these standard programs offer.

I also want to highlight one area that is very challenging for the Courts today. Having worked with mentally ill offenders for many years, I have noted in the last ten years, a tremendous increase in mentally ill offenders coming before our Courts and filling our jails, and the fact that they spend more time in jail than offenders with similar cases who are not mentally ill, and are often repeat offenders, cycling back and forth from the streets to Emergency Rooms and, always, to jail.

Our new Mental Health Diversion statute, the focus on Veterans who suffer from mental illness and substance abuse are examples of substantial steps forward, particularly when the Courts utilize a collaborative court system to work with these offenders.

However, nearly all of the Legislative changes to date in the Penal Code that offer Judges sentencing alternatives, including Primary Caretaker Diversion which I strongly believe in, are

dependent on the existence of local resources to provide the alternative to incarceration and to produce better outcomes.

Unfortunately, we do not have enough treatment and service resources in our Counties to meet this need in a meaningful way. The collaborative court that I preside over has a substantial commitment of the resources of my Court and of Behavioral Health and we try to place in treatment and monitor 1,500 to 2,000 offenders at any given time. Even with the substantial commitment of General Fund dollars, as well as Mental Health Service Act funding, AB 109, Medi-Cal and all other funding sources our County has, we are not able to meet the needs of these offenders.

When I left my Court this past Friday, there were 130 offenders who had been ordered released from jail into community treatment, including offenders granted diversion, who remain in jail awaiting an opening in a treatment program. This number has continued to increase during this past year and the wait-time is growing longer.

My County is not unique in lacking sufficient treatment resources and it is a challenge that I hope you will address. If Judges are motivated to utilize sentencing alternatives, the Courts must be given the treatment and service resources or there will not be better outcomes, and collaborative courts will continue to only be able to address a small percentage of the need.

Finally, I wanted to suggest that you give careful consideration to creating alternatives to incarceration at the time of arrest and booking.

In my County we have established a new facility beside our jail that has 20 recliners and a full Behavioral Health staff to offer law enforcement an alternative to booking mentally ill offenders, including those under the influence of methamphetamine. The concept is a simple one. With the collaboration of the District Attorney, Public Defender, Behavioral Health and the Court, offenders who are given this opportunity rather than booking into jail, and may stay in the stabilization center for up to 23 hours, and during that period professional staff will assesses them and place them in appropriate treatment and move them into a program with the level of care and treatment that they need.

Many other counties have been far more creative and have turned their attention to even better pilot projects than ours for pre-booking Diversion. Of course, we face the same challenge –do we have the treatment and program resources to gain the confidence of the Police Departments by demonstrating better outcomes than incarceration for large numbers of mentally ill offenders?

In this regard, one area I personally hope you will consider is that of “Bench Warrants.” Our Courts issue thousands of bench warrants each year when defendants fail to appear in Court. Mentally Ill and Mentally Challenged offenders have a very difficult time navigating our system. Could an alternative to a Bench Warrant be developed that would allow the defendant to be

given an opportunity to return to treatment, rather than be booked into jail, spend time in jail, and ultimately be released again to treatment?

We are at a time when the Courts in my view are far more willing than at any time in the past to utilize alternatives to incarceration, and we should make every effort to encourage that major change.

Staff Summary of Submission of sujatha baliga

sujatha baliga is Director of the Restorative Justice Project at Impact Justice and a 2019 MacArthur Fellow.[1]

- Impact Justice's Restorative Justice Project has helped establish restorative justice programs for youth and young adults throughout the country.
- Approaches to adopt:
  - Pre-charge — A pre-charge program "truly centralizes the needs of people harmed by affording them as much control as possible over their own healing journeys." A pre-charge model is also quicker and saves money because it "relies on little to no county and state resources (such as the funds required to support judicial, prosecutorial, defense, and probationary functions)."
  - Confidential — Without confidentiality, "those impacted by crime are unwilling to participate out of fear that restorative processes will be used as an investigatory tool for the state."
  - Limited discretion — To avoid racial and ethnic disparities, the Penal Code should "standardize access" to restorative justice by "limiting discretion in decisions to divert cases."
- Approaches to avoid:
  - Not run by the government — Instead, a program should be "staffed by people representative of the communities they serve, have experience working with people of color and system-impacted people … and be dedicated to supporting people harmed using a strengths-based and trauma-informed framework."
  - Don't limit eligibility — "[A]lthough still a growing field, both domestic and international studies are finding the model to be a beneficial response for a wide range of harm with varying degrees of seriousness," including domestic and sexual violence.
  - Gradual, careful, and thoughtful pace — "[C]ommunities should be entrusted with determining, through consensus-based processes that engage all interested stakeholders, the appropriate amount of time needed to implement and grow these programs." The government can support the process by providing adequate resources.

[1] Her submission was prepared with Impact Justice Restorative Justice Project staff Ashlee George (Associate Director) and Sia Hentry (Senior Program Specialist).

- Ms. baliga's submission includes four attachments:
    - A study by Impact Justice of a restorative justice youth diversion program in Alameda County. The study reports at page 9 that 91% of survivor participants reported they would participate in another restorative justice conference and would recommend the process to a friend. The study also reports at page 7 that youth who completed the program were 44% less likely to recidiviate compared to youth processed through the juvenile legal system.
    - A catalog of reforms undertaken by George Gascon, formerly San Francisco District Attorney, which notes at page 11 that the restorative justice diversion program in San Francisco realized a 13% recidivism rate versus a 53% rate for youth who went through the traditional system. Those statistics are based on "almost 50 youth accused of felony crimes."
    - A model agreement with a prosecutor's office to create a restorative justice program, including language about confidentiality.
    - Impact Justice's 144-page "Diversion Toolkit for Communities," which explains "[h]ow to build a pre-charge restorative justice diversion program that reduces youth criminalization while meeting the needs of people harmed."

To: Committee on Revision of the Penal Code

From: The Restorative Justice Project at Impact Justice

Date: March 5, 2020

Re: Legislating for Restorative Justice Diversion

Restorative justice is, at its core, about relationships — how we create, maintain, and mend them. Grounded in the idea of interconnectedness, this approach offers a paradigm shift in the way we think about and address wrongdoing. Instead of viewing harm as a crime or violation of the law, restorative justice encourages us to understand harm as a violation of people and relationships that requires individual, interpersonal, community, and system-wide accountability and healing. As a program, pre-charge ***restorative justice diversion*** creates opportunities to bring those who have caused harm, survivors, and affected community members into accountability processes that allow the responsible parties to make things as right as possible.

The Restorative Justice Project at Impact Justice is partnering with communities across the country to establish pre-charge, restorative justice diversion programs for youth and young adults and is exploring applications in the adult context. Through these programs, trained community-based organizations bring young people arrested for serious offenses into accountability processes with those they have harmed and their families in order to discuss the impact of their actions and develop and complete a plan to make things right. So long as the young person completes that plan, typically within ten months, no charges are ever filed.

In addition to this work, the Restorative Justice Project advises and offers technical assistance and training to community-based organizations, system partners, and lawmakers nationwide about various applications of restorative justice, from pre-adjudication through

post-release. The Restorative Justice Project is also in the nascent stages of envisioning safe restorative justice responses to intimate partner and sexual violence (this work is supported by Blue Shield of California, a long-standing funder in our state dedicated to ending domestic violence).

The Restorative Justice Project's work is characterized by supporting communities in building programs that are oriented around the needs of people harmed, designed to end racial and ethnic disparities in juvenile and criminal legal systems, focused exclusively on pre-charge diversion, designed to prevent net-widening, dedicated to a strengths-based approach to healing harm, rooted in relationships, and committed to protecting participant confidentiality.

While a number of organizations and agencies across the country are using various restorative-justice based approaches to address harm, the Restorative Justice Project has found that community-based, pre-charge, felony diversion approaches oriented around the needs of those harmed is the best way to bring about survivor satisfaction[1], reduce recidivism[2], and realize significant cost savings[3]. (*See*, Attachments A and B). In supporting the growth of this model, we offer the following recommendations to the California State Legislature as approaches to adopt and avoid:

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[1] A 2017 report exploring the benefits and effectiveness of Alameda County's restorative justice diversion program, operated by Community Works, found that 91% of survivor participants reported they would participate in another conference and the same percent said they would recommend the process to a friend. (Attachment A: sujatha baliga et al. *Restorative Community Conferencing: A Study of Community Works West's Restorative Justice Youth Diversion Program in Alameda County*. Impact Justice (2017)).

[2] Youth who completed Alameda County's restorative justice diversion program are 44% less likely to recidivate, compared to youth who are processed through the juvenile legal system. (Attachment A). Similarly, the restorative justice diversion program in San Francisco has realized a 13% recidivism rate versus a 53% rate for youth who go through the traditional system. (Attachment B: George Gascón. *Transformative Justice Prosecution Strategies to Reform the Justice System and Enhance Community Safety*. San Francisco District Attorney's Office (2019)).

[3] The average cost of a restorative justice diversion case is estimated to be around $10,000. Comparatively, in 2018 it cost about $490,000 to incarcerate a young person in Alameda County for one year. (Joaquin Palomino and Jill Tucker. *Empty Cells, Rising Costs*. https://projects.sfchronicle.com/2019/vanishing-violence/part-2/ (2019)).

Approaches to Adopt

- When legislating for restorative justice diversion, it is important to establish this approach as a ***pre-charge***, rather than pre-incarceration, model. Doing so will ensure the process truly centralizes the needs of people harmed by affording them as much control as possible over their own healing journeys. In contrast, a post-charge approach situates the needs of survivors as second to the interests of the state. A model that allows the parties to circumvent criminal legal system involvement also permits those who have caused harm to take full responsibility for their actions. By first charging individuals with a crime, the state necessarily places them in an adversarial relationship with the person they harmed, one where admitting accountability will likely jeopardize their freedom and carry other financial, emotional, and familial consequences. Finally, a pre-charge model is more expeditious and allows for considerable cost savings as it relies on little to no county and state resources (such as the funds required to support judicial, prosecutorial, defense, and probationary functions).
- To ensure participants feel comfortable speaking openly about the harm they have caused and experienced, the information they share in restorative justice processes must be deemed ***confidential***. Without an assurance of confidentiality, those impacted by crime are unwilling to participate out of fear that restorative processes will be used as an investigatory tool for the state. To guarantee that this does not occur, legislation should provide that communications during restorative justice processes, including those which occured in preparation for restorative justice dialogues, should remain confidential and cannot be used against any of the participants in future court proceedings, whether civil

or criminal. (*See*, Attachment C for sample language, which includes the confidentiality agreement that the Restorative Justice Project requires each partnering district attorney to sign prior to diverting cases to the trained, community-based organization.)[4]

- Over the past many decades, activists, researchers, and journalists have documented racial and ethnic disparities throughout our criminal legal system. While restorative justice diversion has the potential to alleviate such disparities, there remains a strong likelihood of it becoming another diversion program that fails to reach the communities most impacted by our criminal legal systems. In order to end inequality we must be deliberate about addressing it, including the role prosecutorial discretion plays in the accessibility of diversion programs to communities of color. Legislation around restorative justice diversion should therefore seek to ***standardize access to this process***, thereby limiting discretion in decisions to divert cases. For instance, legislation could encourage implementing jurisdictions to agree to divert all eligible cases from the zip codes from where or crimes for which people of color are disproportionately incarcerated. The broader effort in California to collect and disseminate data about the criminal legal system would support our efforts to measure our relative effectiveness over the current system in a variety of categories, including: race, gender identity and expression, sexual orientation, ability, and other demographic and identity-related factors.

Approaches to Avoid

- Similar to supporting an approach that permits participants to avoid system involvement, it is critical that legislation specify restorative justice processes ***should not live in or be***

[4] We are currently updating that MOU and will submit the revised version within the next several weeks.

operated by government agencies. Given that prosecutor and probation offices are fundamentally law enforcement agencies — and are thereby tasked with enacting punishment, not creating spaces for healing — it would be inappropriate and unwise to "repurpose" these departments to administer restorative justice programs. This is especially true for communities with justifiably deep-seated feelings of distrust and fear of the law enforcement agencies charged with protecting them. Instead, legislation should be clear that restorative justice diversion processes must be established by and for the communities they are operating within. Ideally, the organizations running such programs should be staffed by people representative of the communities they serve, have experience working with people of color and system-impacted people, be trusted by community members, have demonstrated a commitment to racial justice and an understanding of the impacts of power and privilege, and be dedicated to supporting people harmed using a strengths-based and trauma-informed framework.

- Legislators should be careful ***not to prematurely limit the types of cases or people eligible*** for restorative justice diversion. The tendency for many criminal-justice related statutory reforms is to focus on removing or limiting system involvement for people convicted of first-time and/or "low-level," "non-violent" offenses. Generally, this is a flawed approach as it both limits the impact of reform efforts and assumes a false dichotomy between "violent" and "non-violent" crime, ignoring the root causes of harm and society's failure to address those causes. In the case of restorative justice diversion, although still a growing field, both domestic and international studies are finding the model to be a beneficial response for a wide range of harm with varying degrees of

seriousness. Thus, instead of restricting application of this approach to low-level offenses, which can ultimately lead to net-widening, such crimes should be decriminalized with restorative justice diversion being used for cases that would have otherwise been criminally charged and would have resulted in the responsible party being incarcerated or placed on probation. Ultimately, in order to truly center the needs of survivors, the legislative body must understand that it is not up to it or any other government branch or agency to dictate what types of harm are and are not appropriate for restorative justice. Rather, legislation should, to the extent possible, recognize that survivors have the right to determine what justice and healing looks like for them and support the creation of safe spaces for them to do so. This is especially true in the case of domestic and sexual violence. Due to a growing demand from survivors and advocates for the application of restorative justice to these forms of violence, we are seeing states having to now undo restorative justice legislation which previously disallowed application in these circumstances.

- Finally, while restorative justice diversion approaches have proven incredibly beneficial, it is important that legislators and other systems stakeholders respect the ***gradual, careful, and thoughtful pace*** these programs require in order to scale responsibly and realize long-term success. (*See*, Attachment D). To that end, communities should be entrusted with determining, through consensus-based processes that engage all interested stakeholders, the appropriate amount of time needed to implement and grow these programs. The government can, and should, support this process by providing adequate resources, recognizing that if it is going to outsource a responsibility it has proven

incapable of doing well (i.e., addressing harm and bringing about public safety), it must do so in a manner that is fiscally capable of succeeding. We must not suggest that restorative justice is the panacea to the current failures of the criminal legal system without sufficient resources and time to allow it to live up to its potential to meet our public safety needs and right our system's wrongs.

Submitted by:
sujatha baliga, Director | MacArthur Fellow
Ashlee George, Associate Director
Sia Henry, Senior Program Specialist
Impact Justice Restorative Justice Project

Attachments:

(A) Restorative Community Conferencing: A Study of Community Works West's Restorative Justice Youth Diversion Program in Alameda County
(B) Transformative Justice Prosecution Strategies to Reform the Justice System and Enhance Community Safety
(C) Generic Memorandum of Understanding
(D) A Diversion Toolkit for Communities

Staff Summary of Submission of Nicole Kirkaldy

Nicole Kirkaldy is the Program Coordinator for the Yolo County District Attorney's Neighborhood Court program. This program "uses the principles of restorative justice to reach practical, non-punitive, and community-based solutions to crime affecting our local community."

- The Neighborhood Court Program began in 2013 and initially focused on first-time misdemeanor offenders. The program has expanded to include more misdemeanors and some felonies.
- Since it started, the program has handled over 1,400 cases and has a completion rate above 90%. "An independent evaluation in 2018 determined that NHC graduates were 37% less likely to recidivate than similarly situated individuals whose cases were resolved through other means."
- In the program, "community members and defendants meet face-to-face in facilitated conference to share their stories, speak openly about the impacts from the criminal conduct being addressed, discuss the harms experienced by those involved, and find creative resolutions that speak to the needs of all affected parties." The conferences are staffed by volunteers who are trained in mediation skills and the principles of restorative justice.
- If there is a direct victim in an eligible case, they are consulted before a diversion offer is made.
- Suggestions for revising the Penal Code:
    - Allow formal mechanisms for collecting restitution for cases resolved through diversion: "[d]iversion programs often have limited means to track and collect payment over longer time frames, and many defendants are unable to pay required restitution upfront or in a short period of time due to limited income or other socioeconomic restraints." One solution "might be to convert any unresolved payments to a civil judgment after a certain time."
    - Simplify the process for record sealing for those who have completed diversion. The current process is, for many, "unclear or confusing" because it costs $150 — even for cases resolved prior to filing — and is "not easily navigable for a lay person." The sealing process could also be automated.
    - Reliable and sustainable funding for alternatives to incarceration programs. Relying on grant funding does not allow for truly stable programming and funding concerns take up staff time. "If the legislature were to authorize and enforce accessible and reliable funding opportunities, we would undoubtedly see program options proliferate" — including greater ability transfer cases across counties.

Yolo County Neighborhood Court

The Yolo County District Attorney (YCDA)'s Neighborhood Court (NHC) program uses the principles of restorative justice to reach practical, non-punitive, and community-based solutions to crimes affecting our local community. Restorative Justice is a philosophy increasingly practiced nationwide that focuses on repairing the harms caused to communities and individuals as a result of criminal acts. In Yolo County, NHC is part of a comprehensive continuum of prosecutorial diversion efforts which encompass a wide swath of the criminal justice-involved population. Through such programming, YCDA seeks to balance the demands of the criminal justice system and public safety with the needs individuals involved in that system – both victims and defendants. While in practice it takes more staff time and effort to divert cases than it does to prosecute them, the YCDA is a firm believer in the necessity and transformative potential of such reforms. The results to date– reduced recidivism and increased public engagement – support this belief. NHC has handled over 1400 cases since its inception, and maintains an overall program completion rate above 90%. However, operational success is not without its challenges. Concerns, such as reliable program funding, restitution issues, and accessible arrest relief, pose potential barriers to accessing the full benefits of restorative diversion. Appropriate legislative changes to support program sustainability, external collection of restitution, and automatic post-completion record relief, would not only support victim needs, and increase the benefits of participation to defendants, but would also encourage widespread proliferation and prosecutorial buy-in to such reformative and progressive programming.

Motivated by a need for alternatives to incarceration and more effective resolution of lower-level offenses, NHC was designed and implemented in 2013 as a pilot project serving first-time offenders. The program model built on the ideals or restorative justice and implemented a 3-step process where community members and defendants met face-to-face in facilitated conference to share their stories, speak openly about the impacts from the criminal conduct being addressed, discuss the harms experienced by those involved, and find creative resolutions that spoke to the needs of all affected parties. This was a significant shift from the traditional model of

case resolution, and quickly gained momentum. In 2015, with the aid of federal grant funding, NHC was able to expand to incorporate all major municipalities in Yolo County. Since then the program has continued to show promising results. An independent evaluation in 2018 determined that NHC graduates were 37% less likely to recidivate than similarly situated individuals whose cases were resolved through other means. Consequently, the program has continued to broaden its eligibility criteria to include a wider array of misdemeanor offenses, and some felony level offenses, in an effort to extend the programmatic benefits to an even larger percentage of criminal justice involved individuals.

NHC prioritizes three major stakeholder groups; victims, defendants, and the local community. In implementing this program, we have strived to ensure that all parties involved benefited from the process. Our office does not take the responsibility of seeking justice for victims of crime lightly. When there is a direct victim in an NHC eligible case, they are consulted prior to the offer for diversion being made. Victims receive support throughout the process from dedicated advocates, are provided detailed information so they can make informed decisions, and can choose whether they feel this type of diversion is appropriate (with the exception of treatment-based diversion options), and whether/how they want to participate in the process.

Defendants too are supported throughout their participation. Enrollment is voluntary. Our office collaborates with the Public Defender's office to identify eligible cases and ensure participants receive sufficient information about their legal options. Staff members communicate with defendants after their enrollment and encourage successful completion. The Public Defender has also implemented staffing to assist participants through the process currently available for petitioning the court to seal their records following program completion.

NHC relies heavily on local participation as well. The conference process is completely staffed by volunteers who are trained in mediation skills and the principles of restorative justice. Program staff does not dictate or veto agreements so community volunteers carry the full responsibility for resolving criminal cases with those involved. This unique involvement not only allows community members to gain insight and play an active role in the criminal justice system, it also gives them a chance to deeply engage and affect change in their own communities on an

individual level. The benefits of diversion impact all three stakeholder groups and it is vital that we work to support them as we expand diversion to an increasing array of cases.

For victims, this means creating avenues for the collection of restitution which can be enforced without limiting the benefits of diversion. Victims often experience significant financial loss in the commission of crimes. As put forth in PC § 1202.4 (a)(1), “It is the intent of the Legislature that a victim of crime who incurs an economic loss as a result of the commission of a crime shall receive restitution directly from a defendant convicted of that crime. The choice to engage in an alternative means of resolution should not alter this right. However, diversion programs often have limited means to track and collect payment over longer time frames, and many defendants are unable to pay required restitution upfront or in a short period of time due to limited income or other socioeconomic restraints. This is especially true in felony level offenses which often involve larger monetary amounts, and may therefore effectively bar participation or reflect incompletely on actual engagement for participants with limited means. This de facto income limitation for certain offense types could be addressed by separating the collection of restitution from the diversion agreement. One solution might be to convert any unresolved payment to a civil judgment after a certain term. Such a mechanism would not negate a defendant’s right to participate in diversion, but would also allow victims a structured means of collection should full payment not be received.

For defendants, diversion often provides a second chance; an opportunity to accept responsibility, address problematic behavior, access resources that encourage insight and change, and make amends, all without the negative impact of a conviction on their record. Convictions can make obtaining gainful employment and even housing extremely difficult. Such barriers often lead defendants to return to criminal behaviors and perpetuate a cycle of legal repercussions. Diversion allows defendants to instead reengage positively with their communities and move forward. However, for many, the means for accessing the full benefit of record relief available to successful participants is unclear or confusing. Currently, penal code 851.87 (a)(1), allows that “In any case where a person is arrested and successfully completes a prefiling diversion program administered by a prosecuting attorney in lieu of filing an accusatory pleading,

the person may petition the superior court that would have had jurisdiction over the matter to issue an order to seal the records pertaining to an arrest and the court may order those records sealed as described in Section 951.92." The same benefit also applies to any "person who has suffered an arrest that did not result in a conviction" under PC § 851.91. Once sealed, the record is updated with notations indicating the arrest was sealed/relief granted and any "police investigative report related to the sealed arrest shall, only as to the person whose arrest was sealed, be stamped 'ARREST SEALED: DO NOT RELEASE OUTSIDE THE CRIMINAL JUSTICE SECTOR,'" (PC § 851.92). This provides participants with protection from many of the legal consequences of an arrest. However, the process required has an additional cost of $150, requires further court involvement (which seems especially frivolous in matters resolved prior to filing) and is not easily navigable for a lay person. Furthermore, as it relates to misdemeanor diversion, the benefits of sealing ones record are not clearly defined in comparison to the benefits of diversion alone as set forth under PC§ 1001.9, " Upon successful completion of a diversion program, the arrest upon which the diversion was based shall be deemed to have never occurred … except as specified in 853.87(b)." The penal code provides for some forms of relief to be automated through the Department of Justice. A similar mechanism, wherein diverted cases were automatically sealed two years after an entry of successful completion, might cement the benefits of participation in diversion for participants as well as defense counsel. Further, this would eliminate the potential for delays to successful reintegration in the community and thereby reduce the continuation of negative cycles of criminal justice involvement in our most vulnerable communities.

Truly restorative diversion is the wave of the future and the benefits of successful implementation are widespread. The need for reasonable and functional criminal justice reforms is undeniable. Alternatives to incarceration are what our communities are demanding and so desperately need. However, we cannot expect local agencies to do the hard work of enacting such programming without the support of the legislature and a mechanism for reliable and sustainable funding. NHC has benefitted from the pursuit of federal funding to enable staffing increases and program expansion. But grant funding is limited, cyclical, and subject to political

whim. It is not consistent and does not facilitate the creation of truly stable programming with room for longevity and foresight. Funding concerns absorb much needed staff time and curtail program capacity. The incorporation of socioeconomic, mental health, and substance abuse treatment supports in conjunction with criminal diversion, has also been a major push in recent years. These supports are vital and address some of the issues faced by those most vulnerable individuals in the criminal justice system. Without consistency in statewide program options, diversion approaches are often limited in their ability to address the needs of out-of-county participants. NHC has met with representatives from other counties, regions, and even other states – it is clear that the desire and motivation for change is there. However, the recurring theme is the challenge of funding to allow for the full implementation of programming desired. Often, programs that are brought to life are done so with severely limited options due to minimal staffing capabilities. Others face destabilizing programmatic insecurity and must answer to funding timelines rather than community needs. If the legislature were to authorize and enforce accessible and reliable funding opportunities, we would undoubtedly see program options proliferate. This redundancy would enable cross-county capacity to address the needs of participants in much the way that probation is supported statewide and able to transfer cases as needed to better address individual needs.

With an eye to the future of diversion and progressive criminal justice reform, NHC would point to three areas for targeted legislative reform to encourage the proliferation and successful implementation of alternatives to conviction and incarceration: restitution, record relief, and consistent funding opportunities. By enabling restitution to be collected civilly, you would remove a potential financial bar to successful participation in diversion without diminishing victim rights. In creating an accessible mechanism for automated record relief, you would ensure the benefits of diversion are experienced by all, regardless of financial means or understanding of legal procedure. And finally, by ensuring a means for consistent funding, you would enable the implementation of true statewide reform by providing a consistent resource thereby encouraging innovation across county lines and reducing the limitations posed by regional isolation and program singularity.

Staff Summary of Submission by Chief Probation Officers of California

John Keene is the Chief of Probation for San Mateo County, and Secretary/Treasurer for the Chief Probation Officers of California (CPOC), as well Chair of CPOC's Legislative Committee. In lieu of a submission from Chief Keene, CPOC submitted four documents for the Committee's consideration:

- A report from 2014 that gave an overview of the work of California probation departments, a history of recent changes in the law, and CPOC's plans for the future. (This report is titled "An Updated CPOC Adult Probation Business Model to Improve Criminal Justice Outcomes in California.")
- Two info sheets: "Probation: The Linchpin if California's Public Safety System," and "Probation in California." These documents explain the work that probation does and noting that 350,000 "adult felons [are] supervised by Probation — the most commonly used sanction in the criminal justice system." (No date was given for this data.)
- "Probation in California": An overview that notes that the "hallmarks of probation" are "innovation, local responsiveness, and targeted community engagement." It also explains that prior to SB 678 in 2009, which "sought to incentivize reduced revocations to state prison without implications for public safety and focus funding on local implementation of evidence-based practices in county Probation Departments," "40% of new admissions into California prisons — about 20,000 inmates — were offenders who had failed probation at the local level." (The report does not contain specific information updating this data, but notes that SB 678 has been successful.)

CHIEF PROBATION OFFICERS OF CALIFORNIA

Probation: The Linchpin of California's Public Safety System

Probation services are critical and unduplicated anywhere in our systems of criminal and juvenile justice. Unlike any other discipline, Probation bridges the critical intersection of accountability and treatment, improving public safety through decreased recidivism and linking the efforts of the courts, the community, and public safety. *Probation is the linchpin of an interlocking system between state and local government that provides the needed checks and balances to promote a better public safety system for all Californians.*

While probation officers are California peace officers pursuant to Penal Code 830.5, Probation Departments have a unique role in California because the probation infrastructure bridges the critical gaps between California courts, the communities we serve and both state and local corrections. Probation Departments are part of local county government and serve as an arm of the state court system, which allows for the hallmarks of probation - innovation, responsiveness and targeted community engagement – to be possible. Yet Probation Departments are also responsible for implementing, and the community engagement of, state reforms such as Juvenile Justice Realignment, SB 678, AB 109, and pretrial reform.

The results of probation's work are clear – a balance of accountability and evidence-based rehabilitation is the true way to protect public safety and prevent victims.

THE GOAL OF PROBATION IS TO PREVENT CRIME AND DELINQUENCY, REDUCE RECIDIVISM, RESTORE VICTIMS AND PROMOTE HEALTHY FAMILIES AND COMMUNITIES. PROBATION'S MULTI-DIMENSIONAL APPROACH TO COMMUNITY SAFETY INCLUDES:

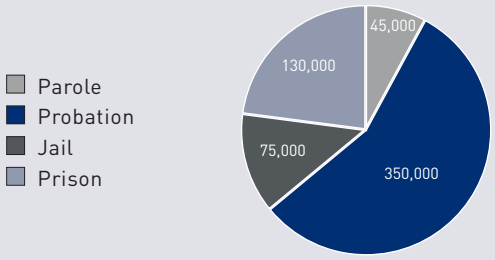
- **Holding clients accountable through community supervision.**
- **Preventing crime by changing criminal thinking.**
- **Objectively assessing the law and facts for individuals coming before the Court.**
- **Restoring victims and preventing future victimization.**
- **Rehabilitating our clients with evidence-informed strategies that change their behavior.**
- **Ensuring secure and effective detention services and successful reentry.**

EX 42

ADULT PROBATION

350,000

Number of adult felons supervised by Probation - the most commonly used sanction in the criminal justice system



80% of probationers received evidence-based programs or services

JUVENILE PROBATION

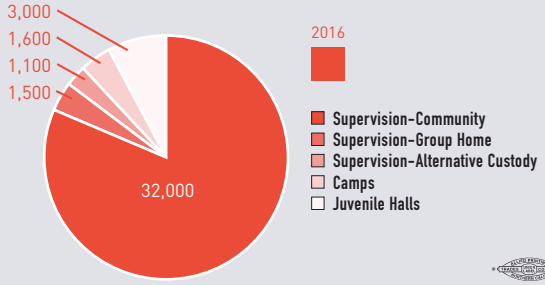
SINCE THE PASSAGE OF JUVENILE JUSTICE REALIGNMENT

60% decline in youth detention rates

73% decline in juvenile arrest rates

74% decline in DJJ institutional population

90% of Probation youth are supervised in the community



CHIEF PROBATION OFFICERS OF CALIFORNIA

PROBATION IN CALIFORNIA

WHAT IS PROBATION?

As a criminal justice sanction, probation is a tool that holds people convicted of crimes accountable and helps oversee their rehabilitation using evidence-based rehabilitation strategies. Evidence-based practices are supported by scientific research to reduce recidivism.

The goal of Probation is to prevent crime and delinquency, reduce recidivism, restore victims and promote healthy families and communities by doing the following:

- Administering research-based juvenile and adult probation programs.
- Making recommendations to the courts and enforcing its orders in communities by providing supervision and treatment for juveniles and adults.
- Overseeing the management, operation, programming, and administration of juvenile detention and rehabilitation facilities that promote positive behavior change.

ADULT PROBATION

Probation Departments are responsible for providing community-based supervision of adults convicted of felonies or misdemeanors either in lieu of incarceration or as a condition of release following incarceration. As a field of law enforcement, Probation in California is distinguished by its commitment to a research-based approach to public safety that promotes positive behavior change. Since 2011, Probation has the responsibility of supervising many offenders from the state prison and parole systems, categorized as individuals either on post-release community supervision (PRCS) or on Mandatory Supervision as part of their split sentences. Currently, felony probation accounts for about 85% of those on probation, 11% on PRCS and 4% on mandatory supervision.

JUVENILE PROBATION

Over the last decade, California has seen tremendous change and success with how it approaches youth in the juvenile justice system. In 2007, the passage of Juvenile Justice Realignment gave Probation Departments the resources necessary to expand investments into local rehabilitation services for youth and greatly enhanced evidence-based practices. This had a significant impact and led to a precipitous decline in juvenile detention rates and juvenile arrest rates. It also gave Probation the opportunity to decrease reliance on institutions and greatly enhance assessments to determine who can be safely treated in the community.

ADULT PROBATION

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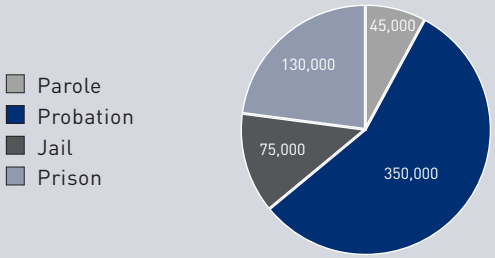
Number of adult felons supervised by Probation - the most commonly used sanction in the criminal justice system



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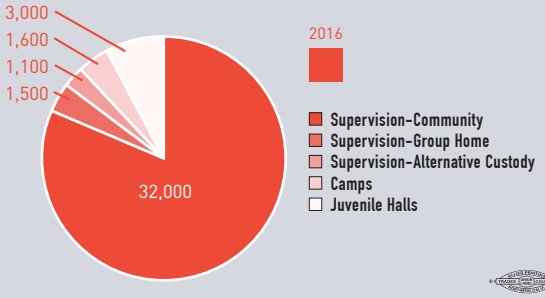

Probation in California

What is Probation?

While probation officers are California peace officers pursuant to Penal Code 830.5, Probation Departments have a unique role in California because the probation infrastructure bridges the critical gaps between California courts, the communities we serve and both state and local corrections. Probation Departments are part of local county government, which allows for the hallmarks of probation - innovation, local responsiveness and targeted community engagement – to be possible. Yet Probation Departments are also responsible for implementing, and the community engagement of, state reforms such as Juvenile Justice Realignment, SB 678, AB 109, and most recently SB 10. Probation protects the community, supports the court, assists victims and helps rehabilitate clients.

As a criminal justice sanction, probation is a tool that holds people convicted of crimes accountable and helps oversee their rehabilitation using evidence-based rehabilitation strategies. Evidence-based practices are supported by scientific research to reduce recidivism. The goal of probation is to prevent crime and delinquency, reduce recidivism, restore victims and promote healthy families and communities. Probation's multi-dimensional approach to community safety includes:

- Preventing crime by changing criminal thinking.
- Objectively assessing the law and facts for individuals coming before the Court.
- Holding clients accountable through community supervision.
- Restoring victims and preventing future victimization.
- Rehabilitating our clients with evidence-informed strategies that change behavior.
- Ensuring secure and effective detention services and successful reentry.

Adult Probation

- Over the last 10 years, California has seen tremendous change and success with how it approaches individuals in our criminal justice system. In 2010, the passage of SB 678 (The Public Safety Performance Incentives Act) established the first ever system of performance-based funding for Probation Departments when they demonstrated success in reducing the number of adult felony probationers going to state prison.

- SB 678 was the first of its kind policy approach in California and made historic and lasting impacts on California's prison population and the public safety system as a whole. The success of the policy has helped not only impact the state system but also has helped lead the evolution in probation practices and culture.
- In 2011, the passage of Criminal Justice Realignment (AB 109) began to give Probation Departments the investment necessary to further build the framework and infrastructure for local services and supports to clients and greatly enhanced infrastructure for evidence-based practices.
- These historical state-level investments into local probation has built the foundations for a public safety system that safely invests in rehabilitation and helps decrease reliance on the state prison system.
- A distinctive of probation is our leadership and reliance on data, research and evidence-based practices to guide true and lasting public safety. While there is a role for graduated sanctions, we believe the best way to protect public safety is to help people returning to, and living in, our communities, to become healthy members of society through research-based rehabilitation strategies.
- Probation Departments are responsible for providing community-based supervision of adults convicted of felonies or misdemeanors either in lieu of incarceration or as a condition of release following incarceration. As a field of law enforcement, probation in California is distinguished by its commitment to a research-based approach to public safety that promotes positive behavior change.
- Since the passage of AB 109 in 2011, probation has the responsibility of supervising thousands of offenders from the state prison and parole systems, categorized as individuals either on post-release community supervision (PRCS) or on Mandatory Supervision. In our most recent data, probation supervises 40,017 PRCS offenders, 12,519 on Mandatory Supervision, and 255,836 on formal felony probation. There are approximately 355,000 adults supervised by probation throughout California.

<u>Juvenile Probation</u>

- Over the last decade, California has seen tremendous change and success with how it approaches youth in the juvenile justice system. In 2007, the passage of Juvenile Justice Realignment gave Probation Departments the resources necessary to expand investments into local rehabilitation services for youth and greatly enhance evidence-based practices. This had a significant impact and led to a precipitous

60% decline in juvenile detention rates and 73% decline in juvenile arrest rates. It also gave probation the opportunity to decrease reliance on institutions and improve assessments to determine who can be safely treated in the community. Approximately 40,700 youth are served by Probation Departments with roughly 90% of those youth being safely served in the community.

- Often youth on probation are dealing with multiple challenges. It is probation's duty to assess the youth's needs and make recommendations to the court. Probation's role is to prevent entry into the adult system by reducing juvenile recidivism; to heal and reconnect families; and to respond to youth behavior with interventions that reduce re-offense and teach youth healthy and positive tools for dealing with adversity.

- Probation Departments operate 112 juvenile halls, camps and/or ranches across the state, which can be found in 49 of the 58 counties. Approximately 4,600 youth are in these facilities.

- Probation offers a range of services to youth served in secure detention settings and in the community including multi-systemic therapy, cognitive behavioral therapy, wraparound services, aggression replacement training, referrals to mental health and/or substance use disorder treatment, and vocational and educational programming among others.

Major State Reforms Implemented by Probation

California Community Corrections Performance Incentives Act of 2009 (SB 678)

SB 678 sought to incentivize reduced revocations to state prison without implications for public safety and focus funding on local implementation of evidence-based practices in county Probation Departments. This legislation and incentive funding have tremendously improved probation services, specifically the use of, and infrastructure for, evidence-based programming. It has also improved longer-term changes to the way probation operates and how violations of probation are handled. Prior to SB 678, 40% of new admissions into California prisons – about 20,000 inmates – were offenders who had failed felony probation at the local level.

Improving outcomes for this population of offenders improves public safety and reduces the prison population. This legislation has not only had a positive impact on recidivism

but has also been a catalyst for lasting successful outcomes for offenders – the true way to safer communities. SB 678 has been hallmark legislation to show how state policy can use incentives to reduce revocations and spur positive change in diverse localities. SB 678 gave the needed resources to county Probation Departments to use evidence-based supervision practices to accomplish these goals.

AB 109: Criminal Justice Realignment

In 2011, Governor Brown signed AB 109 to realign certain responsibilities for lower-level offenders, and adult parolees, from state to local jurisdictions. Under Realignment, newly-convicted low-level offenders without current or prior serious or violent offenses stay in county jail to serve their sentence. Local Probation Departments took on the responsibility for monitoring these offenders upon release as well as offenders with certain offenses who are released from state prison. Overall, this resulted in a population decrease of about 25,000 in California state prisons.

The Chief Probation Officer is the Chair of each county's realignment committee that directs AB 109 funding within the county. Probation has been successful at leveraging these state dollars to improve the entire criminal justice system and building infrastructure needed to provide evidence-based rehabilitation and services.

SB 81: Juvenile Justice Realignment

Juvenile Justice Realignment in 2007 shifted the responsibility for 98% of juveniles to county Probation Departments. During this period, Probation Departments have worked hard to divert youth from our detention settings through a myriad of services and programs tailored for youth and/or their families and by partnering with community-based agencies. The result of successful diversion from detention facilities has led to the youth who are sent to our facilities being of the highest risk to public safety and/or to themselves and who have the highest needs. This effort reserved the state Division of Juvenile Justice (DJJ) for those youth who have been found to commit the most serious of offenses or require specialized programming like sex offender treatment.

Probation's Role with Foster Youth

County Probation Departments work diligently to keep youth with their families whenever possible and reserves recommendations for foster care for those situations wherein a youth does not need to be in a secure setting but they require the intensive services, supports and supervision that are able to be provided to the youth via a group home or Short-Term Residential Treatment Program (STRTP). There are additional

youth between the ages of 18 and 21 being served by Probation Departments in the Extended Foster Care Program also known as AB 12.

As part of our role with probation youth in foster care, CPOC has been implementing the Continuum of Care Reform (CCR). CCR emphasizes the importance of utilizing home-based family care when youth are placed into foster care and reserving placement into STRTPs in lieu of group homes. Further, it requires the creation of child and family teams in an effort to build lasting natural supports for the youth and family that will exist beyond the youth's involvement with the juvenile justice system.

SB 10 Implementation (Pending)

Senate Bill 10 (Hertzberg, Stats. 2018, Ch. 244) authorizes a change to California's pretrial release system from a money-based system to a risk-based release and detention system. SB 10 assumes that a person will be released on his or her own recognizance or supervised own recognizance with the least restrictive nonmonetary condition or combination of conditions that will reasonably assure public safety and the defendant's return to court.

As experts in assessing and mitigating risk, we believe SB 10 gives a good framework to a pre-trial system that will maximize public safety, maximize return to court and mitigate the highest risk.

SB 10 utilizes evidence-based validated risk assessments. Risk assessments are an additional tool in a series of considerations to allow the courts to make an educated decision on pre-trial release using a scientifically proven way to understand the risk factors of an individual rather than simply subjective opinions.

Probation has the experience and expertise in assessment that will be critical to make this reform good for public safety and allow as few disruptions to positive social engagement for low risk offenders.