

July 16, 2020

First Supplement to Memorandum 2020-8

**Short Sentences:
Panelist Materials**

Memorandum 2020-8 gave an overview of short sentences of incarceration, the topic for the July 23–24, 2020, meeting.

This supplement presents and summarizes written submissions from the panelists scheduled to appear before the Committee on July 23.

Exhibit

Measuring Recidivism Outcomes Across Sentencing Types in California

Professors Mia Bird & Ryken Grattet.....A

Perspectives on Serving Sentences in Jails and Prisons

James King, Ella Baker Center.....B

Max Huntsman, Inspector General, Los Angeles CountyC

Aaron Fischer, Disability Rights CaliforniaD

Bridget Cervelli, Legal Services for Prisoners with Children.....E

Administering Short Sentences

Butte County Sheriff Kory L. Honea.....F

Charles Callahan, CDCR, Deputy Director (A), Facility Support.....G

Discussion Panel 1

Measuring Recidivism Outcomes Across Sentencing Types in California

Mia Bird, Visiting Assistant Professor, UC Berkeley Goldman School of Public Policy

Ryken Grattet, Chair and Professor, UC Davis Department of Sociology

Professors Mia Bird and Ryken Grattet will present recent research about recidivism outcomes in California following 2011’s Public Safety Realignment and 2014’s Proposition 47. See Ex. A. The research is particularly helpful as it appears to be the first time that recidivism outcomes from jail and probation sentences were compared to outcomes from state prison sentences. The research made two findings: post-realignment, people were rearrested more, but convicted less

compared to before realignment. *See* Ex. A, Figure 1. This finding was generally true across the different types of sentences examined. The second finding was that people sentenced locally generally had higher rearrest but lower conviction rates than people sentenced to prison. *See* Ex. A, Figure 2.

Discussion Panel 2 Perspectives on Serving Sentences in Jails and Prisons

James King, State Campaigner for the Ella Baker Center for Human Rights

James King will discuss his experience with CDCR's rehabilitative programs. *See* Ex. B. In addition to describing the life-changing impact that a program on processing childhood trauma had for him, Mr. King describes long waitlists for programming, including at San Quentin, where one of his jobs was helping people sign up for programming. To address these issues, Mr. King suggests that CDCR establish specialized housing and programming for people with shorter sentences. Mr. King also proposes that pre-trial diversion be expanded so that population likely to serve short sentences is not incarcerated in the first place.

Max Huntsman, Inspector General for Los Angeles County

Max Huntsman has been the Inspector General for Los Angeles County since 2013 and his office, among other responsibilities, monitors conditions at the Los Angeles County jails. Mr. Huntsman will describe some of the conditions at the jails, including recurring problems with medical care, particularly during intake. *See* Ex. C. His office has also provided information about the number of people serving sentences at the jails, which, as of July 9, 2020, is more than 1,200 people, most of which have been classified at lower security levels (65% low security; 30% medium; 5% high). Mr. Huntsman notes that while rehabilitative opportunities in the jails have expanded since Realignment, there is no specialized programming targeted at people serving jail sentences, and people serving jail sentences are housed through the county jail system and mixed with people detained pre-trial.

Aaron Fischer, Litigation Counsel at Disability Rights California

Aaron Fischer has extensive experience litigating and monitoring jail conditions throughout California, as well as mental health treatment at CDCR prisons. Mr. Fischer describes the lack of accommodations for people with disabilities, persistent failings in mental health care, and dramatically higher suicide rates that occur in some jails in California. *See* Ex. D. He urges the Committee to explicitly consider how its recommendations will impact people

with mental health issues and intellectual/developmental and other disabilities, encourages the expansion of credit-earning and work release opportunities in jails, and proposes that any Committee proposals include a recommendation that they be made retroactive.

Bridget Cervelli, Senior Staff Organizer at Legal Services for Prisoners with Children

Bridget Cervelli will discuss her experience being incarcerated at multiple jails around Northern California, including serving a jail sentence in San Luis Obispo. *See Ex. E.* She was ultimately released to a residential drug treatment program and will discuss how different jails addressed people with substance abuse issues.

**Discussion Panel 3
Administering Short Sentences**

Butte County Sheriff Kory L. Honea, California Sheriffs' Association Second Vice President

Sheriff Kory L. Honea has been the sheriff of Butte County since 2013 and is the current Second Vice President of the California Sheriffs Association. His submission describes issues with running a jail that incarcerates people serving jail sentences. *See Ex. F.* Sheriff Honea notes that funding for realignment-related projects and services at the county level has declined for the first time because of a decline in sales tax revenue. Some state funding was also provided to build more space for rehabilitative programming and medical care but many counties are still planning this type of construction.

Despite this lack of space, Sheriff Honea notes that education, vocational, and other programming is available at jails around the state. Realignment has also brought what Sheriff Honea describes as more sophisticated and violent populations to the jails and, as a result, assaults on both staff and incarcerated people have increased across the state. Sheriff Honea also notes that counties use alternative custody programs such as county parole and electronic monitoring to help manage jail populations and to alleviate overcrowding.

**Charles Callahan, California Department of Corrections and Rehabilitation,
Deputy Director (A), Facility Support – Division of Adult Institutions**

Charles Callahan is Acting Deputy Director of Facility Support for the California Department of Corrections and Rehabilitation's Division of Adult Institutions. He will address how CDCR classifies incarcerated people to decide where they should live and what programs may be appropriate. *See* Ex. G. Classification begins when an incarcerated person arrives at a Reception Center from county jail and continues with a Unit Classification Committee (UCC) when that person is transferred to general population. Mr. Callahan's submission also includes a list of currently available programs at CDCR.

Respectfully submitted,

Thomas M. Nosewicz
Senior Staff Counsel

Exhibit A

Professor Mia Bird &
Professor Ryken Grattet

Felony Sentencing and Recidivism Outcomes in California

Mia Bird, University of California, Berkeley

Ryken Grattet, University of California, Davis

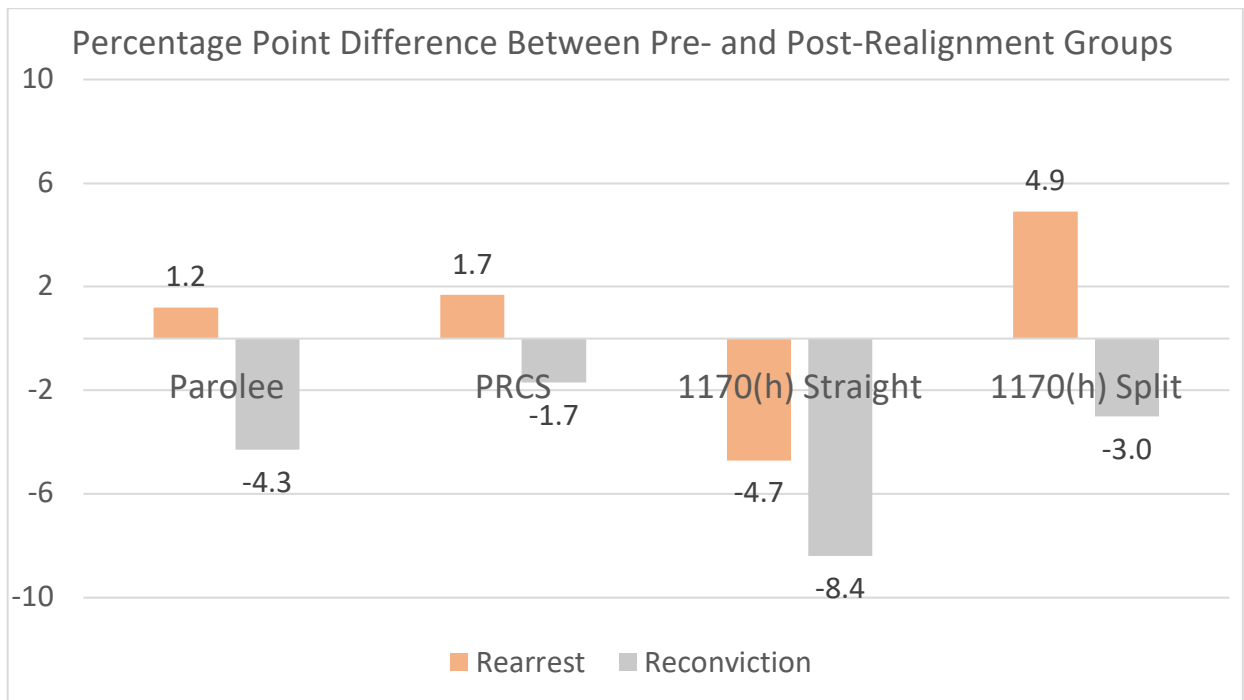
Over the past decade, California has undertaken a series of criminal justice policy reforms that fundamentally restructured felony sentencing and led to substantial reductions in incarceration. These reforms have aligned county interests with state goals and emphasized the use of data-driven, evidence-based practice to reduce recidivism.

Decade of Reform: In 2009, the State passed SB 678, which incentivized probation departments to implement evidence-based practices to improve reentry outcomes and reduce revocations to prison. This policy reform demonstrated early success and two years later – in the midst of a budget crisis and under court mandate to reduce prison overcrowding – the state enacted Public Safety Realignment. Realignment shifted correctional responsibility for lower-level felony offenders from the state to the counties by restructuring sentencing rules to limit prison admissions to more serious felons and ending the option of a revocation to prison for most offenders. The prison population decreased dramatically following Realignment and, while jail populations increased in response, overall incarceration rates fell in California. Three years later, Proposition 47 – enacted by voters – further reduced incarceration rates by limiting the charge level to misdemeanor for a specific set of lower-level property and drug offenses.

Building a Criminal Justice Data Infrastructure: These policy reforms presented a unique opportunity to improve our understanding of how changes in felony sentencing affect recidivism outcomes. However, efforts to understand the effects of policy on criminal justice populations and outcomes have been limited by a lack of data in California. Our criminal justice system is highly decentralized, with CDCR holding prison data, DOJ holding statewide arrest and conviction data, and 58 county criminal justice systems holding jail, probation, district attorney, and court data. Between 2013 and 2017, we partnered with these state agencies and a group of 12 counties representative of the state population to build a criminal justice data infrastructure that would allow us to evaluate the effects of these state policy reforms. Drawing on this data infrastructure, we monitored changes in felony populations and recidivism rates, and we evaluated the effects of policy changes on recidivism outcomes.

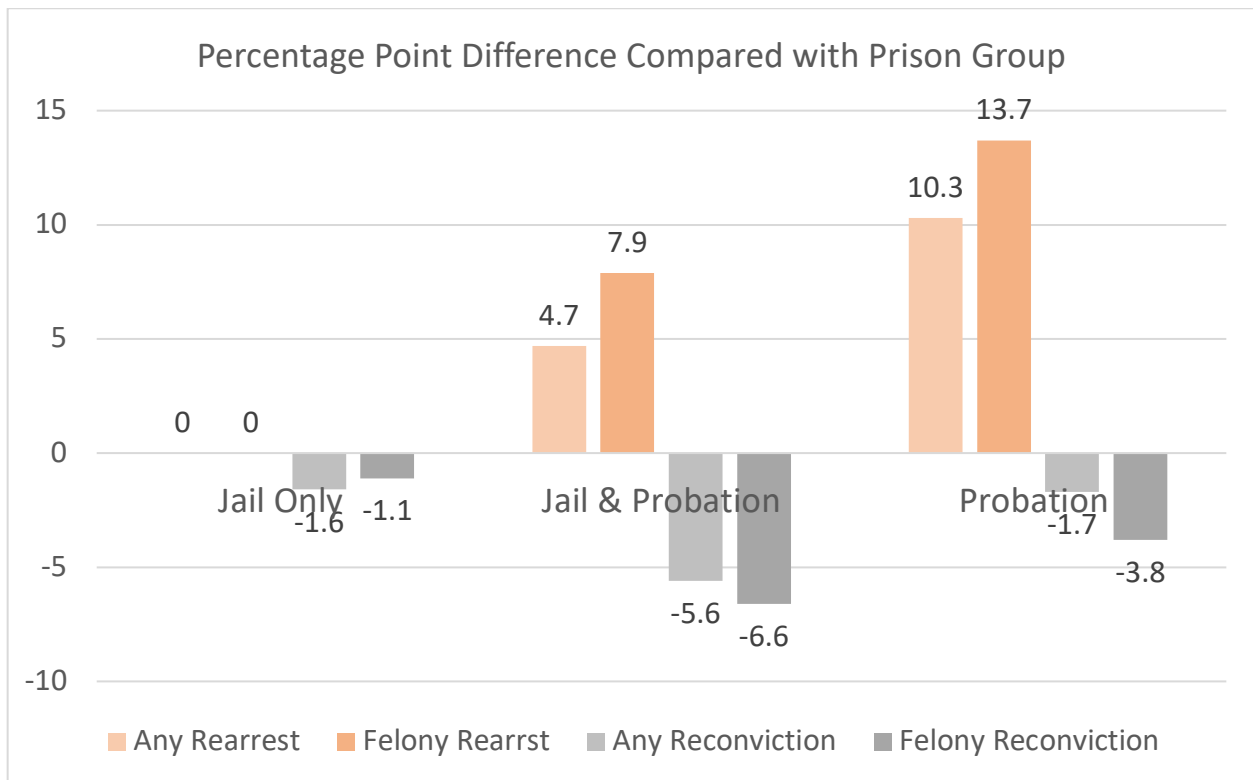
Relationship Between Sentence Type and Recidivism Outcomes: We have two studies that examine the relationship between sentencing and recidivism. The first study evaluates the effects of Realignment on recidivism for four felony groups: Parolees, PRCS, 1170(h) Straight-sentenced, and 1170(h) Split-sentenced. Adjusting for differences in characteristics, we compare outcomes for these individuals to those of their pre-realignment counterparts. We find most post-realignment groups generally had higher rates of rearrest, but all had lower rates of reconviction. The second study focuses on all felony offenders released to the community during the four years following realignment. Adjusting for differences in characteristics between sentencing groups, we compare the recidivism outcomes of those sentenced to prison and those sentenced locally. We find consistent results – the locally sentenced groups generally have higher rearrest rates but lower reconviction rates.

Figure 1. Effects of Realignment on Two-year Recidivism Rates



Source: Multi-county Study (MCS) data, 2009 – 2017

Figure 2. Relationship Between Felony Sentence and Recidivism Outcomes



Source: Multi-county Study (MCS) data, 2011 – 2017

Exhibit B

James King, Ella Baker Center

**Written Submission of James King, Ella Baker Center
for Committee on Revision of the Penal Code
July 23, 2020**

After my arrest, for 2nd degree robbery in 2004, I spent the first year of my incarceration in county jails in San Diego County. During that time, I transferred back and forth between two jails. Neither offered self help programming, though I did attempt to gain acceptance into “Delancey Street,” a rigorous substance abuse program that was sometimes promoted as an alternative to a prison sentence.

In 2005, I was sentenced to thirty years to life under California’s Three Strike law. Less than a week later, I was sent to RJ Donovan, for intake into the California state prison system. It took about five months for me to be classified and for me to be assigned to what is known as a “mainline yard,” which is a prison with security-level appropriate housing, recreation yard, and programming. Though my time in intake was five months, this was partially due to the length of my sentence which meant I first had to be assigned to live at a maximum security prison. The majority of time was spent waiting for a bed to open up in the prison I’d been assigned to. Typically, people with shorter sentences were deemed lower security risks and assigned to yards with higher turn over of residents. Those with sentences of five years or less tended to spend three to four months before being assigned to a mainline yard. During my time in intake, or “reception” as it is known, self help programming was not available.

Between 2005-2009, I resided at two maximum security prisons. The first, Calipatria State prison only offered Alcoholics Anonymous and Narcotics Anonymous. The second prison, CSP-Lancaster offered the above mentioned programs and an additional one on processing childhood trauma. The latter program was instrumental in my healing, and changed my life. It gave me the tools to combat shame I felt over my criminal activities, and helped me understand why I acted in harmful ways.

As my security level dropped, I was transferred to California Men’s Colony-East, which is also known as CMC-East. I resided there from 2009-2013. CMC-East is categorized as a medium security prison. At that prison, there were less than four self help programs available for people, unless they were participants in the CDCR’s mental health program. For those in the mental health program, there were a whole range of programs, ranging from anger management and substance abuse, to programs that taught how to balance a budget, or seek a job once released. Though these programs would have been beneficial for most people incarcerated at that prison, space and capacity would not have allowed more widespread participation, even if enrollment criteria were loosened.

From May 2013 to December 2019, I was at San Quentin. One of my responsibilities there was to help people sign up on the waiting lists for self-help programming. I served in that role from 2016-2019, which was pre Prop 57, and post. Prop 57 increased the amount of time someone could get for completing certain programs and created new credit earning possibilities. For

example, Prop 57 allows people to earn time off of their sentences for earning a trade, getting a GED, or a degree in higher education. It also creates credit earning incentives for participating in anger management programs, substance abuse programs, restorative justice and criminal thinking programs and more. The current regulations allow prisons to partner with community based organizations to offer in person programs, monitor the incarcerated person's attendance and participation, and award time off of their sentences based upon previously determined benchmarks.

As the emphasis on offering self help programming is relatively new, most prisons, including San Quentin, struggle with finding space to hold classes on a larger scale basis. Most institutions repurpose daytime education classrooms, and even chapels and dining halls into spaces to offer self-help programming during the evening hours. It's important to note that this has also affected CDCR staffing levels as well. As these spaces are converted into rooms for self-help programming, additional correctional officers are then assigned to oversee those areas.

Prior to Prop 57's passage, self-help programs were mostly attended by people with indeterminate sentences. Reasons for this are numerous, but among them were the desire to focus on self improvement as a means of having a meaningful life while serving a life sentence, and learning the skills needed to demonstrate suitability for release to the Parole Board. Prop 57 created a new incentive for people who had determinate sentences to participate in self-help programming as well, by offering opportunities for people to earn time off of their sentences.

As a result of increased demand and scarcity of space, prisons have struggled to meet the demand of people seeking self-help programming. Over the years I held the role of signing people up for self-help programming, the waiting lists of various credit earning groups grew to more than a year, and often to several years. For example, in 2019, the waiting list for the Victim Offender Education Group (VOEG) at San Quentin was 6 ½ years long. These waiting lists were pre-COVID, and therefore may grow exponentially worse now. Currently all in-person self help programming and education is paused indefinitely within state prisons, and it seems likely that acceptable occupancy rates for the classrooms in which self-help programming occurs will likely decrease.

Level 2 prisons, like the one I was working at, are a mix of people with life sentences (level 2 is the lowest security level they can live at) and people with much shorter sentences. There was no availability for people who were 18 months or less to their sentences. Invariably, the long waiting lists "privilege" the lifers. Many of the people with 18 months or less, are therefore unable to access rehabilitative programming prior to their release dates.

Potential solution include:

The below listed solutions are meant to address the new reality of a pressing need to reduce overall occupancy rates within state prisons. It seems clear that, going forward, solutions that reduce the incarceration of people with non violent, non serious crimes within our state prisons

will reduce the overall strain on the prison system itself. Therefore, I'm proposing an emphasis on a shift to offering more self-help programming preconviction (in county jails) and moving community based programming into the community itself.

- A combination of self-help programming offered either in the county jail, or the community, based upon if a person qualifies for bail. Models include Common Justice in Brooklyn, NY. This is a restorative justice program that centers survivors' needs and creative solutions for people responsible for harm to make amends. Other alternatives include expanding funding for Sober living homes and programs for people, even prior to conviction, with the caveat that, if convicted, any credit earning would be applied retroactively.
- Diversionary programs for people who receive sentences of two years or less. Ideally, since these are typically non violent non serious convictions, it would be without wasting resources on electronic monitoring. Instead, a social worker could craft a plan to address factors, like drug use or criminal thinking for example, that led to the conviction. The idea would be to divert these incidents from the criminal justice system into social work resources, with the goal of expanding social justice while reducing the footprint of the criminal justice system.

Other proposals for people who are sent to prison yards include:

- Separate programming on mainline yards for people with shorter sentences. Since short sentences are usually indicative of non violent, non serious crimes, certain types of programming can be targeted. Basically, this would be the same prison facility that people who are deemed low security risks are already sent to. Currently, these yards tend to be a mix of people with short sentences, and those who are at the end of long sentences, or lifers who have arrived at the lowest security level housing they can live at. In this proposal, there would be select programs specifically for people who have less than two years until release.
- Alternatively, people sentenced to less than 3 years could have a separate programming yard devoted to them. This yard would have high turnover due to shortened sentences, which would then mean shorter waiting lists for self help programs.

Exhibit C

Inspector General Max Huntsman, Los
Angeles County

Since the pandemic began, the Los Angeles jail population has been reduced from roughly 17,000 to roughly 12,000. Reduced arrests followed by the “zero bail” schedule were the primary drivers, but many non-violent offenders were also released. Despite the presence of many more non-violent prisoners in custody, the Sheriff has announced that he will not further reduce the population. The Bureau of State and Community Corrections rates Los Angeles jails’ maximum capacity at roughly 12,000 under non-pandemic conditions. Most prisoners are housed in dormitory or other settings where social distancing is impossible. Close to three thousand prisoners have been confirmed to have contracted COVID-19. Most days, more than 100 people are received in the jails and more than 100 are released, resulting in significant transmission in custody and out. COVID-19 is also not the first communicable disease outbreak in the jails. In 2019, prisoners in several housing locations contracted the mumps.

Medical care in Los Angeles jails is challenging as well. Before the pandemic, the jail had difficulty medically evaluating new prisoners in a timely manner, resulting in mentally ill patients being chained to benches for lengthy periods, in some cases in excess of twenty four hours (*see Review of the Inmate Reception Center Intake Evaluation Process*, November 2019, oig.lacounty.gov). Medical care for prisoners, including continuation of community medication regimens and identification and treatment of medical needs in custody, has also been inconsistent. Internal reviews following jail deaths regularly find shortcomings in care and patient/prisoner safety checks. Appropriate housing for the nearly 5,000 mentally health patients is rationed and staffing shortages regularly impede the provision of adequate medical and mental health care. These problems existed long before the pandemic and have not been aided by the shift in population resulting from AB 109, which came about only after years of federal litigation regarding substandard prison medical care.

AB 109 Prisoners in Los Angeles County Jail

As of July 9, 2020, the Los Angeles Sheriff’s Department (LASD) housed 1,228 AB 109 prisoners in its eight jail facilities. As of the same date, the average length of stay for AB 109 prisoners was 216 days. LASD does not offer specialized housing or programming tailored to the AB 109 population.

The Los Angeles jail system includes eight facilities and one wing of the local County hospital. Although LASD has expanded rehabilitative opportunities offered in the jails over the past ten years, no facilities were designed to house prisoners long-term or to provide the services and programs offered in state prisons.

Total AB 109 Population by County Jail Facility--July 9, 2020

Jail Facility	Total
Men’s Central Jail	335
Twin Towers Correctional Facility	106
Century Regional Detention Facility	175
North County Correctional Facility	260
Pitchess Detention Center – North Facility	95
Pitchess Detention Center – South Facility	225
Pitchess Detention Center – East Facility	29
County Hospital	2
Inmate Reception Center	1

Housing and programming opportunities vary widely between and within each facility. Privileges and programming opportunities depend primarily on a prisoner’s assigned security level classification. Most facilities house all security level classifications, but some facilities allow for increased programming for low- and medium-security level prisoners.

Prisoners are classified based on a nine-level, three-category (low-, medium-, and high-security) system, with each increasing level requiring heightened supervision and restrictions on privileges including access to jail programming. The calculation is based on a person’s criminal history, current charges, and history of jail rules violations. Security classification levels are re-evaluated every 45 days and are adjusted to account for current institutional behavior, so they may fluctuate throughout a person’s period of confinement. With the exception of prisoners with problematic institutional behavior, AB 109 prisoners are serving non-violent, non-serious, non-sexual felony sentences and tend to have low-security classifications.

Security Classification of the AB-109 Jail Population--July 9, 2020

Low Security (1-4)	793
Medium Security (5-7)	376
High Security (8-9)	59

Program Opportunities

Educational opportunities and other privileges are typically more widely available to low- and medium-security level prisoners; high-security level prisoners receive limited rehabilitative programming and out-of-cell time. Within the LA County jails, AB 109 prisoners must navigate the same county processes required of other prisoners to access services. Those with good institutional behavior tend to have more access to programming and case management that better supports reentry than those with histories of rules violations/higher security classifications.

Other programming includes opportunities to work, attend school, take part in substance abuse treatment, and, for mothers, bond with newborn children. Male-only programs tend to have more variety of available vocational opportunities, work opportunities and educational classes; however, both male and female programs include classes on parenting skills, life skills, and re-entry planning. The LASD offers “gender-responsive programming” to female prisoners which includes pre- and post-natal services for new and expecting mothers. Programs offered in mental health housing tend to focus less on re-entry and more on basic life skills, mental health care management, and medication compliance.

Participation by AB 109 prisoners tends to be higher in programs like Back on Track, which is a state program built to provide more holistic education, support and case management than traditional re-entry programs. AB 109 prisoners also tend to make up a significant portion of prisoner workers at all facilities and particularly lower security facilities. However, with fewer programming opportunities than males, female AB 109 prisoners report that there are significant wait times for housing where meaningful educational programming is offered. Once prisoners are able to access programming, they tend to participate in the full range of classes and programs offered.

Generally, AB 109 prisoners consistently report that programs in the LA County jails lack opportunities, resources or informational liaisons specific to those with AB 109 sentences. Moreover, AB 109 prisoners

commonly complain that they must spend more money for commissary within the jails, pay more for phone calls and have less access to in-person contact visits than in state prison, although visiting has been further limited by Covid-19.

General Descriptions of Jail Facilities

Because there is no specialized programming for AB109 prisoners, they are housed throughout the County jail system. Below is a general description of each jail facility and the different housing types in each.

- Men's Central Jail (MCJ) is one of the oldest jail facilities in California built on a linear model. Linear design models have since been empirically associated with increased frequency of contraband, coercion of other prisoners, assault, rape, suicide and homicide. Despite its structural weaknesses, MCJ has historically housed the most violent and complex prisoners as well as a few special populations such as medical patients, gay and transgender persons and those charged with sex-related crimes. Some AB 109 prisoners here are in high-security housing, which is restrictive housing with few services and minimal time out of cell. Others are interspersed throughout the facility and have varying program opportunities depending on where they are located. Given the resource and space restrictions in the facility, prisoners there typically receive only minimum Title 15 requirements, including only three hours per week in a yard and showers every other day.
- Twin Towers Correctional Facility (TTCF) is the nation's largest mental health facility. Due to recent reforms meant to identify and treat more mental health patients (designated with "M" classification), patients occupy around twelve of the fourteen floors in the main building, which does not include the adjacent in-patient hospital for those in need of emergency medical or mental health treatment. AB109 prisoners with an "M" classification tend to get more case planning for community placement, although it is not guaranteed. Placement for AB 109 prisoners is not prioritized over that of others in custody. Programming opportunities at TTCF, especially rehabilitative services, are few, especially for acutely mentally ill prisoners. There are a few exceptions for specialized programs focused on medication compliance for those exiting in-patient mental health care.
- Century Regional Detention Facility is the primary women's facility in Los Angeles, which houses all security levels including those with an "M" status. Access to educational programming and housing is limited, therefore many AB 109 prisoners must endure long wait times to access educational and rehabilitative programs. Moreover, opportunities for AB 109 prisoners to work are primarily limited to the needs of the kitchen, laundry and maintenance of housing locations. (In male facilities, work opportunities are much broader and include more vocational programs wherein a person in custody can work off their time.) The Sheriff's Department has greatly expanded upon gender-responsive programming in recent years, including specialized policies and programming for pregnant women and new mothers; however, AB109 prisoners report that these programs still provide less contact with families than those offered in state prison, including contact visits.
- The Inmate Reception Center does not have permanent housing, only temporary housing, and is used to process persons into and out of the facility.

There are four facilities at Pitchess Detention Center (PDC), about 40 miles north of Los Angeles. Three of those facilities are smaller facilities with more open campuses housing lower security levels. At PDC, AB109 prisoners have access to the widest array of work and educational programming.

- At PDC North Facility, configuration of the facility allows for persons in custody to get more than three hours in a yard per day. PDC East Facility is used solely to house persons taking part in Fire Camp which is firefighting training for the State of California. Many AB109 prisoners take part in that program due to their longer sentences and the privileges afforded to those in the program (The training facility offers an open campus for exercise and other activities). At PDC South Facility, almost all prisoners are taking part in education classes or working to reduce their time.
- North County Correctional Facility (NCCF) is the largest facility at Pitchess Detention Center and was built as a “super max” facility common in the 1990s. Although MCJ continues to hold LA County’s most dangerous persons in custody, many people in custody at NCCF have high security level classifications. Many prisoners housed at NCCF in the 700 and 800 buildings have no meaningful access to educational or rehabilitative programs due to their high-security classification.

Exhibit D

Aaron Fischer, Disability Rights California



Written Statement for the Committee on Revision of the Penal Code

Aaron J. Fischer, Esq.

Meeting Date: July 23, 2020

On behalf of Disability Rights California (DRC), I appreciate this opportunity to provide our input to the Committee on the Revision of the Penal Code, during what is a historical moment infused with both urgency and opportunity.

DRC is the state's designated protection and advocacy system, charged with protecting the rights of people with disabilities.¹ DRC has special authority under state and federal law to conduct investigations of possible abuse or neglect of people with disabilities, to provide information and training on disability rights issues, and to advocate for the rights and safety of people with disabilities.²

Since 2016, I have led and participated on DRC teams that investigate conditions in California county jails and detention facilities, with a particular focus on the treatment of people with physical, sensory, and psychiatric disabilities as well as serious medical conditions. These investigations have occurred in systems of varying sizes, including Alameda County Jail, Orange County Jail, Sacramento County Jail, San Diego County Jail, Santa Barbara County Jail, Sonoma County Jail, and the Adelanto Immigration Detention Center.

Our investigations involve on-site tours, interviews of staff and people who are incarcerated, examination of policies, and reviews of individual custody and health care records. Through our statutory authority, we are also able to review non-public records, data, and other materials relevant to our investigation. We are able to take photographs of the facilities, some of which are included in this document.

¹ Welf. & Inst. Code § 4900; 42 U.S.C. §§ 10802(1) & (5); 42 C.F.R. § 51.2.

² Welf. & Inst. Code § 4902(b)(2); 42 U.S.C. § 10805(a)(3); 42 C.F.R. § 51.42(b).

Statement to Committee on Revision of the Penal Code

Aaron Fischer, Disability Rights California

Meeting Date: July 23, 2020

Page 2 of 7

Based on our investigations of detention facilities, we have produced reports with findings and recommendations to address identified deficiencies.³ DRC also serves as class counsel in multiple class action lawsuits challenging unlawful and unconstitutional conditions of confinement in county jail systems.⁴

Having observed conditions in California's jails and heard hundreds of individual stories about the experience of incarceration, I am heartened to see this Committee's effort to turn the page with reforms to our State's criminal system. I must acknowledge that many believe that "turning the page" is not enough, and that we should instead be "burning the book." That perspective is in many ways supported by the horrific social, economic, and physical harms that California's criminal law and carceral systems have inflicted. This is a moment to act with urgency and creative vision.

I begin with the experience of one man among the tens of thousands of people incarcerated in California. Lorenzo is a young man diagnosed with serious mental illness and an intellectual disability. He was charged and imprisoned following an incident in which he was allegedly present in a car when others with him got out of the car and killed another man. Lorenzo spent more than eight years in county jail awaiting trial, having been repeatedly found incompetent to stand trial. His co-defendants went to trial long before. Of those convicted, at least one had already been released on parole while Lorenzo remained a pretrial detainee.

Lorenzo's time in jail was spent almost exclusively in solitary confinement. Permitted just a few hours out of his cell per week, Lorenzo experienced auditory hallucinations, depression, severe anxiety, and suicidal thoughts. He received no meaningful mental health treatment.

³ See, e.g., [*Suicides in San Diego County Jail: A System Failing People with Mental Illness*](#), Disability Rights California (April 2018); [*There is No Safety Here: The Dangers for People with Mental Illness and Other Disabilities in Immigration Detention at GEO Group's Adelanto ICE Processing Center*](#), Disability Rights California (March 2019); [*The Cruel and Unusual Use of Restraint Chairs in California Jails*](#), Disability Rights California (June 2020).

⁴ See, e.g., *Mays v. County of Sacramento*, Case No. 2:18-cv-02081-TLN-KJN (E.D. Cal., filed 2018)), *Murray v. County of Santa Barbara*, Case No. 2:17-cv-08805-GW-JPR (C.D. Cal., filed 2017), *Hall v. County of Fresno*, Case No. No. 1:11-cv-02047-LJO-BAM (E.D. Cal., filed 2011), *Johnson v. County of Los Angeles*, Case No. 2:08-cv-03515-DDP-SH) (C.D. Cal., filed 2008).

Statement to Committee on Revision of the Penal Code

Aaron Fischer, Disability Rights California

Meeting Date: July 23, 2020

Page 3 of 7

Lorenzo was placed in isolation not for disciplinary reasons, but because he had been assaulted on at least two occasions. He was designated as a “Total Separation” prisoner because jail staff found that his disabilities made it difficult to place him in a general population unit. In isolation, he never went outside – with essentially no sun exposure for several years, he developed a severe vitamin D deficiency. His skin broke into hives, with itching so extreme that it prevented him from sleeping. Like other people in the jail, Lorenzo received poor medical care. After being assaulted and having his hand badly broken, he received inadequate care – surgical pins that were placed in his hand were not timely removed, eventually piercing through his skin and causing his hand to “leak blood.”

He told us about his days spent constantly pacing in his cell: “My mind is always running wild. I can’t sit down It turns me suicidal sometimes. . . . I feel real weak and tired.”

Lorenzo bravely served as the lead plaintiff in *Mays v. County of Sacramento*, a DRC class action that recently resulted in a Consent Decree with a detailed remedial plan to address longstanding deficiencies in the county jail, including inadequate medical and mental health care, misuse of solitary confinement, and disability discrimination.



Medical Unit at Sacramento County Jail (DRC, 2016)

Prior to my role as Litigation Counsel at DRC, I worked on the class counsel team in cases regarding conditions and treatment in the California State prison system, including *Coleman v. Newsom*, Case No. S 90-0520 LKK-JFM P (E.D. Cal.) and *Armstrong v. Newsom*, Case No. 94-2307-CW (N.D. Cal.).

Deficiencies in the provision of health care and disability accommodations and access remain serious and pervasive in California’s prisons.

Statement to Committee on Revision of the Penal Code

Aaron Fischer, Disability Rights California

Meeting Date: July 23, 2020

Page 4 of 7

And that is why it shocks me each time – and it happens frequently – that a client in a county jail tells us, “I can’t survive much longer here. Can you please get me to state prison?” Delays and denials of health care in jails are pervasive, and lead to terrible outcomes. One DRC client with significant medical needs pled to get a *longer* sentence so that he could transfer to prison rather than have to serve his term in the county jail.⁵ It sounds like a joke. But none of us are laughing.

Most county jails have a grossly inadequate system to serve people with mental health disabilities. Jail mental health systems are generally fragmented and lack continuity of care. They are crisis-driven systems – that is, people receive care only when their condition deteriorates and becomes acute, culminating in a suicide attempt, an act of serious self-harm, or severe psychosis. When we worked with Sacramento County to design an Intensive Outpatient Program at the jail to serve patients stepping down from acute care or at risk of psychiatric decompensation, there were few, if any, models among California jails.⁶

People with disabilities are regularly denied the reasonable accommodations they need to access jail programs and remain safe. We have observed multiple county jails with *zero* physically accessible cells, showers, and toileting facilities. Our clients have experienced terrible injuries from falls in inaccessible housing units. Many have had to sleep on the floor because they were denied a physically accessible bed.



Medical Unit at Santa Barbara County Jail, with beds on the floor (DRC, 2016)

⁵ Abbie Vansickle and Manuel Villa, *Who Begg to Go to Prison? California Jail Inmates*, The Marshall Project, Apr. 23, 2019, www.themarshallproject.org/2019/04/23/who-begs-to-go-to-prison-california-jail-inmates.

⁶ Ellen Garrison, *As Need Skyrockets, Sacramento Jail to Expand Aid to 43 Mentally Ill*, Sacramento Bee, Mar. 23, 2017, www.sacbee.com/news/local/crime/article140363113.html.

Statement to Committee on Revision of the Penal Code

Aaron Fischer, Disability Rights California

Meeting Date: July 23, 2020

Page 5 of 7

The risk of death, including suicide, is staggering in county jails. Our investigation of San Diego County Jail found that the suicide rate there vastly exceeded, *by a factor of five (5)*, the suicide rate in California's State prison system (107 per 100,000 vs. 21 per 100,000 over a recent three-year period). The San Diego County Jail system's inmate suicide rate was nearly eight (8) times higher than the overall suicide rate for the County overall.⁷



Isolation Cell at San Diego County Jail (DRC, 2016)

As the Committee explores what revisions to the Penal Code are necessary and appropriate, we urge you to consider the following:

1. **Reforms must proactively consider and address the needs and experiences of people with mental health, intellectual/developmental, and other disabilities.** History has shown that reform efforts that do not explicitly address the experience of people with disabilities lead to disparate and discriminatory results. The last decade has seen considerable efforts to address overincarceration in California, yet the progress that has been made has largely left behind people with disabilities – most significantly, people with mental health disabilities.⁸ Efforts by this Committee should take a deliberate, explicit approach to reforms that includes people with disabilities.

⁷ *Suicides in San Diego County Jail: A System Failing People with Mental Illness* at 4.

⁸ Konrad Franco, *The Prevalence of Mental Illness in California Jails is Rising: An Analysis of Mental Health Cases & Psychotropic Medication Prescriptions, 2009-2019*, California Health Policy Strategies (Feb. 2020) at 1 & 6, <https://calhps.com/wp->

Statement to Committee on Revision of the Penal Code

Aaron Fischer, Disability Rights California

Meeting Date: July 23, 2020

Page 6 of 7

2. **There remain enormous opportunities for safe and smart reduction of incarceration among people with mental health and intellectual/developmental disabilities.** One recent RAND study found that at least 61% of the Los Angeles County Jail mental health population were appropriate candidates for diversion.⁹ It is essential to pair the efforts of this Committee with State and local efforts to increase community-based service capacity to meet demand, so that opportunities for diversion can be fully achieved. The implementation of Penal Code provisions on diversion of people with mental health and intellectual/developmental disabilities should be assiduously tracked and analyzed, to identify opportunities for expansion and more effective implementation.¹⁰
3. **Increase good-time credit-earning systems and work release programs, and ensure that people with disabilities are not discriminatorily excluded.** Expansion of good-time credits and work release opportunities can drive safe and smart reduction of the incarcerated population. People with disabilities must have equal opportunity to participate and benefit. For example, people in competency restoration or other treatment programs should receive the full benefit of good-time credits. People with mental health or other disabilities should not lose good-time credits based on institutional rule violations for behavior that is related to their disability. Work release programs must provide opportunities for, and not discriminate against, people with disabilities.

content/uploads/2020/02/Jail_MentalHealth_JPSReport_02-03-2020.pdf (finding that a 10% decrease in California's overall jail population between 2009 and 2019 was accompanied by a 42% *increase* in the number of active mental health cases, such that the "proportion of incarcerated people in California jails with an active mental health case rose by approximately 63 percent").

⁹ Stephanie Brooks Holliday, et al., *Estimating the Size of the Los Angeles County Jail Mental Health Population Appropriate for Release into Community Services*, RAND Corporation (Jan. 2020), https://www.rand.org/pubs/research_reports/RR4328.html.

¹⁰ Penal Code § 1001.36, § 1001.20-23.

Statement to Committee on Revision of the Penal Code

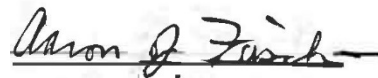
Aaron Fischer, Disability Rights California

Meeting Date: July 23, 2020

Page 7 of 7

- 4. Where revisions to the Penal Code are found necessary to simplify and rationalize the criminal system or to establish appropriate alternatives to incarceration, such revisions should be retroactive.** The State's criminal laws, procedures, and practices have for far too long led to unnecessary and harmful overincarceration. This reality has disproportionately harmed people with mental health needs and other disabilities, especially from communities of color. The State's commitment to equity and the fair administration of justice demands that reforms reach those people who are already entangled in the criminal system. As we look to the future, we must also remedy the harm of existing systemic biases and inequities.

We appreciate the opportunity to participate in this important discussion. We encourage the Committee to act boldly, and to be deliberate in its effort to ensure that reforms are meaningful and do not leave behind people with disabilities.



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Exhibit E

Bridget Cervelli, Legal Services for Prisoners
with Children

Written Submission of Bridget Cervelli, Legal Services for Prisoners with Children
for Committee on Revision of the Penal Code
July 23, 2020

I have been incarcerated in 5 different county jails. Each of them was very different and reflected in part the values of the county in my opinion. More conservative counties had less programs or activities, more liberal counties had more classes and outside visitors who would teach, inspire or provide services. The only jail where I really experienced that was San Francisco jail. The programs, classes and outside visitors were not really anything super beneficial, but they did make me feel more human. The “no good criminal” narrative is still internalized, but the moments when I got to engage with classes, etc. helped me not have to feel that for a short while.

My understanding is that a lot of the programming at SF jail was stopped, and I know that programming in jails has consistently diminished. Just about every jail I went to used to have programs that were discontinued. My final incarceration, an AB 109 sentence served in San Luis Obispo in 2014, was probably the most difficult. There were almost no programs at all, unless you were one of the few that got to go to the “farm.” There, the “program” was working. While it is great to do something besides sit in the general population room that seemed like a shoebox with beds in it, waiting for the hour or two a day to walk around the cement yard with cement walls and razor wire cutting out the sun, there is not much that is life-affirming in performing work for the benefit of the institution.

My experience cycling in and out of county jails was largely fueled by an addiction that quickly took over my life. The first time I was arrested for shoplifting, I took probation because I was so freaked out by the experience of incarceration. I would have done anything to get out. My lawyer advised against it because he recognized the path I was setting out on. I did not. Though that experience of incarceration definitely changed my self-perception. I stopped talking to all of my friends who were not addicts. After having worked since I was 14, I was pretty much unemployable. I began dating a dealer and addiction quickly became my whole world. Most of my time in and out of jail was spent homeless, high and violently tormented by a 250 lb. boyfriend who was probably schizophrenic.

A lot of awful stuff happened that I still haven’t processed because nowhere in our criminal justice system is there room for healing, especially if you are incarcerated. I share all that to say this; we incarcerate trauma. There is no opportunity for healing or growth. I still have not felt anything about the trauma I experienced because I have no way to deal with that pain. I am starting to recognize how that might be the basis for a lot of the irrational self-hatred that I carry with me.

Exhibit F

Sheriff Kory L. Honea, California Sheriffs'
Association Second Vice President

Committee on Revision of the Penal Code
July 23, 2020
Sheriff Kory Honea, Butte County

Kory L. Honea became the 31st Sheriff of Butte County in May 2014. Prior to becoming the Sheriff, Honea served as the Undersheriff for nearly four years. Sheriff Honea began his career with the Butte County Sheriff's Office in 1993, when he was hired as a deputy sheriff. During his law enforcement career Sheriff Honea has held assignments in corrections, patrol and investigations. Sheriff Honea holds a Juris Doctorate from the Taft School of Law and is a member of the State Bar of California. He also holds an Associate of Arts degree from Butte College. Sheriff Honea has extensive law enforcement training certified by the California Commission on Peace Officer Standards and Training (POST).

The enactment of AB 109 (Ch. 15, Statutes of 2011) resulted in significant changes to California's state and local correctional systems. Realignment – as it is more commonly referred to – was a sea change in where and how certain felony offenders would serve their sentences and be supervised after release from state prison.

To support the implementation of realignment, protected funds from the state have been provided to counties to implement approaches for supervision and rehabilitation to reduce recidivism. This funding flows through each county's Community Corrections Partnerships (CCPs), as established in Penal Code Section 1230. For the first time since the enactment of realignment, sales tax collections have declined, meaning fewer state funds are being sent to the counties to pay for realigned programs.

CCPs, and the local entities that participate within them, continue to develop, implement, and sustain various approaches to address whole person care, that is, to consider offenders' full spectrum of needs (e.g., behavioral, medical, socioeconomic) in a coordinated way. Please review the most recent CCP report, *2011 Public Safety Realignment Act: Seventh Annual Report on The Implementation of Community Corrections Partnership Plans July 2019*, at: <http://www.bscc.ca.gov/wp-content/uploads/CCP-Report-2018-2019-FINAL.pdf>.

The Committee on Revision of the Penal Code ("Committee") has requested that I provide information on some of the impacts of realignment:

First and foremost, county jails were not designed to hold offenders for longer than one year. Dedicated and appropriate space for education, substance abuse treatment, medical and mental health care, exercise, etc., were not a usual component of a county jail's physical plant. To help achieve the intent of realignment, the physical structure of most jails has needed to be updated. The Legislature and the Administration provided several rounds of funding for either new construction or renovation of facilities. While a number of counties have completed their projects, many are still in the planning and construction stages.

Medical and mental health care are also critical matters. With inmates serving longer sentences, ongoing health care needs are expected to be met during a person's jail stay. This requires additional space, personnel, treatment, and other services that may not have been originally contemplated for an offender serving a one-year sentence or less. Further, due to the lack of adequate mental health facilities and care in the community, most, if not all, jails are now shouldering some portion of that responsibility. Jails are not typically the best place to treat mentally ill individuals, and many of those individuals may not be best served in a custodial environment. While certain offenders absolutely belong in a locked setting, non-jail-based treatment options are woefully lacking in many of our communities.

Sheriffs agree with the need and responsibility to provide meaningful rehabilitative programming aimed at reducing recidivism. Educational, vocational, and other treatment and training programs are made available at jails around the state.

With realignment bringing felons to jail custody, we are now encountering a more sophisticated and violent population. Assaults on staff and other inmates have increased in jail facilities across the state.

While many crimes that carry the possibility of long custodial sentences were not realigned, we still see jails housing offenders who are sentenced to significant periods of incarceration. While more the exception than the rule, many jails have inmates sentenced to longer than 10 years. Counties have authority to use electronic monitoring, county or sheriff's parole, and work furlough programs to help manage their populations, especially when facilities may become overcrowded.

For more detailed population data, please see the information and links provided below:

Board of State and Community Corrections (BSCC)

Data and Research http://www.bscc.ca.gov/m_dataresearch/

The Jail Profile Survey (JPS), conducted since the mid-1970's, is a data collection instrument that gathers responses from counties on local jurisdiction and county jails. This information provides counties a means of tracking changes in their populations and assessing and projecting program and facility needs. For PDF downloads of the "Jail Profile Survey Workbook", "Rated Capacities of Type II, III, & IV Local Adult Detention Facilities", and archived Jail Profile Survey Result Reports (quarter and annual), please click [here](#). [Jail Population Trends Dashboard opens in a new window](#) Jail Population Trends – [PDF](#) (Updated May 15, 2020)

The AB109 Jail Profile Survey is a data collection instrument completed monthly by counties to reflect the impact of AB109, specifically related to offenders sentenced Penal Code Section 1170(h) or released on Post-Release Community Supervision (PRCS) or parole status who have been admitted or detained in local detention facilities. There are eleven items listed on the AB109 Jail Profile Survey Monthly Report Form.

[Local Detention Facilities: Public Safety Realignment Raw Data](#) (October 2011 through December 2019; last updated 6/3/2020) | [AB 109 Survey Documents](#)

[Jail Population Trends Dashboard](#) – "**Performance Metrics for Community Corrections,**" a report mandated by the Budget Act of 2014, outlines a set of interrelated metrics that are readily available and measurable that can assess how local community corrections systems are functioning. The county-by-county performance metrics identified address reported crime, arrests, supervision, incarceration, and local socioeconomic indicators. In addition to the report, the Board of State and Community Corrections annually updates Statewide and county-by-county data sets and tables of the performance metrics. The data sets and tables now provide data from 2007 through 2017 and compare changes since 2007.

- Click [here](#) to access the full report.
- Click [here opens in a new window](#) to access Statewide and county-by-county datasets and tables. Graphs and tables displaying trends over time in key measures may be retrieved for each county and for the state as a whole. The data sets and tables now provide data from 2007 through 2017 and compare changes since 2007.
- Click [here opens in a new window](#) to access the county profiles that can provide context to the metrics data.

Thank you for the opportunity to discuss these issues today.

Exhibit G

Charles Callahan, California Department of
Corrections and Rehabilitation

Committee on Revision of the Penal Code

California Department of Corrections and Rehabilitation

The classification process is utilized to appropriately place newly received inmates committed to the custody of the Secretary of California Department of Corrections and Rehabilitation (CDCR). The classification process commences as offenders are received from county facilities. CDCR's classification process takes into consideration the inmate's needs, interests and desires, their behavior and placement score in keeping with the Department and institution's/facility's program and security missions and public safety.

Once an inmate is received at the Reception Center, the inmate undergoes Mental Health, Medical and Dental screening, completion of a Correctional Offender Management Profiling for Alternative Sanctions (COMPAS) assessment, California Static Risk Assessment (CSRA) and a Test of Adult Basic Education (TABE) is completed. A Correctional Counselor completes all initial casework inclusive of these assessments. The inmate is interviewed to discuss the inmate's needs, wants, and goals while incarcerated. Upon review and consideration of all of the inmate's case factors, classification staff refer the inmate for transfer to a general population setting.

Upon transfer, an offender is seen by an Initial Unit Classification Committee (UCC), where a review the offenders' Reception Center screening and evaluations are considered for program placement. Discussion at the initial UCC would include program and job assignment availability specific to that institution or facility. Prior to this committee, the Correctional Counselor will have interviewed the inmate, completed a Rehabilitative Case Plan for the inmate, then review the offender's needs, which would include COMPAS, TABE scores, and all other applicable case factors. Consideration of this information in totality, would be the basis the Correctional Counselor's recommendations to the committee for program placement. Initial UCC's consist of a Correctional Captain or a Correctional Counselor III, a Correctional Counselor II, Correctional Counselor I (recorder) the Inmate Assignment Lieutenant, Educational or Career Technical Education program representative and other staff as required. Once the UCC has recorded the approved waiting list placements in the Strategic Offender Management System, the inmate is assigned based on priority and assignment availability which is overseen by the Institution's Inmate Assignment Lieutenant.

Available Programs

Integrated Substance Use Disorder Treatment (ISUDT)

The ISUDT is a comprehensive and evidence-based cross-divisional program implemented to identify inmates at risk for Substance-Use Disorder (SUD) related harms, and provide treatment that reduces risk of overdose and other complications associated with SUD. Treatment may include behavioral interventions or Medication Assisted Treatment, as clinically indicated, and emphasizes a smooth transition within and outside of the prison setting. These programs are provided when an eligible inmate is within the last two years of incarceration and medically eligible. Based on the medical assessment inmates are placed in in either ISUDT Intensive, ISUDT Outpatient, and/or Cognitive Behavioral Interventions.

ISUDT Intensive

This is a 12-month program and provides SUDs classes 5 days per week/2 hours per day (M-F). This program may include Medication Assisted Treatment.

Committee on Revision of the Penal Code

California Department of Corrections and Rehabilitation

ISUDT Outpatient

This is a 12-month program and provides SUDs classes 3 days per week/2 hours per day and are offered M/W/F. This program is curriculum based.

Cognitive Behavioral Interventions (CBI)

CBI is an evidence-based treatment that teaches inmates how to identify and change destructive thought patterns, which have a negative influence on behavior.

CBI encompasses in the following areas:

- Anger Management
- Criminal Thinking
- Family Relationships
- Victim Impact

Education

Inmates without a US recognized and verified High School Diploma (HSD), High School Equivalency (HSE), Certificate of Completion or inmates with developmental disabilities are placed on an Education waiting list by Committee based on their most current reading grade level:

- ABE-I: 0.0-3.9
- ABE-II: 4.0-6.9
- ABE-III: 7.0-8.9
- GED: 9.0 +

Inmates with a minimum TABE score of 4.0, may also participate in the Voluntary Education Program in addition to other primary program assignments.

College

Inmates with a verified HSD/HSE can be enrolled in college. College is offered via face to face and via correspondence. College is primarily after work or rehabilitative program hours.

Vocation or Career Technical Education (CTE)

Inmates with a minimum TABE score of 9.0, can be placed on waiting lists for a Vocation/CTE of their choice which include: Auto Mechanics, Auto Body, Building Maintenance, Carpentry, Electronics, HVAC, Painting, Masonry, Plumbing, Office Services, Small Engine and Welding to name a few.

Prison Industry Authority (PIA)

The California Prison Industry provides work assignments for approximately 7,500 offenders within CDCR. PIA manages over 100 manufacturing, service, and consumable operations in all 35 CDCR institutions throughout California. PIA's goal is to train offenders with job skills, good work habits, and basic education and job support in the community, so when they parole they have a greater chance of success.

Committee on Revision of the Penal Code

California Department of Corrections and Rehabilitation

Transitions

Inmates who are within two (2) years of release or within two (2) years of a parole consideration hearing, are placed in Transitions. Transitions is comprised of classes that provide assistance to inmates in preparing for release by providing employment preparation and financial literacy skills.

Alternative Custody Program (ACP)

The ACP is a voluntary program for inmates whose current term is not considered Violent or Serious per California Penal Code (PC) and have not been convicted of an offense requiring registration as a sex offender per PC 290. The ACP allows eligible inmates to serve the last 12 months of their sentence in the community.

Male Community Reentry Program (MCRP)

Inmates with within fifteen (15) months from release with no less than thirty (30) days remaining can be transferred to MCRP. MCRP helps offenders successfully reenter the community by allowing eligible inmates serve the remainder of their sentence in the community. The MCRP is designed to provide a range of community-based, rehabilitative services that assist with substance use disorder (SUD), mental health, medical care, employment, education, housing, family reunification, and social support.

Custody Community Transitional Reentry Program (CCTRP)

The CCTRP is a voluntary program developed for female inmates with 30-months or less to serve, who have not committed a sex related offense. CCTRP allows eligible inmates committed to state prison to serve their sentences in a Departmentally approved CCTRP Facility in lieu of confinement in state prison.

Youthful Offender Program (YOP)

Inmates received into CDCR who are less than 22 years of age on or after July 1, 2015, shall be considered for placement in the YOP. YOP allows CDCR to classify these offenders at lower custody levels. The intent of the YOP is to identify youthful offenders, and allow them greater access to programs with the goal of increasing the likelihood of rehabilitation, during a critical development stage in their lives.

Inmate Activity Groups (IAG)

The inmates can volunteer for IAG. CDCR provides IAG which allow inmates to earn Rehabilitative Achievement Credits (RAC) for:

- Alcoholics Anonymous
- Narcotics Anonymous
- Alternatives to Violence
- Arts in Corrections-Drawing, Painting, Theatre
- Celebrate Recovery
- Criminal and Gang Members Anonymous
- Getting, Out by Going In (GOGI)
- Lifer Improvement Group
- Positive Parenting Program
- Power of Forgiveness

Committee on Revision of the Penal Code California Department of Corrections and Rehabilitation

Inmate Activity Groups (continued)

- The Urban Ministry Institute (TUMI)
- Toastmasters; Veteran Support Groups

As of June 20, 2019, there were over 3,000 active RAC programs throughout CDCR.