

GOVERNOR'S PROPOSED TRANSFER OF RESPONSIBILITY FOR DELINEATED  
FELONS AND PAROLEES TO LOCAL JURISDICTIONS

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The Governor's realignment proposal in the area of Corrections and Rehabilitation seeks to transfer responsibility for specified "lower-level offenders" and parolees from the California Department of Corrections and Rehabilitation (CDCR) to local jurisdictions, i.e. individual counties.

The proposal for "lower-level offenders" requires counties to incarcerate all convicted felons sentenced to state prison on non-violent, non-serious, non-sex related offenses.<sup>1</sup> Convicted felons sentenced to prison, regardless of the current charge(s), who suffered a prior conviction for a serious, violent or sex offense would be housed in state prison. In addition, the proposal would shift responsibility for adult parole services to individual counties. Parole services includes incarceration for parole violations and parolee supervision. These parolees are not limited to having prior convictions for only non-violent, non-serious, non-sex related offenses. The counties would be supervising and housing felons on parole for rape, murder and all other strike offenses. The state would provide an undetermined amount of money to each county to alleviate the cost of housing and services for such offenders.<sup>2</sup>

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<sup>1</sup> Under the realignment proposal, "serious" felonies are those defined by Penal Code §1192.7(c); "violent" felonies are those defined in Penal Code § 667.5(c); "sex" offenses would include all offenses that require registration as a sex offender upon conviction pursuant to Penal Code § 290(c).

<sup>2</sup> The current proposed assumptions per offender are incarceration costs of \$25,000 for 6 months, community supervision and/or alternative custody costs of \$3,500 for 18 months and treatment and/or programming costs of \$2,275. *California Department of Corrections and Rehabilitation Realignment Local Costs Assumptions*, November 2010.

The current proposal is similar to one proposed by former Governor Arnold Schwarzenegger in 2010. The essence of that proposal was that specified non-serious, non-violent, non-sex offenders convicted with sentences of three years or less be diverted to county jails to serve that sentence. In opposition to that proposal, Los Angeles County Sheriff Leroy Baca informed then Governor Schwarzenegger that, on a daily basis, Los Angeles County houses approximately 18,000 inmates of which 90% are pre-trial detainees. This leaves approximately 1,800 available beds for post-conviction sentencing in Los Angeles County jails. Los Angeles County jails are under a federal court ordered population cap and are already at or near federally mandated capacity.<sup>3</sup> The Schwarzenegger proposal also promised additional money for the local housing of inmates; however, the amount allocated was a fraction of the actual cost and could not solve the issue of insufficient beds to accommodate the estimated increase in inmates.

In calendar year 2010, the Los Angeles County Superior Court sentenced approximately 18,000 defendants to state prison following conviction of a felony (this number does not include those sentenced to state prison after being found in violation of probation or parole). Nearly half of that total number, approximately 9,000 convicted felons, would be considered “lower level offenders” and would be required to serve their sentences in Los Angeles County under Governor Brown’s proposal. These qualifying felons were charged with over 260 different criminal code sections.

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<sup>3</sup> June 10, 2010 letter from Los Angeles County Sheriff Leroy Baca to then Governor Arnold Schwarzenegger opposing shifting felony offenders to local county jails. See *Block v. Rutherford* 468 US 576 (1984), *Rutherford v. Block* (now *Rutherford v. Baca*) Case No. Civ. 75-04111-DDP.

According to the CDCR, in calendar year 2009, more than 18,000 parole violators returned to prison with a new term for violating parole. Of this number, nearly 6,500 inmates were from Los Angeles County, nearly one-third of the total parole violators.<sup>4</sup> Assuming these parole violators served their time in Los Angeles County jails and each violator served 30 days spaced evenly throughout the year, this would result in the need for more than 500 additional beds per month.

The recidivism rate (committing a new felony or parole violation within three years of release) for inmates sentenced to state prison is nearly 70%. The highest rates are among younger offenders and *those serving sentences of 19 to 24 months* (emphasis added).<sup>5</sup> Using this widely accepted recidivism rate and understanding there is currently no room to house these additional prisoners, one can reasonably expect approximately 15,500 convicted felons on the streets of Los Angeles with minimal supervision. Based upon established recidivism rates, the County of Los Angeles can expect to see an additional 10,000 criminal cases filed per year under the terms of this proposal. This increase in criminal prosecutions would require additional staffing by the Los Angeles County District Attorney's Office (LADA). At a minimum, LADA would need 40 additional deputy district attorneys as well as supervisory staff, investigators and support staff. The total projected cost for the necessary staffing would be more than \$19 million.

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<sup>4</sup> *California Prisoners & Parolees 2009*, page 26; California Department of Corrections and Rehabilitations, Offender Information Services Branch, Estimates and Statistical Analysis Section, Data Analysis Unit.

<sup>5</sup> *2010 Adult Institutions Outcome Evaluation Report*, California Department of Corrections and Rehabilitations, Office of Research, October 11, 2010.

Thus, the number of qualifying felons and parole violators would nearly double the current housing levels of Los Angeles County jails. Convicted felons will serve little or no time in custody because there would be insufficient bed space. The gravity of this situation is masked by use of the misnomer “lower-level offenders.” A number of recent cases prosecuted by this office illustrate the gross inaccuracy of this term. These cases are representative of the numerous convicted felons who would be ineligible for state prison and whose sentences may be reduced to inappropriately lower terms under the Governor’s proposal.<sup>6</sup>

### Public Integrity

In a widely-publicized open case, defendant Robert Rizzo (*People v. Rizzo*, BA376026), the former city manager of the City of Bell is charged with misusing more than \$5.5 million in public funds for their personal benefit. If convicted of all counts, Mr. Rizzo faces approximately 50 years in state prison.

### Assault Weapons

In *People v. Powell*, BA338304, the defendant was a heavy methamphetamine user living in an upscale neighborhood. The police were called when the defendant suffered from severe methamphetamine induced psychosis and his behavior was of great concern to the

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<sup>6</sup> In a meeting between Los Angeles County CEO Bill Fujioka, Los Angeles County Sheriff Lee Baca and members of Governor Brown’s Administration on January 13, 2011, Daniel Wall reported that Todd Jerue, DOF Program Budget Manager for Corrections/Criminal Justice informed the group that the existing State sentencing model is not one of the assumptions of the Governor’s plan, and that would likely require changes in the Penal Code. A basic two year model was assumed for the low-level, nonviolent, non-sex related offenders they are proposing to keep at the county level: six months of incarceration and 18 months of supervision.

neighbors. Inside the defendant's home police found, among other firearms and destructive devices, a rocket launcher, tracer rounds, a flame thrower and methamphetamine. The defendant's psychosis and access to an arsenal of weapons made him incredibly dangerous. The defendant was sentenced to eight years in state prison.

### Major Narcotics

Defendants Jose Gomez and Maria Torres delivered over 1,040 kilograms (kilos) of cocaine to undercover officers. Officers subsequently recovered an additional 150 kilos of cocaine, 200 pounds of methamphetamine and \$100,000 in drug proceeds. Gomez had prior drug offenses but no strikes. He received a state prison sentence of 29 years.

### Consumer Protection

Bertha Bugarin was an office manager for six medical clinics serving an immigrant, Spanish speaking community. She had no medical training whatsoever. Ms. Bugarin personally performed abortions on patients for cash. She was charged with seven felony counts of unlicensed practice of medicine and was sentenced to over three years in the State Prison (*People v. Bugarin*, BA328497).

### High Technology Crimes

In *People v. Oluwatosin*, BA255327, the defendant and his co-conspirators compromised the data network owned and operated by ChoicePoint, a data aggregation company. They opened over 40 separate business accounts using stolen identities and fraudulent Los Angeles City tax licenses. Using these fraudulent accounts, Oluwatosin ran the credit

histories of over 189,000 individuals. In an extremely complicated criminal operation, the ring created mailbox drops and cell phone service using victim information. They would thereafter open a ChoicePoint account and use the system to run searches on unsuspecting victims. That information was then used to take over existing credit card accounts and open new accounts which were then used to obtain cash advances. At the time of filing, the estimated victim losses exceeded \$6,500,000. Oluwatosin was convicted and sentenced to 10 years in state prison.

#### Auto Insurance Fraud

Husband and wife ringleaders, Ramon and Magdalena Zanoletti, purchased “victims” legal and medical cases in connection with a large scale insurance fraud. In addition, “stagers” intentionally collided with innocent drivers in order to fraudulently collect insurance. Both defendants were sentenced to 22 years in prison (BA303537).

Under this proposal additional “lower level offenses” include: possession of weapons and explosives (P.C. § 12020 et. seq.); elder abuse, both physical and financial, (P.C. § 368); “endless chain” or ponzi schemes such as those perpetrated by Bernie Madoff (P.C. § 327); welfare fraud, which is estimated to cost taxpayers nearly \$2 billion a year, (W.I.C. § 10980 et. seq.); counterfeiting, which has been shown to cost Los Angeles County businesses approximately \$5.2 billion dollars annually and deprived state and local government of at least \$483 million in tax revenue (P.C. § 350); health care fraud, with losses often over \$10 million; and human trafficking (P.C. § 236.1).

The purpose of imprisonment for crime is punishment. It is a purpose best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances.<sup>7</sup>

Additional objectives in sentencing are protecting society, deterring others, preventing new crimes by defendants through incarceration and obtaining restitution for victims.<sup>8</sup> If the Governor's realignment proposal is adopted, defendants responsible for a wide variety of felony crimes will escape appropriate sentences. The crime rate will predictably and significantly rise. The people of the State of California will inevitably lose confidence in the fairness of the criminal justice system and its ability to govern conduct and maintain order.

#### ALTERNATIVES

There are alternatives to the Governor's realignment proposal. The California Secretary of Corrections and Rehabilitation (Secretary) could be granted the same authority as county sheriffs to utilize alternative incarceration methods for felons convicted of non-violent, non-serious and non-sex related crimes. These alternative methods include home detention combined with electronic monitoring, global positioning systems (GPS) and the use of work furlough programs.

The realignment proposal currently casts too wide a net and includes defendants who deserve long-term commitments in state prison. The transfer of state prisoners to local custody could be limited to felons actually sentenced to 24 months or less in state prison.

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<sup>7</sup> Penal Code § 1170(a)(1)

<sup>8</sup> California Rules of Court § 4.410.

This alternative would alleviate some public safety concerns and comes closer to accurately identifying “lower level offenders.”

### Conclusion

Governor Brown’s realignment proposal in the area of Corrections and Rehabilitation will wreak havoc on Los Angeles County’s criminal justice system and the State as well. The term “lower-level offenders” used to describe qualifying felons is wholly misleading as it includes very serious felony conduct as illustrated in the examples provided. It does not adequately consider the felons’ prior criminal history, the magnitude of the harm done and the number of victims. Society will not be adequately protected. Convicted felons will not be appropriately punished. In addition, there would be woefully insufficient bed space for these convicted felons in Los Angeles County jails. Thousands of convicted felons will be on the streets with minimal supervision. In a time of shrinking budgets, the LADA and all other criminal justice entities from law enforcement agencies to the courts would require substantial additional staffing to handle the predictable, significant increase in criminal filings due to felons serving very little or no time in custody.

The realignment proposal is a public safety nightmare.