

# The San Francisco Sentencing Commission

## City & County of San Francisco

(Administrative Code 5.250 through 5.250-3)

---

### AGENDA

Wednesday February 25, 2015

10:00 a.m. – 12:00 p.m.

Hall of Justice

District Attorney Law Library

850 Bryant Street Room 322

San Francisco, CA 94103

*Note: Each member of the public will be allotted no more than 3 minutes to speak on each item.*

1. Call to Order; Roll call.
2. Public Comment on Any Item Listed Below (discussion only).
3. Review and Adoption of Meeting Minutes from December 18, 2014 (discussion & possible action).
4. Staff Report on Sentencing Commission Activities (discussion & possible action).
5. Presentation on Innovative Policies and Practices for Working with Youth and Young Adults, Vinny Schiraldi, Senior Advisor to New York City Mayor's Office of Criminal Justice (discussion & possible action).
6. Annual Review of San Francisco Sentencing Trends by National Council on Crime and Delinquency (discussion & possible action).
7. California Sentencing Legislation and Policy Update from Californians for Safety and Justice (discussion only).
8. Members' comments, questions, and requests for future agenda items.
9. Public Comment on Any Item Listed Above, as well as Items not Listed on the Agenda.
10. Adjournment.

# **The San Francisco Sentencing Commission**

## **City & County of San Francisco**

(Administrative Code 5.250 through 5.250-3)

---

### **SUBMITTING WRITTEN PUBLIC COMMENT TO THE SAN FRANCISCO SENTENCING COMMISSION**

Persons who are unable to attend the public meeting may submit to the San Francisco Sentencing Commission, by the time the proceedings begin, written comments regarding the subject of the meeting. These comments will be made a part of the official public record, and brought to the attention of the Sentencing Commission. Written comments should be submitted to: Tara Anderson Grants & Policy Manager, San Francisco District Attorney's Office, 850 Bryant Street, Room 322, San Francisco, CA 941023, or via email: [tara.anderson@sfgov.org](mailto:tara.anderson@sfgov.org)

### **MEETING MATERIALS**

Copies of agendas, minutes, and explanatory documents are available through the Sentencing Commission website at <http://www.sfdistrictattorney.org> or by calling Tara Anderson at (415) 553-1203 during normal business hours. The material can be FAXed or mailed to you upon request.

### **ACCOMMODATIONS**

To obtain a disability-related modification or accommodation, including auxiliary aids or services, to participate in the meeting, please contact Tara Anderson at [tara.anderson@sfgov.org](mailto:tara.anderson@sfgov.org) or (415) 553-1203 at least two business days before the meeting.

### **TRANSLATION**

Interpreters for languages other than English are available on request. Sign language interpreters are also available on request. For either accommodation, please contact Tara Anderson at [tara.anderson@sfgov.org](mailto:tara.anderson@sfgov.org) or (415) 553-1203 at least two business days before the meeting.

### **CHEMICAL SENSITIVITIES**

To assist the City in its efforts to accommodate persons with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City accommodate these individuals.

### **KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE (Chapter 67 of the San Francisco Administrative Code)**

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. Copies of the Sunshine Ordinance can be obtained from the Clerk of the Sunshine Task Force, the San Francisco Public Library, and on the City's web site at: [www.sfgov.org/sunshine](http://www.sfgov.org/sunshine).

### **FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE, CONTACT THE SUNSHINE ORDINANCE TASK FORCE:**

Administrator  
Sunshine Ordinance Task Force  
City Hall, Room 244  
1 Dr. Carlton B. Goodlett Place,  
San Francisco, CA 94102-4683.  
Telephone: (415) 554-7724  
E-Mail: [soft@sfgov.org](mailto:soft@sfgov.org)

### **CELL PHONES**

The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Co-Chairs may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices.

### **LOBBYIST ORDINANCE**

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by San Francisco Lobbyist Ordinance (SF Campaign and Governmental Conduct Code sections 2.100-2.160) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 30 Van Ness Avenue, Suite 3900, San Francisco CA 94102, telephone (415) 581-2300, FAX (415) 581-2317, and web site <http://www.sfgov.org/ethics/>

# The San Francisco Sentencing Commission

## City & County of San Francisco

(Administrative Code 5.250 through 5.250-3)

---

### DRAFT MINUTES

---

Thursday, December 18, 2014

District Attorney Office Law Library

Room 322

850 Bryant St.

San Francisco, CA 94103

**Members in Attendance:** Katherine Miller, on behalf of District Attorney George Gascón; Board of Supervisors Appointee Theshia Naidoo; Mayoral Appointee Professor Steven Raphael; Reentry Council Appointee Karen Roye (Director, Department of Child Support Services); Reentry Council Appointee Joanna Hernandez; Captain Tim Falvey (San Francisco Police Department); Chief Adult Probation Officer Wendy Still; Craig Murdock (Department of Public Health); Family Violence Council Appointee Jerel McCrary, Public Defender Jeff Adachi, Sheriff Ross Mirkarimi.

**1. Call to Order; Roll Call.**

Meeting was called to order by Katherine Miller at 10:21am.

**2. Public Comment on Any Item Listed Below (Discussion Only).**

No public comments received.

**3. Review and Adoption of Meeting Minutes from August 6, 2014 (Discussion and Possible Action).**

Ms. Miller made a motion to accept the minutes from the August 6, 2014, meeting, seconded by Chief Wendy Still. The motion carried.

**4. Staff Report on San Francisco Sentencing Commission Activities (Discussion and Possible Action).**

Tara Anderson provided a staff report on Sentencing Commission activities. The Lawyer's Committee for Civil Rights provided a two-page document on the impact of new changes in sentencing law on noncitizens.

Mrs. Anderson provided an update on requested meeting agenda items on pretrial and bail schedule. The Reentry Council is working on these issues under the auspice of the Justice Reinvestment Initiative and Mrs. Anderson indicated that staff will work together to ensure that these are addressed before the appropriate bodies during the 2015 calendar. Mrs. Anderson further informed the members that while presentations during the meeting will address recidivism, future meetings in 2015 should be focused on defining recidivism.

# **The San Francisco Sentencing Commission**

## **City & County of San Francisco**

(Administrative Code 5.250 through 5.250-3)

---

Mrs. Anderson reminded members that the Sentencing Commission is scheduled to sunset in June 2015, as such the annual report must include recommendations about the future of the commission..

Karen Roye gave an update on The Reentry Council of the City and County of San Francisco and stated that the council met December 9, 2014, where Bryan Lovins presented on an assessment tool for robust diversion programs and James Bell of the W. Hayward Burns Institute presented on the racial disproportionality decision-point analysis. Ms. Roye stated that early termination of probation and the impact of Proposition 47 remain to be discussed at the next meeting; however, the date for that meeting has not yet been determined.

Jerel McCrary gave remarks on the Family Violence Council. Mr. McCrary said the council held two meetings: September 3 and November 19, 2014. He added that on the agenda for the Justice and Courage Commission is a review of the current response to domestic violence. Officer Allen Nance provided information from a Juvenile Probation Department report stating that domestic violence situations are mostly male against female, wherein the opposing party is a family member but not an intimate partner. Shauna Reeves of the Elder Abuse Consortium was appointed to the Family Violence Council on November 19, 2014. Full recommendations for 2015 will be in the annual report. Mr. McCrary added that the ordinance that created the council needs to be revised. The next meeting will be held February 18, 2015.

Ms. Miller asked whether there were questions or comments on the Family Violence Council report; seeing none, she turned the time over to Chief Assistant District Attorney Sharon Woo.

### **5. Law Enforcement Assisted Diversion Program Working Group Report (Discussion and Possible Action).**

Prior to the testimony from Ms. Woo Commission staff played a short video on the San Francisco Police Department's approach to addressing drugs and violent crime; the video is available on YouTube. According to the video, San Francisco's approach to drugs and violent crime has made San Francisco a safer place, disbanded the narcotic unit, and decreased gun crimes by 50%. However, the department is adjusting to evolving methods for drug sales; happening on the internet and through the mail.

Ms. Woo began her remarks with an overview of the various diversion opportunities for substance users and emphasized programs like Back On Track which focused on getting young people jobs and decreasing violent crime and drug use. She added that drugs and violent crime are public health issues, as many drug-addicted individuals are sick. A past attempt to solve this problem that did not work was clogging the court systems with drug user prosecutions. In an effort to create more

# **The San Francisco Sentencing Commission**

## **City & County of San Francisco**

(Administrative Code 5.250 through 5.250-3)

---

effective practices, San Francisco has already successfully begun programs that do not clog the court system but address the real issues of this population by diverting drug users out of the court system and into treatment programs.

In June 2014, a team of Sentencing Commission members went to Seattle, Washington, to view the Law Enforcement Assisted Diversion (LEAD) program, which is focused on prebooking low-level offenders, prostitutes, and loiterers. LEAD is a privately funded program that provides job preparation and readiness and individualized case management for those who take part in the LEAD program, which has been a very successful model. Ms. Woo described some key points from the site visit

There are two types of LEAD models: prebooking and precharging. The Sentencing Commission went to Seattle to better understand whether this type of programing would be beneficial in San Francisco. To this end, the Sentencing Commission team that visited Seattle consulted with Craig Murdock of the San Francisco Department of Public Health. The LEAD team waited to make any recommendations until after the elections and the passing of Proposition 47, at which point the LEAD team with consultation by Mr. Murdock reconvened by phone.

The discussion between the LEAD team and the Department of Public Health focused on how LEAD would be effective in San Francisco after the passing of Proposition 47. Discussion also centered on the decriminalization of low-level illegal conduct, and to date, San Francisco has already done good work to address this population. Ms. Woo stated that the LEAD model is based on the “carrot and stick” premise, with treatment and options as the incentive and a threat of incarceration as the “stick.” This method of programming would become difficult in light of the passing of Proposition 47, as the threat of incarceration has been severely diminished. Ms. Woo added that the question now is whether, with no incentive or threat of incarceration, will individuals engage in services?

After much deliberation and conversation, the San Francisco Police Department decided LEAD is not a good model for the city in its current configuration. The team is still in discussion as to what other type of incentives exist for this population aside from the threats of prosecution and incarceration.

Steven Raphael asked Ms. Woo whether Proposition 47 eligible crimes result in arrest. Ms. Woo stated that it depends on how the crime is booked and cited, or whether the person who committed the crime is put in jail. Captain Tim Falvey stated that some of those arrested cannot be released, including those with DUIs and domestic violence cases. He added that the larger issue surrounds issuing misdemeanor street citations which result in court dates 30 to 45 days down the road. He said that LEAD might be advantageous during that time period; the “stick” might be not having a

# **The San Francisco Sentencing Commission**

## **City & County of San Francisco**

(Administrative Code 5.250 through 5.250-3)

---

court date. Ms. Woo said that part of the difficulty of using lack of a court date as an incentive is that there is no contact with the individual until the court date.

Ms. Woo added that a larger question is whether coercion is necessary. Individuals may have other motivations—including a job, family, and housing—that may act as incentives to entering the program. Theshia Naidoo indicated that research has shown that when treatment is voluntary, the outcomes are more effective. Jeff Adachi stated that even if charged with a misdemeanor, similar to neighborhood courts, intervention happens immediately, whether it is court or program. He went on to ask why that premise would not work for the LEAD program. Mr. Adachi asked Ms. Woo about the possibilities of trying LEAD on a pilot site. Ms. Woo agreed and said that a pilot site was an excellent idea. Ms. Woo said she and the LEAD working group will consider this new focus of LEAD to see how the program could be modified for San Francisco.

Chief Still added a few suggestions for the LEAD working group to consider, such as contacting the Human Services Agency of San Francisco (HSA), considering how the Affordable Care Act will play into the LEAD program, and adult probation for alternatives. Theshia Naidoo agreed with Chief Still regarding the Affordable Care Act.

Ms. Woo thanked the Sentencing Commission for their time and turned the time back to Ms. Miller, who asked whether there were additional questions. Seeing none, Ms. Miller moved the meeting to item six on the agenda.

### **6. Young Adult Court Working Group Report (Discussion and Possible Action).**

Ms. Miller stated that on August 6, 2014, the Sentencing Commission created a young adult court working group to explore alternatives to incarceration for young adults. She stated that in the November 2014 election year, the Children's Fund was reauthorized and the funding was extended to programs that included young adults ages 18 to 24. Ms. Miller stated that the city is now figuring out how to spend the new funding source for that age group. In November, a grant proposal that would provide funds to create a young adult court in San Francisco was submitted to the State Board of Community Corrections. The Department of Children, Youth, and Their Families is the lead on the grant proposal.

Ms. Miller added that the proposal included collaboratively working with the district attorney's office, courts, the public defender's office, and the police department and will include an evaluation component. Ms. Miller is confident that the young adult court working group will receive the funding and the planning process will begin in March 2015. The planning process will include a variety of stakeholders (education, police, HSA, housing, etc.) who will consider all services needed for the young people who may use the program and where the service gaps may be.

# **The San Francisco Sentencing Commission**

## **City & County of San Francisco**

(Administrative Code 5.250 through 5.250-3)

---

Joanna Hernandez asked whether the court will be only for young adults who have committed minor offenses or whether violent offenders will be included. Ms. Miller stated that these questions will be addressed when the planning begins. The young adult court working group will find out in January whether there were awarded the grant.

Ms. Miller asked if there were any additional questions regarding the young adult court working group report. Seeing none, Ms. Miller turned the time over to Monique Perkins, Alameda County Director of the Center for Employment Opportunities (CEO).

### **7. Presentation on Reducing Recidivism Through Employment Services by Monique Perkins, Alameda County Director, Center for Employment Opportunities (Discussion and Possible Action).**

Ms. Perkins began the presentation by introducing Vernon Royal, a job coach and recruitment specialist at CEO. Ms. Perkins stated that CEO provides services for men and women retuning from prison so that they have paying employment. The goal of CEO is to introduce those who were formerly incarcerated with new patterns of behavior. CEO began at the Vera Institute of Justice in New York City, branched off into their own organization, and was incorporated in 1996. Since then, CEO has grown tremendously and now has 11 offices, one of which opened in Oakland, California, in 2011 and began to provide services in 2012. CEO plans to open another office in Philadelphia, Pennsylvania, in 2015, and with new funding from the Google Impact Challenge, they plan to open a location in San Jose, California.

Mr. Royal stated that one way that he is able to recruit participants is by going to the Santa Rita jail and speaking with inmates a month before their release under Assembly Bill 109. Mr. Royal stated that the CEO program includes job placement, life skills classes, sustainable employment practices, and interviewing techniques. Each Friday, formerly incarcerated participants graduate from classes. Participants work at least three days per week and are paid daily, and they are paid to attend classes before they are placed on a job. Participants are usually “job ready” within three to four weeks of release.

In addition to working with the formerly incarcerated, Mr. Royal meets with employers who have agreed to provide employment for this population. Mr. Royal, along with a team of job developers, meets with potential employers to schedule interviews and meetings for the participants. Participants are tracked for one year, are required to bring in a pay stub every two weeks, and continue to receive job coaching and gift cards as incentives.

CEO program staff include vocational staff, job developers, life skills educators, job coaches, recruitment staff, and field staff (site supervisors for litter abatement, public works, and Caltrans).

# **The San Francisco Sentencing Commission**

## **City & County of San Francisco**

(Administrative Code 5.250 through 5.250-3)

---

Ms. Perkins stated that staff are both male and female and usually were previously incarcerated. The CEO model is the same at all sites and is monitored through the Salesforce database. CEO was recently evaluated, and some of the results included that the programing increased employment 23.9% for the high-risk individuals and reduced recidivism by 20.8% for the high-risk individuals. CEO has 700 participants, seven work crews, paid transitional work for 660 participants, and 383 full-time placements with an average wage of \$12 per hour.

Mr. Raphael asked how clients are coached on addressing their criminal history at a job interview. Mr. Royal answered that they teach participants to be truthful about their past. He said employers are already aware of their past and it is good practice for participants to be honest, explain what they learned during their time incarcerated, and tell employers how they have worked to make better life choices.

Ms. Roye stated that those who reenter the workforce may not have been working for more than 10 years and asked how the jobs are maintained long term. Ms. Perkins stated that CEO offers wraparound services to the participants and also clarified that many of the participants have been working while incarcerated. Participants are given incentives to continue working (a paycheck and gift cards). Additionally, if something like a fight were to happen while on a work crew, depending on the severity, the individual's job coach would talk with the individual and the employer, and most times, the participant would be able to return to the work crew.

Ms. Hernandez asked how participants received transportation to work and whether housing is also provided. Ms. Perkins answered that CEO is very specific about the services they offer, which are employment opportunities. However, they understand that both housing and transportation are critical to the formerly incarcerated. Ms. Perkins added that CEO works with and the Volunteers of America, which houses many of the participants, and that it takes strong partnerships with other organizations to provide wraparound services to this population.

Ms. Miller thanked Ms. Perkins and Mr. Royal for their presentation and introduced the next item on the agenda.

### **8. Presentation on Improving Recidivism as a Performance Measure by Ryan King, Senior Fellow, Justice Policy Center, Urban Institute (Discussion and Possible Action).**

Ryan King began by stating that due to time constraints, he would provide his PowerPoint presentation to the Sentencing Commission for later review. Mr. King stated that in an effort to measure recidivism accurately, it is important to have metric for success and to classify what is being measured. He stated that the numbers are not the end of the conversation when measuring recidivism but necessary steps to create a meaningful performance measure. Mr. King stated that meaningful performance measures should be defined, data should be collected, the measures should

# **The San Francisco Sentencing Commission**

## **City & County of San Francisco**

(Administrative Code 5.250 through 5.250-3)

---

be analyzed, and information should disseminated to stakeholders in a meaningful and comprehensible way.

Mr. King added that there is no single measure or right measure when looking at recidivism. There are multiple measures, including return arrest, multiple convictions, misdemeanor versus felony, those who never reoffend in addition to those who do reoffend, more and less severe offenses, and intervention and policies for behavior changes. It is also important to develop protocols, unique identifiers, and long-term records; collect contextual information, such as history and age at first arrest; and update changes in status. It is also critical to account for underlying composition of the population.

Mr. King stated that the study that was done in Washington looked like a failure on face value because of the high recidivism rate. However, when those who conducted the study controlled for population differences and risk, and allowed prediction on what is and what should have been and compared the two, they found a different result that had a high impact on policy decisions. Mr. King added that jurisdictions need more sophisticated analysis and that it is critical to decide on the desired measurement and to collect data based upon that desired measurement.

Chief Still made a motion to convene a working group to develop definitions and data collection recommendations. Chief Still added to the motion to take the legislature's (Board of State and Community Corrections) definitions of recidivism into consideration. The motion was seconded by Mr. Raphael and the motion passed.

Ms. Miller thanked Mr. King for his presentation and continued to the next item on the agenda.

### **9. Presentation on the Anti-Recidivism Coalition's Efforts to Improve Outcomes for Formerly Incarcerated Young Adults by Scott Budnick, Founder, Anti-Recidivism Coalition (Discussion and Possible Action).**

Scott Budnick began his presentation by stating that the Anti-Recidivism Coalition (ARC) began in Los Angeles, California. Mr. Budnick began teaching a creative writing class to incarcerated youth who were being tried as adults. During that time, Mr. Budnick realized that education was one of the largest indicators of success for the young people he worked with, so he created ARC to provide educational services to them.

Mr. Budnick stated that an analysis done on outcomes for previously incarcerated young people found that for every \$1 spent on education, \$3 to \$4 were saved in recidivism costs. He also stated that a meta-analysis concluded that there was a 33% lower chance of recidivism when an education program was provided. He stated that he also began to work in other areas of criminal justice

# The San Francisco Sentencing Commission

## City & County of San Francisco

(Administrative Code 5.250 through 5.250-3)

---

reform, including to pass Senate Bill (SB) 109 and SB 260, which included language of no life sentences for young people under the age of 16.

Mr. Budnick stated that ARC has peer support groups, case managers, and wraparound services and is influential in policy change. ARC provides services that formerly incarcerated young people will need to return to the community. ARC began a facility on a Los Angeles community college campus and now offers residents manager housing, mentoring, jobs, trauma therapy, and other services. Mr. Budnick raised \$500,000 to start the facility, which has been in use for four months. No residents have reoffended and all the young people are in school at the community college. Mr. Budnick stated that education provided through the community college system is at the core of the ARC model. Community college education for these young people has been a game changer. Most of these youth do not have a stable place to live, so providing that alone changes outcomes.

Ms. Miller asked where ARC will go from here. Mr. Budnick responded that he hopes to influence policies that will look at the sentencing system, which will reward behavior change. Mr. Budnick wants systems that reward personal responsibility and transformation and provide positive incentives. He also hopes to create a supportive housing workforce community college model for the formerly incarcerated and create a support network in Northern California.

Ms. Miller thanked Mr. Budnick for his presentation and moved onto the next item on the agenda.

### **10. San Francisco Sentencing Commission 2014 Annual Report (Discussion and Possible Action).**

Tara Anderson stated that the Sentencing Commission annual report has been drafted and is included in members' packets. The annual report will need to include reauthorization of the Sentencing Commission. Ms. Anderson stated that if Sentencing Commission members approve the report as is, it will be provided to the board of supervisors to approve the extension of the Sentencing Commission.

Ms. Anderson also stated that in light of the day's discussion, language will be added to the annual report recommendations that will include recidivism data collection and establishing a youth court. The annual report will also include recommendations that the Sentencing Commission created in 2013, including the investment of feasibility of LEAD.

Chief Still asked that language be added to the annual report regarding the Sentencing Commission's conversation on shorter probation lengths. She offered a draft of the language as follows.

Recognizing that a generic probation sentence length is not evidence-based and uses valuable limited public resources, one of the justice reinvestment strategies is to create a spectrum of probation

# **The San Francisco Sentencing Commission**

## **City & County of San Francisco**

(Administrative Code 5.250 through 5.250-3)

---

lengths based on risk level. The Sentencing Commission fully supports the development of an evidence-based probation system where determining probation sentence lengths are based on evidence-based practice.

Chief Still made a motion to include the stated language, which was seconded by Ms. Roye and agreed upon unanimously. The motion to adopt the report was made by Ms. Roye and seconded by Mr. Raphael. The motion carried.

Ms. Miller asked the Sentencing Commission members whether they had any further comments; seeing none, she moved on to the next agenda item.

### **11. Members' Comments, Questions, and Requests for Future Agenda Items.**

Alex Busansky, president of the National Council on Crime and Delinquency, presented an award to Chief Still to commemorate her service to the city of San Francisco and work on the Sentencing Commission.

### **12. Public Comment on Any Item Listed Above or Items Not Listed on the Agenda.**

Ms. Miller asked whether there was any public comment on any item listed on the agenda; seeing none, she moved on to the next agenda item.


### **13. Adjournment.**

Ms. Miller asked if there was a motion to adjourn the Sentencing Commission meeting. This motion was seconded, all members voted in favor, and the motion passed. At 12:15 p.m., the meeting was adjourned.

# SMARTER JUSTICE

FOR YOUNG ADULTS AND PROBATION CLIENTS

VINCENT N. SCHIRALDI,  
SENIOR ADVISOR,  
MAYOR'S OFFICE OF CRIMINAL JUSTICE

 Mayor's Office of Criminal Justice

## Emerging Young Adult Research

2

- Most criminal careers start before 25; most mature out by 25
- 18-25 year olds more similar to adolescents than fully mature adults
  - ▣ More impulsive, especially in emotionally-charged settings
  - ▣ Less future-oriented
  - ▣ More susceptible to peer pressure
  - ▣ Transitioning to full adulthood
- NIJ Study Group on the Transitions between Juvenile Delinquency and Adult Crime in its 2013 report suggest:
  - ▣ Raising the age of juvenile court to 21 or even 24
  - ▣ Create specialty courts for young adult offenders ages, 18-24 with fewer ongoing stigmatizing effects and more special programming

## National Data

3

- Young Adults overrepresented at many stages of the system. 13% of US population; 30% of arrests; 21% of prison admissions
- Once released, 75% will be rearrested within 3 years; highest of any age cohort
- African American young adults 15 times more likely to be imprisoned than young whites



## European Trends

4

- Most European Countries have special approaches to young adults that aren't applicable to adults
  - 57% of 35 European countries surveyed had special rules concerning young adults in either juvenile or general penal law
  - 49% had penalty mitigation
  - Only 7 countries had no special rules



## European experiences

5



In Germany, adults ages 18-21 originate in juvenile court, with the option of sentencing according to adult or juvenile law; 22-25 may be waived down; separate youth facilities;



The Netherlands recently extended the use of juvenile justice sanctions to young adults (18-23). Young adults sentenced to youth prisons are placed in juvenile facilities.



Every major candidate running for office has committed to creating special response to young adults in the CJ system. Organizing/reports issued by Transitions to Adulthood (UK): <http://www.t2a.org.uk/>

**NYC** CRIMINAL JUSTICE

## And in the United States...

6

- The majority of states currently have laws that reflect the belief that older adolescents benefit from the type of support and services provided by the juvenile justice system
  - ▣ 70% of states in the U.S. allow youth to remain in juvenile correctional custody until at least age 21
  - ▣ 3 states retain juvenile custody up to age 25
    - California, Oregon, Wisconsin

**NYC** CRIMINAL JUSTICE

## State Examples

7



Florida has had a youthful offender law since 1978 that allows the courts to use alternative processing for 18-21 year olds



Michigan's "Holmes Youthful Trainee Act" allows a judge to sentence a youth between 17-20 without having to incur a criminal conviction



In Ohio, adults up to age 21 who are sent to adult court, or who turn 18 while under the juvenile court's jurisdiction, are placed in juvenile, rather than adult detention facilities.

**NYC** CRIMINAL JUSTICE



## New York

8

- Corrections announced special facility for Young Adults
- Probation is creating specialized caseloads
- Courts are considering creating diversion "parts" up to age 24, misdemeanors *and* felonies
- Child welfare is establishing a bail fund/wrap around services
- Gov's recommendation – extend YO law to 21; separate facilities; civil sealing of records

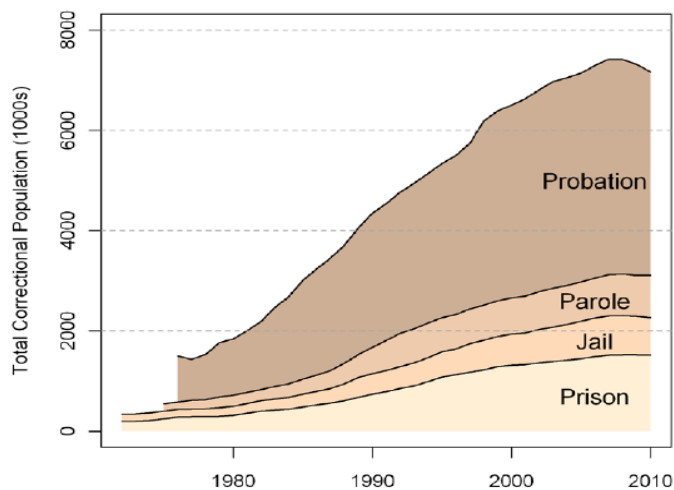
**NYC** CRIMINAL JUSTICE

## REFORMING PROBATION



Mayor's Office of Criminal Justice

### Exponential Probation Growth



**Figure 1.** Total adult correctional population including state and federal prison, local jail, and parole and probation populations, 1972 to 2010.



## Problems in Probation

11

- Supervision time arbitrarily long
  - ▣ Contributes to high violation/revocation rate
  - ▣ Increases caseloads/reduces individualized attention
- Too many low-risk clients
  - ▣ Studies show lengthy probation times increase recidivism; effect of supervision wanes after 18 mos
- Lack of differentiated programming
  - ▣ Programs not tailored for criminogenic needs
  - ▣ Programs not tailored for varying ages



## Reforming Probation

- Make probation sentences shorter, more meaningful and reduce-able for program completion
- Develop strong risk assessment tools
- Tailor supervision strategies based on risk and needs of client
- Use incentives and graduated sanctions to respond to probationers' behaviors; and
- Don't put low risk clients on probation or, if you do, bank their caseloads
  - ▣ Shortening sentences is a powerful motivator of people on supervision



## Dosage Probation

### Key elements:

- Links duration of supervision to the offender's assessed level of risk and achievement of case plan objectives
- Incentivizes offenders' engagement in risk-reducing activities
- Ensures offenders receive interventions and services that have been demonstrated effective



## Dosage Probation

### Research findings:

- A 2009 study by the U.S. Federal Courts showed that early termination of supervision of federal probationers did not adversely impact public safety
- Expanded study found that early termination of supervision reduced recidivism not just for low-risk offenders, but for moderate and high risk ones as well
- Current study of dosage probation in Milwaukee County





## Arizona– Shrinking the System

- State passed “Safe Communities Act,” in 2008
  - ▣ Probationers eligible for reduction in supervised term for compliance with probation conditions
  - ▣ 2008 to 2011, revocations fell 39% and felony convictions for probationers fell 42%
- State augmented supports for high-risk clients, including offering cognitive-behavioral and social-learning programs



## Nevada–Shrinking the System

- In 2007 Nevada passed several reforms which projected a 60% prison population increase by 2012.
  - ▣ increased program credits awarded for in-prison education
  - ▣ increased vocational and substance abuse treatment
  - ▣ expanded the number of credits people in prison and on community supervision can earn for ‘good time’
  - ▣ reinstated an advisory commission to review sentencing and corrections policies
- Saved Nevada \$38 million in operating costs and \$1.2 billion in prison construction costs.





## California: Probation and Realignment

17

- “Triple nons” serve time in county jails and under the supervision of county probation officers
- SF uses funding from realignment for alternative sentencing and re-entry programs – including connecting clients w/ an array of services
- SF probation completion rates have gradually increased, reaching 80% in 2013, as the number of active probation cases has dropped.



## NYC: Juvenile/Young Adult Probation Reform

18

- NYC to establish specialized caseloads for 14-18 year olds and 19-25 year olds
  - Special training for staff and special programming for youth
- Project Reset: Pre-arraignment diversion pilot
  - Eligible 16- and 17-year-old first offenders arrested for non-violent misdemeanors will be issued Desk Appearance Tickets (DATs)
  - Youth to participate in counseling, community service, or a session in a youth court run by peers.





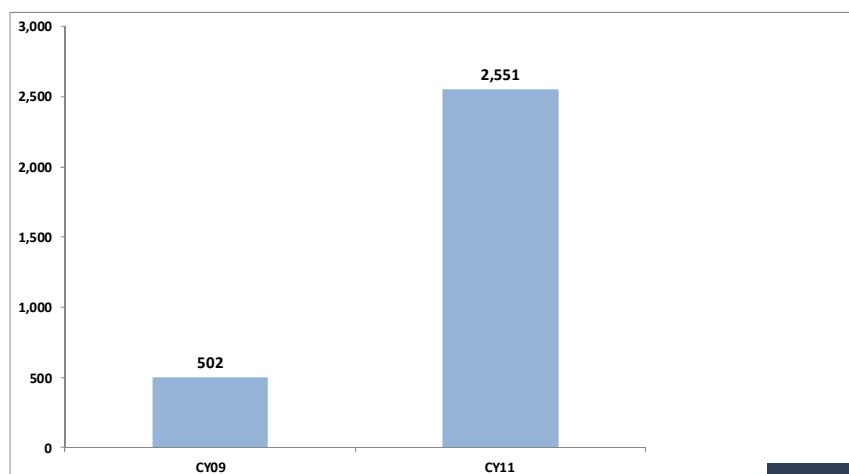
## NYC & Less Community Supervision

- Reduced number of low-risk clients
  - ▣ Since 1996, the number of people on probation in NYC has dropped by 63%
- 1. Electronic supervision via kiosks for 2/3 of clients
  - ▣ Reduced caseload of Probation Officers from 200:1 to 29:1 (amongst highest caseloads), giving officers more time to supervise high-risk clients
  - ▣ Rearrests for among high- and low-risk clients declined slightly after kiosks program
- 2. Low risk clients start on kiosks and we push staff to step down medium risk if they're successful
- 3. Increased requests for early discharge 6-fold
- 4. Got legislation passed reducing probation terms
- 5. 3% of early discharge/4% of completers get rearrested for felonies within a year.



## Adult Operations: Early Discharges Submitted

20

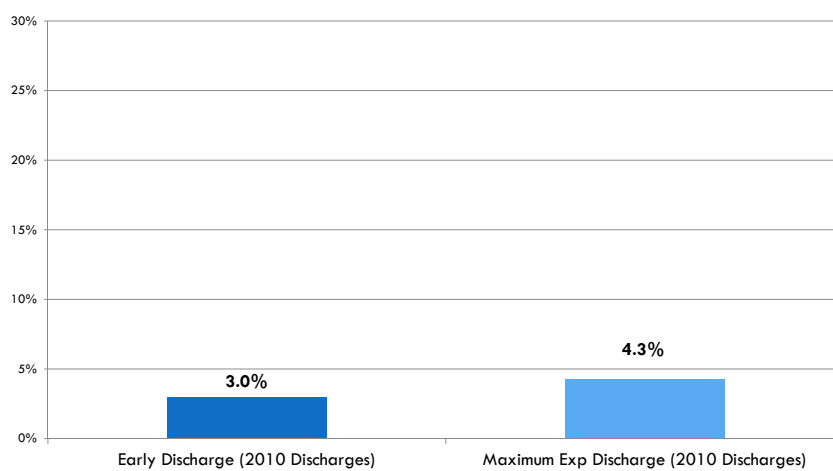


SOURCE: NYC DOP STARS Performance Management Statistics



## Felony Rearrest Rates Within a Year of Discharge, Early Discharges vs. MEDs, 2010

21

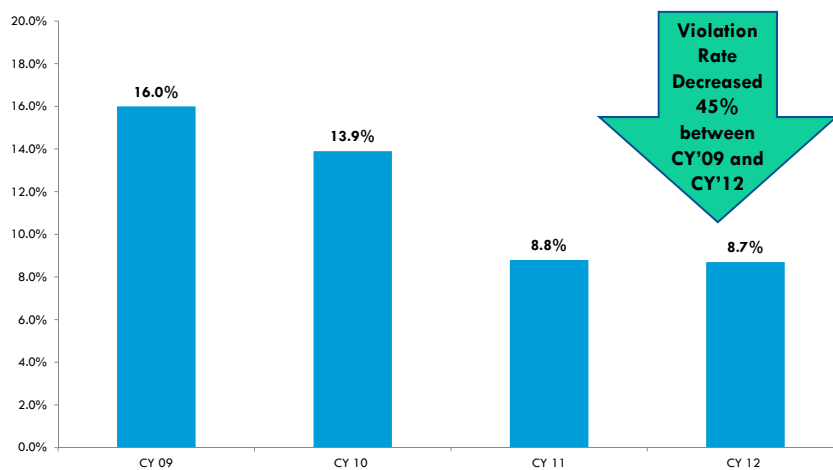


SOURCE: OPCA/DCJS

**NYC** CRIMINAL JUSTICE

## Adult Operations: Total Violation Rates - 2009 to 2012

22



SOURCE: NYC DOP STARS Performance Management Statistics

**NYC** CRIMINAL JUSTICE

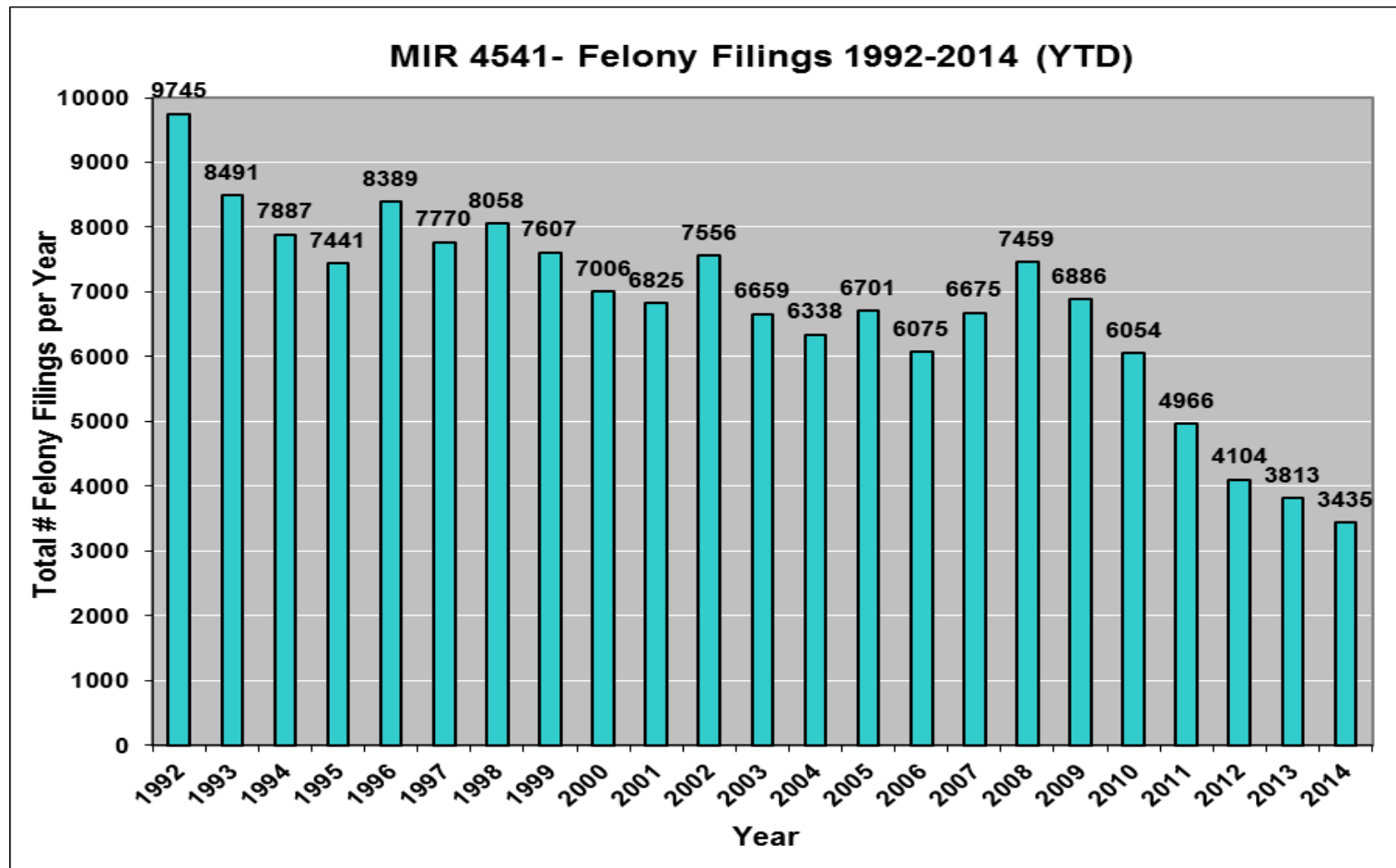
# Discussion



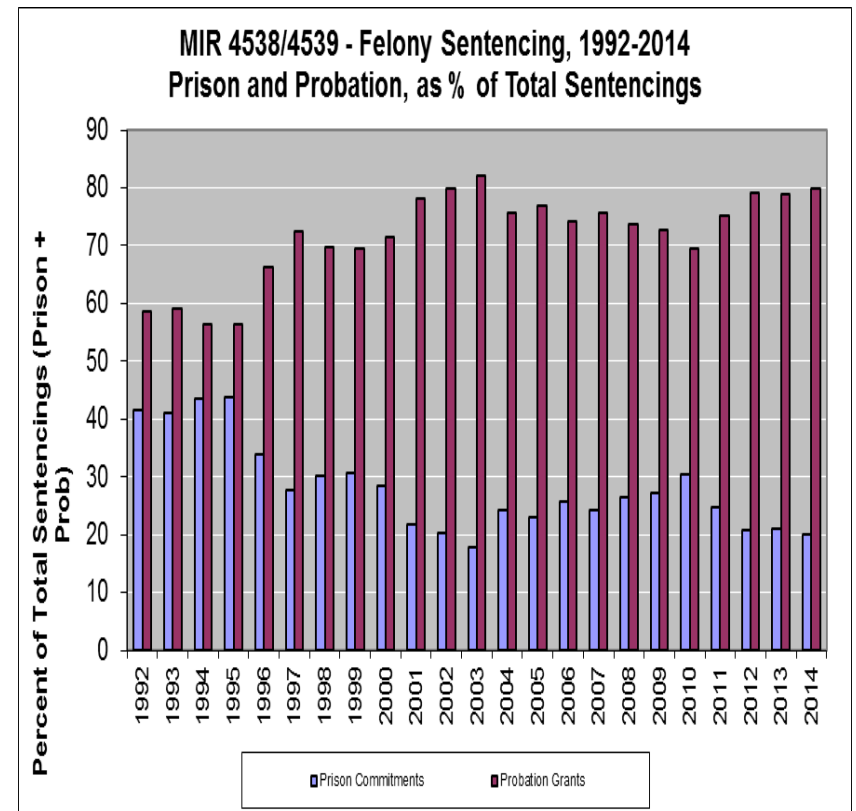
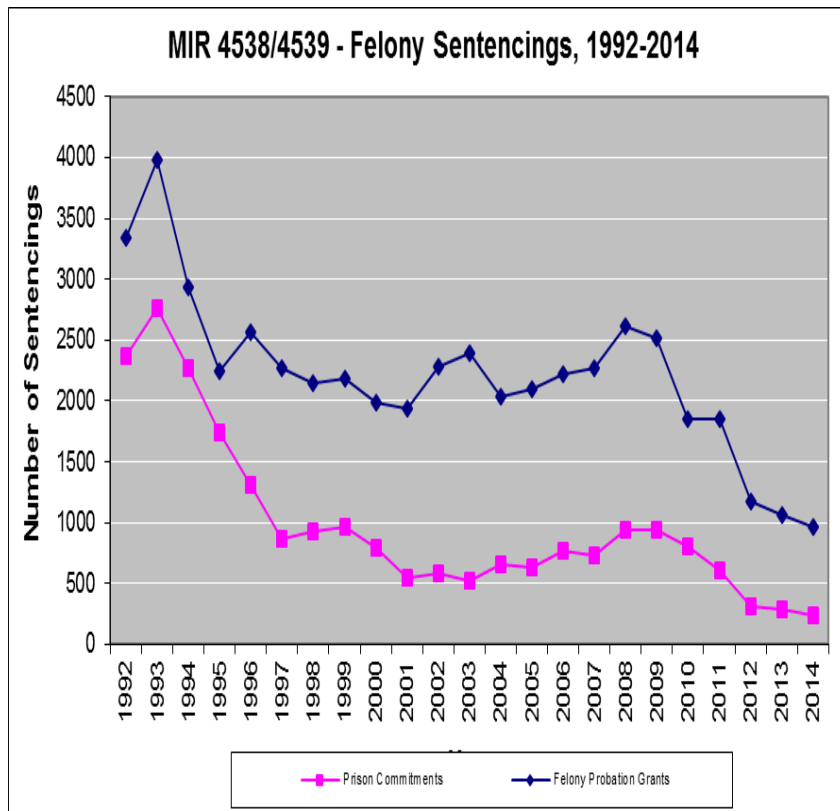
Mayor's Office of Criminal Justice

# Update: San Francisco Superior Court and Adult Probation Data

# Superior Court of California, County of San Francisco

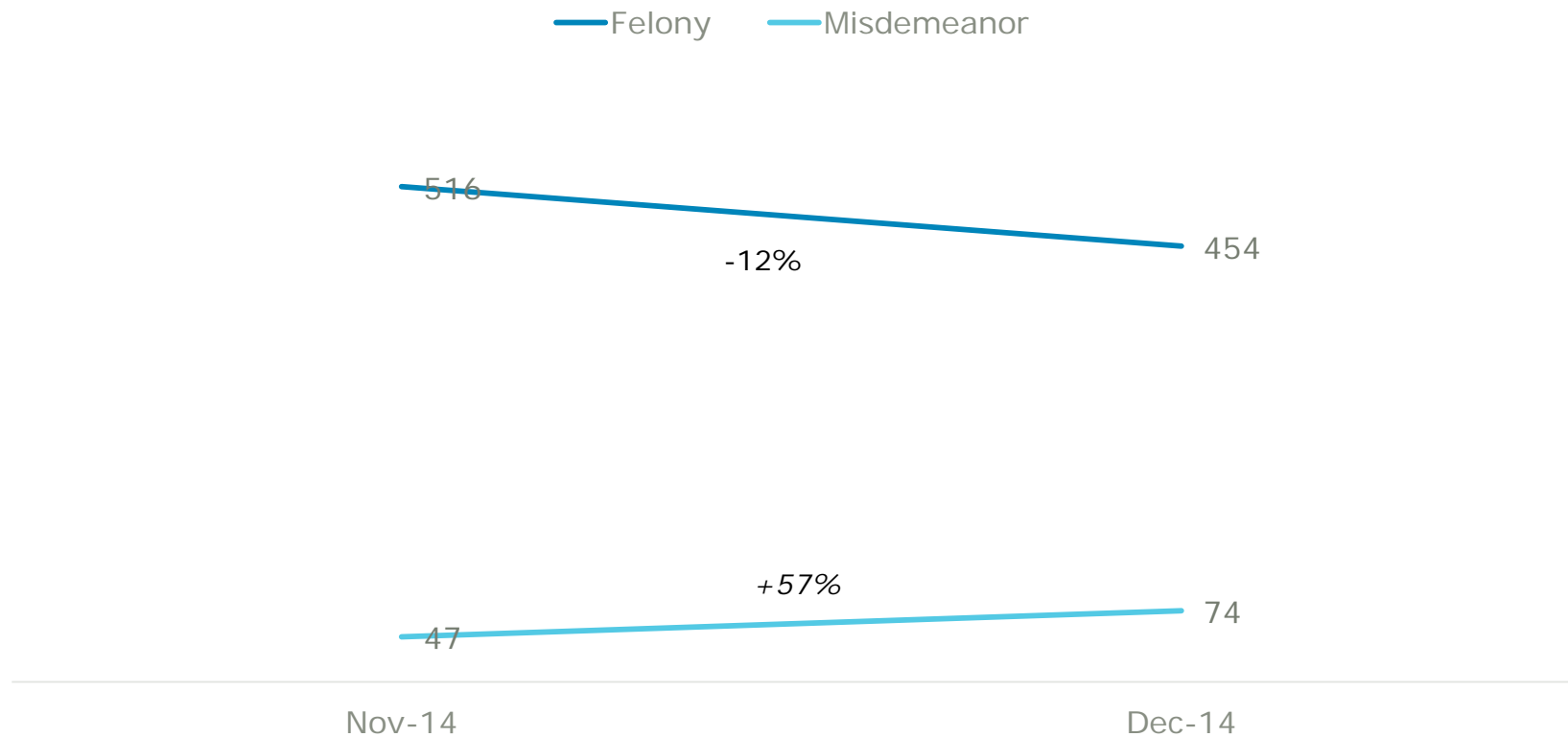


Source: Superior Court of California, County of San Francisco  
Principal Management Analyst Michael A. Corriere



Source: Superior Court of California, County of San Francisco  
Principal Management Analyst Michael A. Corriere

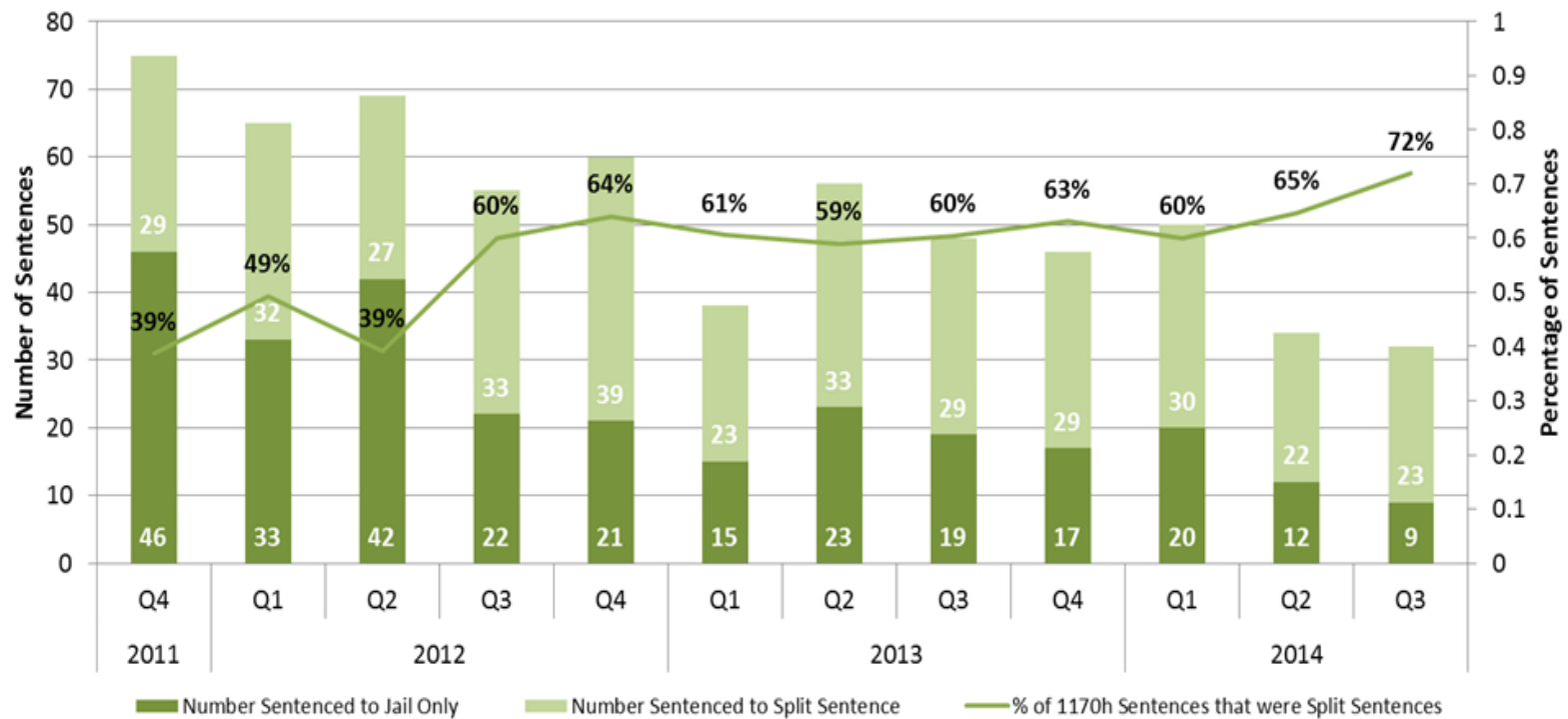
## MIR 2133: Future Scheduled Open Felony and Misdemeanor Drug Cases by Most Severe Charge



Source: Superior Court of California, County of San Francisco  
Principal Management Analyst Michael A. Corriere

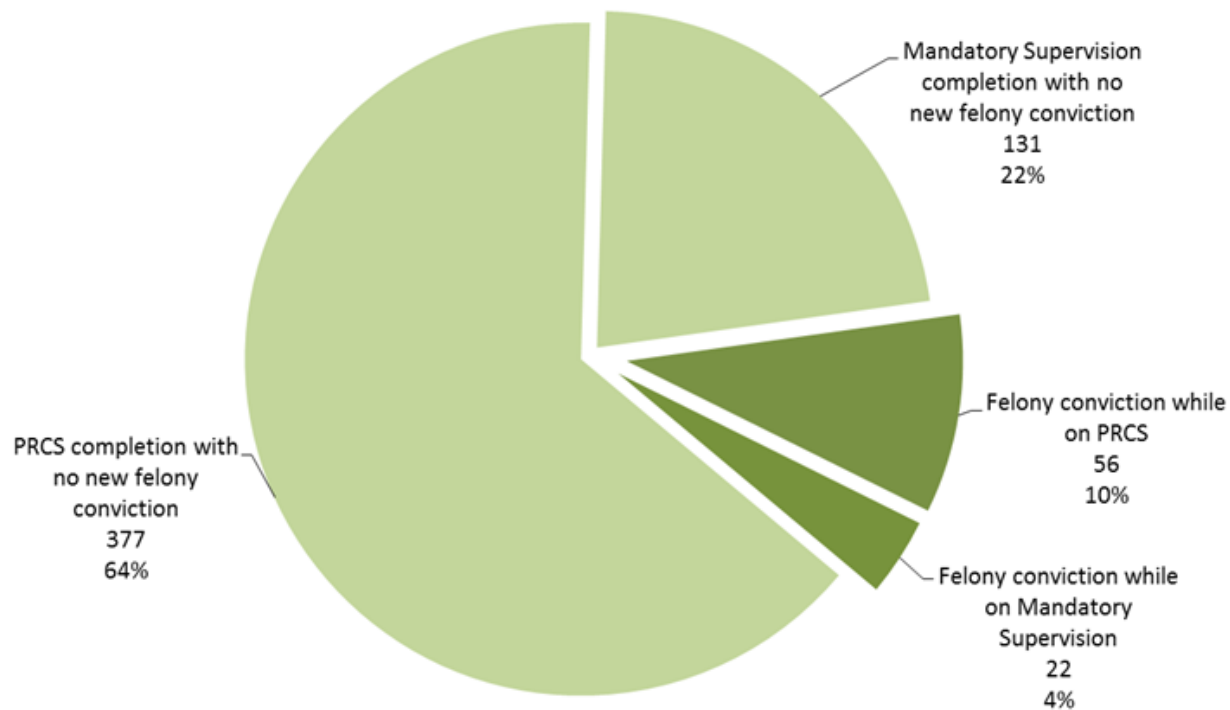
# City and County of San Francisco Adult Probation

**1170(h) Straight and Split Sentences Imposed by Quarter,  
Q4 2011 - Q3 2014**



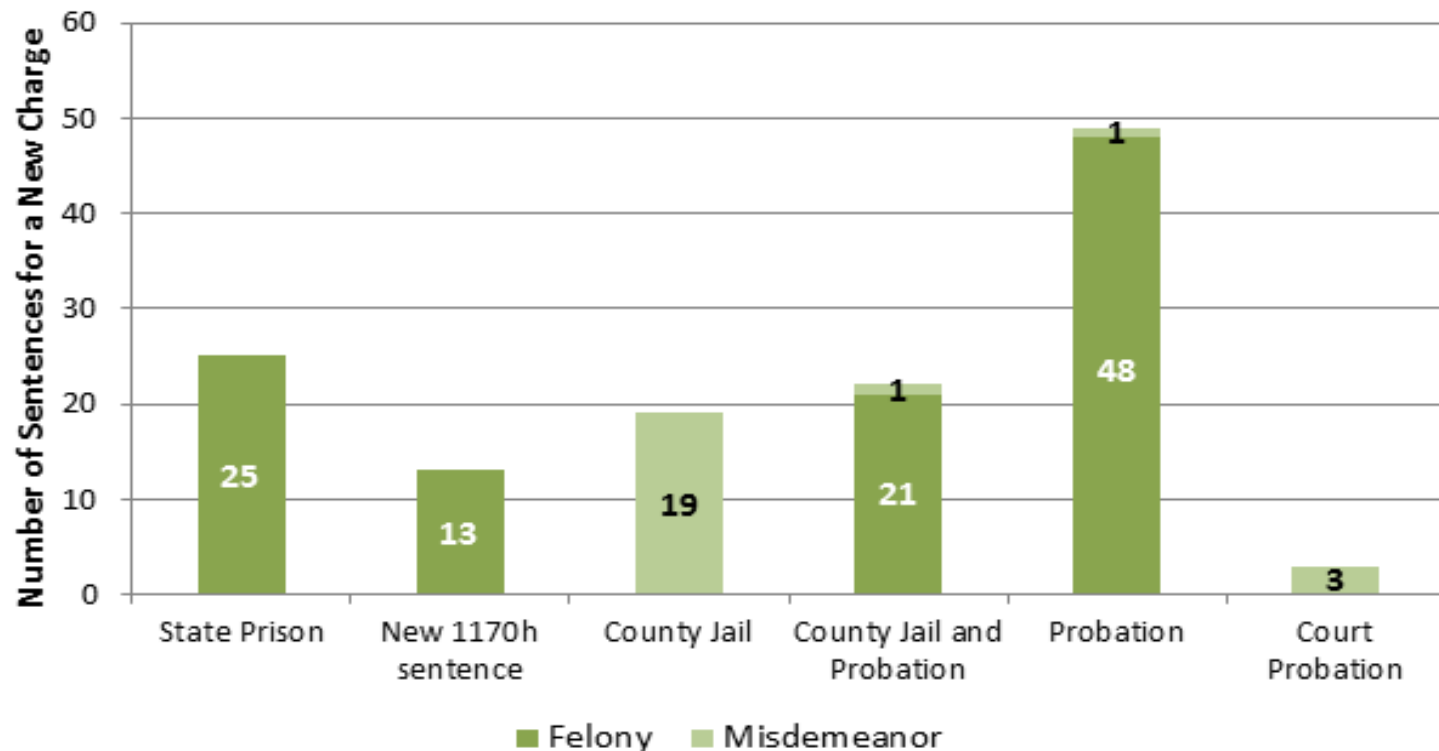
*\*Source San Francisco Adult Probation Department  
For more information, contact: Leah Rothstein, Reentry Division Research Director*

### PRCS and Mandatory Supervision Felony Recidivism, October 2011 - September 2014



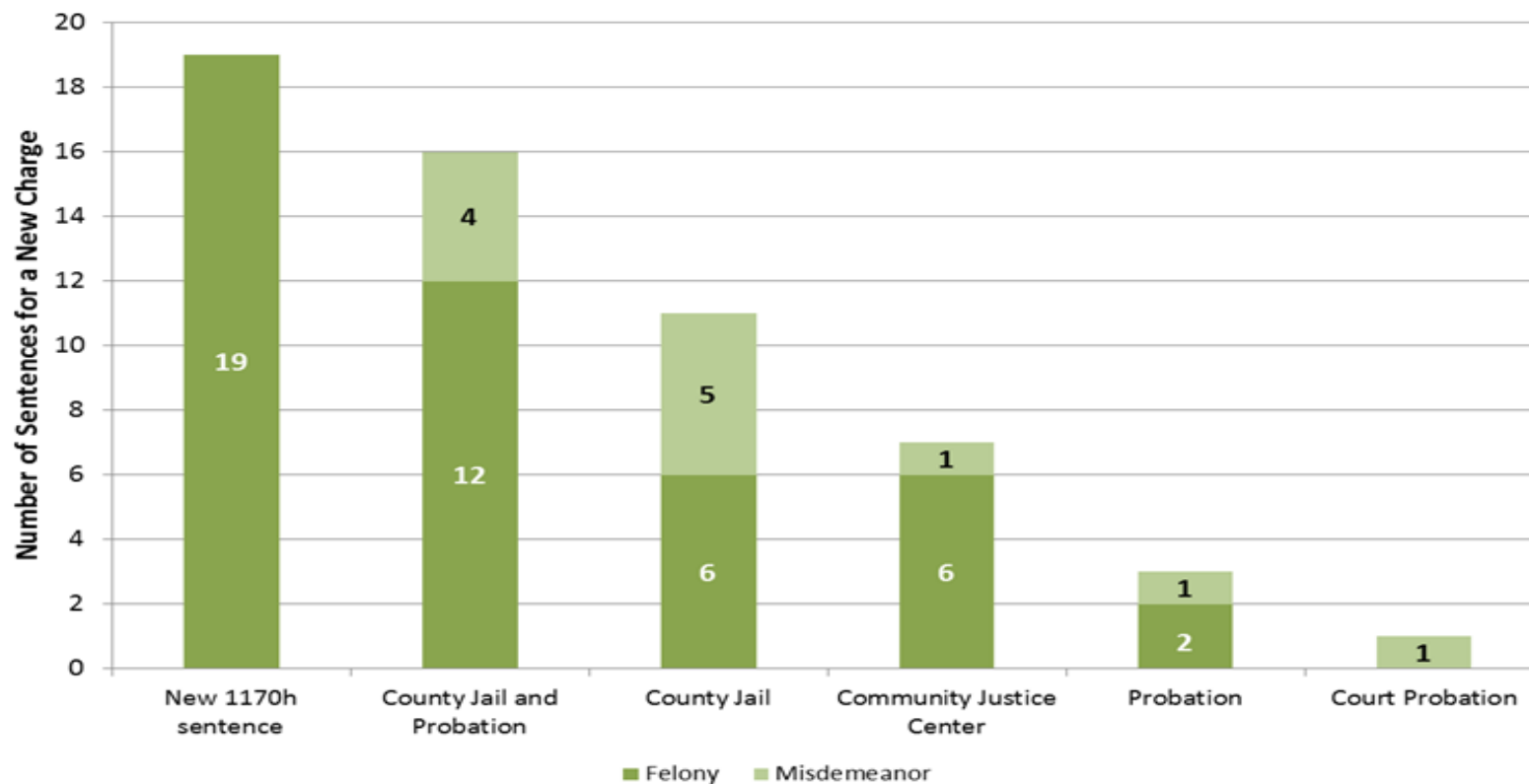
*\*Source San Francisco Adult Probation Department  
For more information, contact: Leah Rothstein, Reentry Division Research Director*

## PRCS Violations for New Charge Resulting in a New Sentence, by Type of Sentence



*\*Source San Francisco Adult Probation Department  
For more information, contact: Leah Rothstein, Reentry Division Research Director*

## Mandatory Supervision Arrests Resulting in a New Sentence, October 2011 - September 2014 by Type of Sentence



\*Source San Francisco Adult Probation Department  
For more information, contact: Leah Rothstein, Reentry Division Research Director

The 2015-16 Budget:

# Implementation of Proposition 47



MAC TAYLOR • LEGISLATIVE ANALYST • FEBRUARY 2015



## EXECUTIVE SUMMARY

Proposition 47, which was approved by voters in November 2014, makes significant changes to the state's criminal justice system. Specifically, it reduces the penalties for certain non-violent, nonserious drug and property crimes and requires that the resulting state savings be spent on (1) mental health and substance use services, (2) truancy and dropout prevention, and (3) victim services. In this report, we describe the impact of Proposition 47 on state corrections, state courts, and the county criminal justice system, as well as the Governor's budget proposals related to the proposition. We also provide recommendations for ensuring that the resulting state savings are spent in an effective manner.

***Impact on State Correctional Population.*** The Governor's budget assumes a reduction of 1,900 inmates in 2015-16 due to the implementation of Proposition 47. Our analysis indicates that the proposed budget likely underestimates the effect of the measure on the prison population. In addition, we raise concerns with the administration's plan for managing the state's prison capacity following the implementation of Proposition 47. Specifically, we find that the proposed level of contract bed funding appears higher than necessary. As such, we recommend that the Legislature not approve the proposed contract bed funding until the department can provide additional information. We also recommend that the Legislature direct the California Department of Corrections and Rehabilitation to resume its historical practice of providing long-term population projections biannually in order to assist the Legislature in determining how best to adjust prison capacity in response to Proposition 47.

***Impact on State Courts.*** The Governor's budget proposes \$26.9 million in 2015-16 and \$7.6 million in 2016-17 for the courts to process resentencing petitions from offenders currently serving felony sentences for crimes that Proposition 47 reduces to misdemeanors. We find that the administration's funding request for the budget year is reasonable, but that additional data is needed to justify the requested funding for 2016-17. Thus, we recommend that the Legislature approve the amount requested for 2015-16 but not for 2016-17, pending additional data on the actual impacts on court workload.

***Impact on Counties.*** In general, Proposition 47 will significantly reduce criminal justice workload for counties, particularly by freeing up beds in county jails and resources in probation departments. We estimate that, prior to the passage of the proposition, counties spent several hundred million dollars annually on workload that will be eliminated by the measure. However, local decisions on how to respond to this workload reduction will determine whether it results in fiscal savings or improvements to the administration of local criminal justice systems. For example, counties could choose to use the freed up beds in their jails to reduce the number of inmates that are released early.

***Spending State Savings.*** While the state savings that will result from Proposition 47 is subject to significant uncertainty, we estimate that the annual savings will likely range from \$100 million to \$200 million beginning in 2016-17. Although Proposition 47 states that these savings shall be allocated for grant programs administered by specific departments, the Legislature has the

opportunity to provide direction on how the funds are spent. Specifically, the Legislature could weigh in on (1) how the individual departments should distribute the funds and (2) how much state oversight to provide to ensure that the funds are being spent effectively. We provide the following recommendations on how the Legislature can ensure that the grant programs are effective.

- ***Mental Health and Substance Use Treatment Services.*** Sixty-five percent of the savings will be allocated to the Board of State and Community Corrections (BSCC) to provide grants to public agencies to support mental health and substance use treatment programs, with a goal of reducing recidivism. We recommend the Legislature direct BSCC to coordinate these grants with other programs, prioritize programs that have been proven cost-effective, and evaluate the funded programs' ability to reduce recidivism.
- ***K-12 Truancy and Dropout Prevention.*** Twenty-five percent of the savings will be allocated to the California Department of Education to administer a grant program to reduce truancy, high school dropout, and student victimization rates. We recommend that the Legislature allocate these grants to school districts that have notably high concentrations of English learners, low-income, or foster youth, as these students are at higher risk for these concerning outcomes.
- ***Victim Services.*** Ten percent of the savings will be allocated to the Victim Compensation and Government Claims Board for grants to trauma recovery centers (TRCs), which assist victims in coping with the trauma they have suffered. We recommend that the Legislature (1) structure the grants to ensure the funds are spent in an effective and efficient manner, (2) ensure that the services TRCs provide are being included in the state's application for federal matching funds, and (3) require the evaluation of TRC grant recipients and their outcomes.

## INTRODUCTION

Proposition 47, which was approved by voters in November 2014, makes significant changes to the state’s criminal justice system. Specifically, it reduces the penalties for certain non-violent, nonserious drug and property crimes and requires that the resulting state savings be spent on (1) mental health and substance use services, (2) truancy and dropout prevention, and (3) victim services. In this report, we describe the provisions of the measure and their effect on state corrections, state courts, and the county criminal

justice system. We also describe and assess the Governor’s 2015-16 budget proposals related to Proposition 47. In addition, we recommend steps the Legislature can take to ensure that it has the necessary information to make important decisions regarding the implementation of Proposition 47. Finally, we provide recommendations on how the Legislature can ensure that the state savings from the proposition are spent in a manner that maximizes reductions in recidivism, truancy, and dropout-rates and improves victim services.

## BACKGROUND

### Overview of State Sentencing Law

There are three types of crimes: felonies, misdemeanors, and infractions. A felony is the most serious type of crime. State law classifies some felonies as “violent” or “serious,” or both. Examples of felonies defined as both violent and serious include murder, robbery, and rape. Felonies that are not classified as violent or serious include grand theft and selling illegal drugs. A misdemeanor is a less serious crime. Misdemeanors include crimes such as petty theft and public drunkenness. An infraction is the least serious crime and is usually punished with a fine.

**Felony Sentencing.** In recent years, there has been an average of about 220,000 annual felony convictions in California. Prior to 2011, anyone convicted of a felony was eligible for state prison. In 2011, the state realigned to county governments the responsibility for certain felony offenders. Under this realignment, most offenders convicted of nonserious and non-violent felonies (specifically those with no prior convictions for violent, sex,

or serious crimes) are generally ineligible to be sentenced to state prison and are instead sentenced to county jail and/or community supervision. Accordingly, offenders convicted of felonies can be sentenced as follows:

- **State Prison.** Felony offenders who have current or prior convictions for serious, violent, or sex crimes can be sentenced to state prison. Offenders who are released from prison after serving a sentence for a serious or violent crime are placed on parole where they are supervised in the community by state parole agents. Offenders who are released from prison after serving a sentence for a crime that is not a serious or violent crime are usually supervised in the community by county probation officers. Offenders who break the rules that they are required to follow while supervised in the community can be sent to county jail. However, they may be sent to state prison if they commit a new prison-eligible offense.

- **County Jail and/or Community Supervision.** Felony offenders who have no current or prior convictions for serious, violent, or sex offenses are typically sentenced to county jail and/or the supervision of a county probation officer in the community. In addition, depending on the discretion of the judge and what crime was committed, some offenders who have current or prior convictions for serious, violent, or sex offenses can receive similar sentences. Offenders who break the rules that they are required to follow while on community supervision can be sent to county jail. However, they may be sent to state prison if they commit a new prison-eligible offense.

**Misdemeanor Sentencing.** Under current law, offenders convicted of misdemeanors may be sentenced to county jail, county community supervision, a fine, or some combination of the three. Offenders on community supervision can be placed in jail if they break the rules that they are required to follow while supervised in the community. However, they may be sent to state prison if they commit a new prison-eligible offense. In general, offenders convicted of misdemeanor crimes are punished less severely than felony offenders. For example, misdemeanor crimes carry a maximum sentence of up to one year in jail while felony offenders can spend much longer periods in prison or jail. In addition, offenders who are convicted of a misdemeanor are usually not supervised as closely by probation officers.

**Wobbler Sentencing.** Some crimes—such as burglary of a commercial property—can be charged as either a felony or a misdemeanor. These crimes are known as “wobblers.” Courts decide how to charge wobbler crimes based on the details of the crime and the criminal history of the offender.

## Major Provisions of Proposition 47

### Reduction of Criminal Penalties

Proposition 47 reduced certain nonserious and non-violent property and drug offenses from wobblers or felonies to misdemeanors. The measure limits these reduced penalties to offenders who have not previously committed certain severe crimes listed in the measure—including murder and certain sex and gun crimes. Specifically, the measure reduces the penalties for the following crimes:

- **Drug Possession.** Under Proposition 47, possession for personal use of most illegal drugs (such as cocaine or heroin) is always a misdemeanor crime. Previously, such a crime was a misdemeanor, a wobbler, or a felony—depending on the amount and type of drug. The measure did not change the penalty for possession of marijuana, which is currently either an infraction or a misdemeanor.
- **Receiving Stolen Property.** Individuals found with stolen property may be charged with receiving stolen property. Proposition 47 changes receiving stolen property worth \$950 or less from a wobbler crime to a misdemeanor.
- **Theft.** Proposition 47 limits when theft of property of \$950 or less can be charged as a felony. Specifically, such crimes cannot be charged as felonies solely because of the type of property involved or because the defendant had previously committed certain theft-related crimes.
- **Shoplifting.** Under Proposition 47, shoplifting property worth \$950 or less is

always a misdemeanor and can no longer be charged as burglary in the second degree, which is a wobbler.

- **Writing Bad Checks.** Under Proposition 47, it is always a misdemeanor to write a bad check unless the check is worth more than \$950 or the offender has previously committed three forgery related crimes, in which case the crime is a wobbler. Previously, writing a bad check was a wobbler crime if the check was worth more than \$450, or if the offender had previously committed a crime related to forgery.
- **Check Forgery.** Proposition 47 makes forging a check worth \$950 or less a misdemeanor, except that it is a wobbler crime if the offender commits identity theft in connection with forging a check. Previously, it was a wobbler crime to forge a check of any amount.

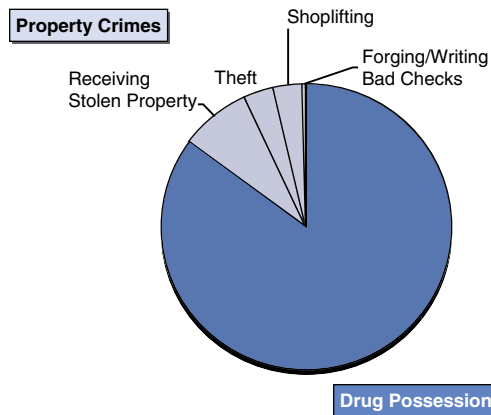
Based on 2012 data, we estimate that about 40,000 offenders annually are convicted of the above crimes and will be affected by the measure. However, this estimate is based on the limited available data, and the actual number could be thousands of offenders higher or lower. As shown in Figure 1, most of the affected crimes are drug offenses.

**Change in Penalties for These Offenders.** Since Proposition 47 designated crimes are nonserious and non-violent, most offenders have been handled at the county level since the 2011 realignment, as shown in Figure 2. Nearly nine out of every ten offenders who received felony convictions in 2012 for crimes affected by Proposition 47

were sentenced to county jail and/or county community supervision. Under Proposition 47, these offenders will continue to be handled locally. However, the *length of sentences*—jail time and/or community supervision—will typically be less. A relatively small portion—roughly one-tenth—of offenders of the above crimes are currently sent to state prison. Under this measure, none of these offenders will be sent to state prison. Instead, they will serve lesser sentences at the county level.

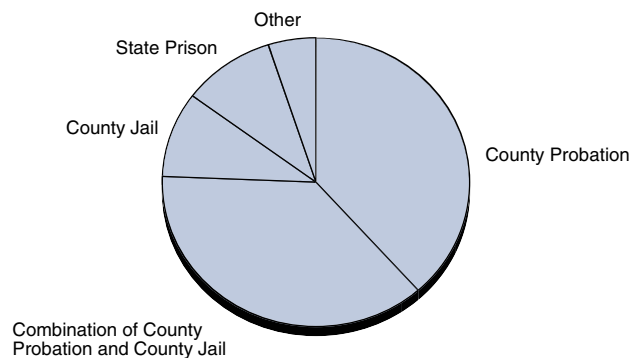
**Figure 1**

**Most Crimes Affected by Proposition 47 Are Drug Offenses**



**Figure 2**

**Most Offenders Affected by Proposition 47 Were Already Handled by Counties**



## **Resentencing of Previously Convicted Offenders**

Proposition 47 allows offenders currently serving felony sentences for the above crimes to apply to have their felony sentences reduced to misdemeanor sentences. In addition, certain offenders who have already completed a sentence for a felony that the measure changes can apply to the court to have their felony conviction reclassified as a misdemeanor. However, no offender who has committed a specified severe crime can be resentenced or have their conviction reclassified. In addition, the measure states that a court is not required to resentence an offender currently serving a felony sentence if the court finds it likely that the offender will commit a specified severe crime. Offenders who are resentenced are required to be on state parole for one year, unless the judge chooses to remove that requirement.

## **Funding for Treatment, Truancy Prevention, and Victim Services**

The measure requires that the annual savings to the state from the measure, as estimated by the Department of Finance (DOF), be annually transferred from the General Fund into a new state fund, the Safe Neighborhoods and Schools Fund (SNSF), beginning in 2016-17. The amount will depend on DOF's estimate of savings resulting from the measure in the prior fiscal year. For example, state savings from 2015-16 will be deposited into the fund for expenditure in 2016-17. (State savings in 2014-15 are not required to be deposited in the SNSF.) The measure also states that funds in the SNSF shall be continuously appropriated, which means that the funds can be

spent without future legislative action. Under the measure, monies in the fund would be divided as follows:

- 65 percent to the Board of State and Community Corrections (BSCC) for grants to public agencies aimed at supporting mental health treatment, substance abuse treatment, and diversion programs for people in the criminal justice system. The measure directs BSCC to prioritize programs that reduce recidivism of people convicted of less serious crimes (such as those covered by Proposition 47) and those who have substance abuse and mental health problems.
- 25 percent to the California Department of Education (CDE) for grants to public agencies aimed at improving outcomes for K-12 public school students by reducing truancy and supporting those students who are at risk of dropping out of school or are victims of crime.
- 10 percent to the Victim Compensation and Government Claims Board (VCGCB) to make grants to trauma recovery centers (TRCs) to provide services to victims of crime.

While Proposition 47 requires state savings to be spent for the above purposes, it does not specify what process shall be used by the administrative agencies to allocate the funding. For example, the measure does not generally specify what criteria the administering agencies shall use to identify grant recipients (such as a demonstration of need) or what requirements shall be placed on grant recipients (such as reporting on outcomes).

## HOW WILL PROPOSITION 47 AFFECT STATE CORRECTIONS?

### Reduction in Inmate Population, Helping State Comply With Court-Ordered Cap

#### *Impact on State Correctional Population.*

Proposition 47 makes two changes that will reduce the state prison population. First, the reduction of certain felonies and wobblers to misdemeanors will make fewer offenders eligible for state prison sentences. We estimate that this could result in an ongoing reduction to the state prison population of several thousand inmates within a few years. Second, the resentencing of inmates currently in state prison could result in the release of several thousand inmates, temporarily reducing the state prison population for a few years. The release of these inmates will also result in a slight increase in the state parole population of a couple thousand parolees over a three-year period.

**Impact on Meeting Court-Ordered Population Cap.** In recent years, the state has been under a federal court order to reduce overcrowding in the prisons operated by the California Department of Corrections and Rehabilitation (CDCR). Specifically, the court found that prison overcrowding was the primary reason the state was unable to provide inmates with constitutionally adequate health care and

ordered the state to initially reduce its prison population to 143 percent of design capacity by June 20, 2014. (Design capacity generally refers to the number of beds CDCR would operate if it housed only one inmate per cell and did not use temporary beds, such as housing inmates in gyms. Inmates housed in contract facilities or fire camps are not counted toward the overcrowding limit.) As shown in Figure 3, the federal court ordered the state to further reduce the prison population to 141.5 percent of design capacity by February 28, 2015 and to 137.5 percent of design capacity by February 28, 2016. The February 2016 cap represents the ongoing and final limit on the state's prison population. (For more information regarding the federal court-ordered population cap, please see our report, *The 2014-15 Budget: Administration's Response to Prison Overcrowding Order*.)

The court also appointed a compliance officer. If the prison population exceeds the population cap at any point in time, the compliance officer would be authorized to order the release of the number of inmates required to meet the cap. In order to ensure that such releases do not occur if the prison population increases unexpectedly, CDCR has intentionally reduced the prison population below the court-required cap by thousands of

**Figure 3**

#### **Federal Court-Ordered Prison Population Cap**

|  | Design Capacity of<br>CDCR Prisons | Population Cap<br>(Percent of Design Capacity) | Inmates Allowed in<br>CDCR Prisons |
|--|------------------------------------|--|------------------------------------|
| June 30, 2014 through February 27, 2015        | 82,707                             | 143%   | 118,271                            |
| February 28, 2015 through<br>February 27, 2016 | 82,707                             | 141.5  | 117,030                            |
| After February 27, 2016                        | 85,082 <sup>a</sup>                | 137.5  | 116,988                            |

<sup>a</sup> Assumes that three infill facilities will be activated in February 2016 and that the court will immediately count the full design capacity of 2,376.

inmates. This gap between the number of inmates CDCR is allowed to house in its 34 prisons and the number it actually houses acts as a “buffer” against the population cap. Between June 2014 and November 2014, CDCR maintained an average buffer of about 2,000 inmates and at no point came within 1,000 inmates of the population cap. In recent months, the buffer has grown even larger as a result of a decline in the inmate population—primarily from Proposition 47. As of January 28, 2015, the inmate population in the state’s prisons was about 113,500, or 3,600 inmates below the February 2015 cap, and slightly below the final February 2016 cap. The expected impact of Proposition 47 on the prison population will make it easier for the state to remain below the population cap. As we discuss below, the Governor’s budget projects that the state will maintain compliance with the court-ordered population cap throughout 2015-16.

## Governor’s Proposals

### **Budget Assumes Proposition 47 Will Reduce Prison Population by 1,900 Inmates**

***Reduces CDCR’s Budget by \$12.7 Million Due to Proposition 47.*** The Governor’s budget assumes a reduction of 1,900 inmates and an increase of 900 parolees in 2015-16 due to the implementation of Proposition 47. The budget assumes this will result in a decline in the number of inmates housed in the state’s prisons. Accordingly, the budget assumes no reduction in the number of inmates housed in contract beds. For the most part, prison staffing levels remain fixed when the inmate population changes unless the change is significant enough to justify opening or closing housing units. Since the Governor’s budget does not propose closing specific housing units, the savings from the estimated reduction of 1,900 inmates is limited to minor staffing reductions and other variable costs (such as

feeding and clothing costs). These savings amount to about \$9,500 per inmate, for a total of \$18 million in 2015-16. These savings are offset by a proposed \$5.4 million augmentation for the projected increase in the parole population. In total, the budget proposes a net \$12.7 million reduction to CDCR’s budget for 2015-16 to account for Proposition 47.

### **Plans for Complying With Court-Ordered Population Cap**

The administration is projecting that the prison population will decline by nearly 2,000 inmates from 2014-15 to 2015-16—resulting from Proposition 47 and various court-ordered population reduction measures. Due in part to this reduction, the Governor’s budget is projecting that the state will maintain compliance with the federal court-ordered population cap throughout 2015-16. However, the state’s ability to comply with the cap also depends on various factors that affect the amount of prison capacity available to the department. In particular, it will depend heavily on (1) the number of contract beds maintained by CDCR and (2) the design capacity of the state’s 34 prisons. The Governor’s budget for 2015-16 includes proposals that affect both of these factors.

***Slight Increase in Contract Beds.*** The Governor’s budget includes \$495 million in General Fund support to maintain about 15,900 contract beds in 2015-16. This represents a slight increase (about 4 percent) from the revised current-year funding level of \$476 million for 15,400 contract beds. As mentioned above, inmates housed in contract beds are not counted towards the population cap.

***Activation of New Infill Beds.*** The Governor’s budget also includes \$36 million from the General Fund to activate three new infill bed facilities that are currently under construction—specifically, two new facilities at Mule Creek prison in Ione and one new facility at R.J. Donovan prison in San Diego.

These facilities will add almost 2,400 beds to the design capacity of CDCR's 34 prisons. Because the state will be allowed to overcrowd to 137.5 percent of design capacity, the activation of these facilities will allow the state to add about 3,300 inmates to its prison facilities. The budget assumes that all three facilities will be activated in February 2016. (A facility is considered to be activated when it admits its first inmate.)

### **Administration Indicates Its Compliance Plan Accounts for Uncertainty**

According to the administration, there is significant uncertainty regarding a couple of key aspects of its compliance plan. In particular, the administration indicates that its inmate population projections and the timing of additional capacity from new infill facilities are subject to uncertainty. However, the administration states that its plan was developed to account for such uncertainties and to ensure compliance with the population cap regardless of how these factors unfold.

***Population Projections Subject to Unusually High Degree of Uncertainty.*** According to the administration, a key source of uncertainty is the accuracy of the department's population projections. In developing its annual budget request, CDCR estimates what its inmate population will be in the upcoming fiscal year. In past years, these projections—provided as part of the Governor's January budget proposal and May Revision—have also included the department's estimate of what the average annual inmate population will be in each of the four fiscal years following the budget year. The department's population projections are always subject to some uncertainty because the prison population depends on several factors (such as crime rates and county sentencing practices) that are hard to predict. However, according to the administration, this year's projections are particularly uncertain due to

the additional challenge of estimating the effects of Proposition 47 and other court-ordered population reduction measures. Due in part to this, CDCR has decided not to publish its estimate of the inmate population beyond 2015-16.

***Timing of Additional Capacity From New Prison Facilities Is Uncertain.*** According to the administration, another key source of uncertainty is the schedule for the activation of the three new infill bed facilities. The department plans to admit inmates into the facilities in waves beginning in February 2016 and expects to reach full occupancy by July 2016. However, the administration is uncertain whether the facilities will in fact begin accepting inmates as scheduled. In particular, the administration indicates that construction crews could encounter unanticipated difficulties (such as poor weather) that could result in delayed activation.

In addition, there is some uncertainty regarding how the federal court will count the additional infill capacity for the purpose of calculating the number of inmates the state can house in its 34 prisons. In a previous order, the court required the state to meet with the plaintiff's attorneys and attempt to reach an agreement regarding how the court should count capacity added by new construction, such as the above infill facilities. According to the administration, these negotiations have not yet begun. The number of inmates that can be housed in the 34 prisons could vary significantly depending on the court's decision. For example, if the court counts the entire design capacity of the facilities immediately upon activation—irrespective of the number of inmates actually housed there—the number of inmates that could be housed in the 34 prisons would increase by about 3,300 immediately. (This is the way the court previously treated additional capacity.) Alternatively, the court could determine that the facilities must be fully occupied before it counts the

full design capacity. In that case, the court would likely count the inmates housed in the facilities during the activation phase the same way it counts inmates housed in contract facilities or fire camps. In other words, the state would only get credit for the number of inmates housed in the infill facilities rather than for the full 3,300 bed increase in design capacity. Such a decision would reduce the number of inmates that could be housed in the state's prison by thousands of inmates in the months in which the facilities are being filled.

## **Governor's Proposals Raise Concerns**

The Governor's proposals raise a couple of concerns. Specifically, we find that the budget would provide more contract bed funding than necessary for CDCR. In addition, the Governor's budget lacks long-term inmate population projections that are needed for the Legislature to begin planning how best to adjust the state's prison capacity to account for the effects of Proposition 47. We discuss these concerns in greater detail below.

### **Proposed Contract Bed Funding Higher Than Necessary**

In order to deal with the uncertainty regarding the above factors, the Governor's budget makes very cautious assumptions regarding (1) the number of contract beds needed to comply with the population cap and (2) the size of the population reductions resulting from Proposition 47. This approach provides more funding than necessary to CDCR. The precise amount of excess funding depends on whether the infill facilities are activated on time and how the court counts the new capacity. However, as we discuss below, our analysis indicates that the amount would reach at least \$20 million under almost any scenario.

***Proposed Number of Contract Beds Would Result in Excessive Buffer.*** Based on CDCR's

population projections, the administration is planning to maintain a buffer of several thousand inmates in 2015-16. It maintains this buffer by housing these inmates in contract beds rather than in the state's 34 prisons. In other words, CDCR could move several thousand inmates from contract beds into the state's prisons without violating the court's order. According to the administration, the planned buffer is needed to account for the uncertainty regarding the timing of additional capacity from the new infill facilities. However, our analysis suggests that the state could achieve significant savings by maintaining a smaller buffer without meaningfully increasing the risk of violating the population cap. This is true regardless of whether the infill facilities are activated as scheduled or how the court counts the new capacity provided by the facilities.

For example, if the new facilities are activated as scheduled and the court counts the full capacity immediately, the state would have enough inmates in contract beds to maintain an average buffer of 4,300 inmates in 2015-16. Alternatively, if the court instead requires the facilities to be fully occupied before counting them towards the state's design capacity, the state would still have enough inmates in contract beds to maintain an average of 3,700 inmates below the population cap. Maintaining the buffer at the level proposed by the department would come at a significant cost. This is because the department saves almost \$18,500 annually by taking an inmate out of a contract bed and placing the inmate in one of the state's prisons. If the department instead maintained a buffer in 2015-16 at a level similar to the average buffer over the first several months of 2014-15—about 2,500 beds—it could reduce its contract bed expenditures significantly. While the precise amount of savings would depend on how the court counts the additional infill capacity, we estimate it would reach at least \$20 million under almost any scenario.

***Operational Savings Could Offset Contract Bed Costs If Infill Delayed.*** If the activation of the infill facilities is delayed, we find that CDCR would still have excess funding under the Governor's budget. This is because if the facilities are not activated on the timeline assumed in the budget, some or all of the proposed \$36 million to support their activation would not be needed. For example, if the department determines that construction is running behind schedule, it could delay the hiring of the staff needed to operate the facilities. While some staff may be needed to prepare the facility for activation, the vast majority of staff (such as custody staff assigned to guard the housing units) would not be needed as long as there are no inmates in the facilities. While the operational savings would vary depending on the extent of the delays, the amount could easily reach into the tens of millions of dollars. A delay of the infill capacity would likely require the department to maintain contract beds at the level proposed by the administration during the last several months of 2015-16. Nevertheless, we note that CDCR could still reduce its use of contract beds somewhat over the first several months of the budget year. Moreover, the operational savings from the delayed activation of the infill facilities could be used to partly offset the cost of any additional contract beds needed.

***Population Estimates Appear High.*** Our analysis indicates that the administration may be underestimating the population impacts of Proposition 47 and thus overestimating the inmate population for 2015-16. In other words, the administration is assuming a lesser reduction in the inmate population from Proposition 47 than will likely occur. If this turns out to be the case, the amount of excess contract bed funding we described above would be even greater. We acknowledge that it is difficult to predict the size of the effect of Proposition 47 on CDCR's inmate population. This is because it depends on some key

factors about which there is uncertainty, such as exactly how many offenders are currently in prison for offenses affected by the measure, which are described in more detail later in this report. Given such uncertainty, we find that the administration's estimate of the impact of Proposition 47 on the prison population is not out of the realm of possibility. However, our analysis indicates that the administration made very cautious assumptions in a variety of areas that have the effect of minimizing its estimate. For example, the administration assumed that there would be no impact on the prison population from provisions in the measure that prevent shoplifting from being charged as a felony. The result is that CDCR's estimate is on the low end of a range of what our analysis indicates could occur. In our view, there is a high likelihood that the actual population impacts will be greater than projected by the department.

### **Lack of Long-Term Population Projections Makes Planning Difficult**

In the long term, the Legislature may have a variety of options to achieve savings by reducing prison capacity as the inmate population declines as a result of Proposition 47, as well as population reduction measures ordered by the court. For example, the Legislature could consider permanently reducing the state's use of contract beds or even closing a state prison. The appropriate course of action, and any necessary planning to achieve it, depends heavily on the estimated prison population in future years. As we discuss later, this decision could significantly affect the amount of state savings achieved from Proposition 47, and as a result, the size of the deposit to the SNSF. As such, it is impossible for the Legislature to make an informed decision regarding how to adjust the state's prison funding and capacity without the long-term population projections that the department has declined to provide this year.

## LAO Recommendations

### *Withhold Action Pending Additional*

**Justification.** We find that the Legislature could reduce the Governor's proposed contract bed funding level by at least \$20 million by directing CDCR to move inmates from contract beds into state prisons. We note, however, that the amount of savings could exceed our preliminary estimate depending on (1) the timing of the activation of the infill beds, (2) how the court counts the infill capacity, and (3) how the actual inmate population level compares to the administration's projections.

As such, we recommend that the Legislature not approve the proposed contract bed funding until the department can provide additional information demonstrating what level is necessary to meet the court-ordered population cap. Specifically, we recommend the Legislature direct the CDCR to report at budget hearings on (1) how the administration's population

projections for the current year compare with actual population levels, (2) whether the infill facilities are on track to be activated on schedule, and (3) the status of negotiations with plaintiffs related to how the court will count the additional capacity resulting from the activation of the infill facilities. Based on this information, the Legislature would be able to assess the amount of contract bed funding needed and adjust the budget for 2015-16 accordingly.

### *Direct CDCR to Provide Long-Term*

**Population Projections.** In addition, we recommend that the Legislature direct CDCR to resume its historical practice of providing long-term population projections biannually. This information would allow the Legislature to better assess and plan for the long-term implications of Proposition 47, as well as court-ordered population reduction measures, and determine how best to adjust the state's prison funding and capacity accordingly.

## HOW WILL PROPOSITION 47 AFFECT STATE COURTS?

### **Short-Term Increase, Long-Term Decrease in Court Workload**

***Resentencing and Reclassification Hearings Will Temporarily Increase Workload.*** Under Proposition 47, trial courts will experience a one-time increase in costs resulting from the processing of (1) resentencing petitions from offenders currently serving felony sentences for the crimes affected by Proposition 47 and (2) reclassification petitions from individuals who have already completed their sentences. Resentencing requests eligible under the proposition will be resolved in judicial hearings. Based on our discussions with the courts, such resentencing hearings could last minutes if the

request is uncontested or several hours if evidence and arguments need to be presented. In contrast, Proposition 47 authorizes the court to resolve reclassification petitions without a hearing. Finally, the proposition requires that all petitions be filed within three years of its enactment unless the petitioner can demonstrate good cause for filing at a later date.

***Reduction in Felony Cases and Other Hearings Will Permanently Reduce Workload.*** The above increased costs to the courts will be partly offset by savings in other court workload. First, because misdemeanors generally take less court time to process than felonies, the reduction in penalties will reduce the amount of resources

needed for such cases. Second, Proposition 47 will reduce the amount of time offenders spend on county community supervision, resulting in fewer offenders being supervised at any given time. This will likely reduce the number of court hearings for offenders who break the rules that they are required to follow while supervised in the community. Overall, we estimate that the measure would likely result in a net increase in court workload for a few years with a net annual reduction thereafter.

### **Governor's Proposal**

The Governor's budget proposes a \$34.5 million General Fund augmentation to the courts—\$26.9 million in 2015-16 and \$7.6 million in 2016-17—to address increased workload related to resentencing petitions. The budget includes provisional language to allow the amount proposed for 2015-16 to be available for this workload until June 30, 2017. The proposed augmentation does not include funding for costs related to reclassification hearings and does not include an adjustment to reflect savings from reductions in workload resulting from the implementation of Proposition 47. According to the judicial branch, funds would be allocated to trial courts on a workload basis.

### **Actual Impacts on Courts Unclear**

*Estimate of Resentencing Costs Appears Reasonable for 2015-16.* . . . In order to estimate the cost to process resentencing requests, the administration relied on historical data on sentencing outcomes, workload, felony filing patterns, and trial court staffing costs. This historical data served as a proxy for potential workload given the current lack of reliable data on actual increases in court workload. (We would note that the judicial branch has started to collect data on the number of petitions filed related to Proposition 47 and the time required to resolve

them.) The administration assumes that the majority of the workload would occur in the first 18 months following the passage of the proposition. We note that a portion of the funding proposed for 2015-16 would reimburse courts for workload that occurred in 2014-15—specifically the first eight months following the passage Proposition 47. In general, we find that the administration's methodology for calculating potential resentencing costs appears reasonable given the limited data available.

#### *. . . But Costs After 2015-16 Are Uncertain.*

While the administration's estimate appears reasonable for 2015-16 based on the limited data currently available, it is unclear at this time if the proposed \$7.6 million for 2016-17 will be necessary. The availability of data collected in 2015-16 would help resolve several uncertainties about the workload associated with Proposition 47 resentencing hearings. First, it is currently unknown whether the administration's estimates will match the actual workload received and processed by the trial courts. For example, fewer petitions may be filed or more court time may be needed to process a hearing than assumed in the Governor's budget. Second, while Proposition 47 requires that offenders must file their petitions for resentencing within three years of the proposition's enactment unless there is good cause for a later filing, there are no requirements on how quickly trial courts must resolve these petitions. We note that the proposition generally requires that the judge who originally sentenced the offender address the resentencing request. This could result in courts resolving resentencing cases beyond the time frame assumed in the administration's estimate.

*Lack of Data Related to Other Effects on Courts.* Although the judicial branch indicates that it has started to collect data related to Proposition 47 (such as the number of resentencing or reclassification petitions received), the

judicial branch is not currently collecting data to measure the proposition's impact on other court workload. For example, data is not currently being collected on the number of cases being filed as misdemeanors that otherwise would have been filed as felonies absent enactment of the proposition. The availability of such data would provide the Legislature with the necessary information to determine whether adjustments to trial court funding are necessary. Because Proposition 47 requires that any state savings from its enactment (including those obtained from reduced court workload) be annually deposited into the SNSF, this data will be needed to accurately estimate the size of this deposit.

### **LAO Recommendations**

#### ***Only Approve Proposed Funding for 2015-16.***

We recommend that the Legislature approve the Governor's proposed \$26.9 million General Fund augmentation in 2015-16 to address court workload related to resentencing petitions. Based on the data currently available, the administration's estimates and funding request for the budget year are reasonable. The additional funding would minimize impacts on the processing of other court workload—such as backlogs—that would result if the courts were required to absorb the additional workload related to Proposition 47. In addition, the additional funding would help ensure that there are no delays in the resentencing hearings. This is important because such delays could postpone the release of inmates eligible for reduced sentences, which in turn would reduce the amount of state

and county correctional savings resulting from the proposition. In addition, we recommend the Legislature direct the judicial branch to provide an update at budget committee hearings this spring regarding the impact of Proposition 47 on trial court workload. To the extent additional data is available and shows a different level of funding is necessary, the Legislature could adjust the request accordingly.

However, we recommend that the Legislature not approve the Governor's proposed \$7.6 million General Fund augmentation for 2016-17 at this time. Instead, we recommend the Legislature require the administration to provide an updated workload calculation as part of the deliberations on the 2016-17 budget. By using updated data from the judicial branch on the *actual* workload impacts of processing petitions for resentencing and reclassification, the administration and the Legislature would be able to more accurately determine the appropriate level of funding needed in 2016-17.

***Require Data Collection to Enable Calculation of Savings From Reduced Workload.*** We also recommend that the Legislature require the Judicial Council to immediately begin collecting additional data to measure the proposition's impact on overall court workload (such as the number of cases being filed as misdemeanors instead of felonies), and report on the overall effect of Proposition 47 on the courts. Without such workload data, it would be difficult to accurately calculate the amount of court savings needed to be deposited into the SNSF.

## **HOW WILL PROPOSITION 47 AFFECT COUNTIES?**

The reduction in penalties authorized in Proposition 47 will affect county jails and probation departments, as well as various other county

agencies (such as public defenders and district attorneys' offices). In general, the proposition will significantly reduce criminal justice workload for

counties. We estimate that, prior to the passage of Proposition 47, counties spent several hundred million dollars annually on workload that will be eliminated by the measure. However, local decisions on how to respond to this workload reduction will determine whether it results in fiscal savings or improvements to the administration of local criminal justice systems, such as reduced jail overcrowding. We discuss below the specific effects of Proposition 47 on jails, probation departments, and other county agencies.

## **Effects on County Jails**

### ***Reduction in County Jail Workload.***

Proposition 47 will reduce the workload for county jails associated with the individuals affected by the measure for several reasons. First, offenders convicted of the crimes affected by the measure will generally receive shorter jail terms than they otherwise would have. This is because the maximum amount of time an offender can be held in jail for a misdemeanor is one year. In contrast, when these offenses were classified as felonies, offenders were typically eligible for jail terms of between 16 months and 3 years. Second, individuals arrested for the crimes affected by Proposition 47 are less likely to be held in jail prior to the conclusion of their court case. This is because counties are less likely to hold individuals arrested for misdemeanors prior to their trials as compared to those arrested for felonies. Finally, some offenders serving sentences in jail for the crimes affected by Proposition 47 are eligible for shorter jail terms or release if they are successfully resentenced.

The above reductions in jail workload will be slightly offset by an increase in workload associated with offenders who would otherwise have been sentenced to state prison. As discussed above, when offenders who have not previously been convicted of one of the severe crimes listed

in the measure commit one of the crimes affected by Proposition 47, they can only be subject to misdemeanor penalties. Accordingly, they can no longer be sentenced to state prison and may instead serve their sentences in county jail. Despite this possible increase in workload, we estimate that the total number of statewide county jail beds freed up by these changes could reach into the low tens of thousands annually within a few years.

***Relief to Overcrowded Jails.*** Although Proposition 47 will free up county jail beds, it will not necessarily result in a reduction in the county jail population of a similar size. This is because, just prior to the passage of Proposition 47, 33 of the state's 58 counties—which account for two-thirds of the state's jail population—had overcrowded jails and therefore were releasing inmates early. Such overcrowded jails could use the freed up beds created by the measure to reduce early releases. This would result in longer sentences being served by the remaining jail population. In these cases, there would be little or no reduction in the size of the jail population in the affected counties. Alternatively, the freed up jail beds could be used to reduce overcrowding. This could improve the operation of jails in a couple of ways. First, it can require more staff and be more difficult to manage inmates in crowded conditions than if the jail is operating at or closer to its design capacity. In addition, reduced overcrowding could improve a county's ability to provide rehabilitation or health care services to inmates by freeing up the space necessary to conduct classes and provide treatment.

***Cost Reductions for Other Jails.*** Jails that are not overcrowded will have reduced operating costs because they will have fewer inmates under their supervision. At a minimum, these counties will realize savings from purchasing less food, clothing, and other items used daily by inmates. Additional savings could also be realized, depending on the extent to which these counties are able to reduce

higher cost components of their jail operations, such as staffing.

### **Effects on County Probation Departments**

***Probation Workload Likely to Decline.*** County probation departments will experience reduced workload as a result of Proposition 47 for a couple of reasons. First, offenders who are sentenced for misdemeanors generally receive less intensive community supervision than offenders sentenced for felonies. For example, probation departments typically conduct routine meetings and compliance checks with felony offenders, while many individuals on community supervision for a misdemeanor are seldom required to meet with their probation officer or be subjected to compliance checks. In addition, some offenders typically spend less time under community supervision when they are sentenced for a misdemeanor instead of a felony. We estimate that this reduction in supervision terms could result in county probation departments experiencing a reduction of thousands of offenders in their caseloads annually.

***Impact on Community Supervision Services and Costs Could Vary.*** The effect on counties will depend on how they respond to the above reductions in community supervision workload. Counties could use the freed up resources to conduct more intensive supervision on the remaining population or provide offenders with additional rehabilitative services. Alternatively, counties could achieve savings from the reduced probation workload and redirect the funds to other local priorities. The extent to which counties choose to use the freed up resources to provide more intensive probation services versus achieving cost savings could vary by county and will likely depend on numerous factors, such as whether probation departments were adequately staffed prior to these changes.

***Unclear Effect on SB 678 Grants.*** Chapter 608, Statutes of 2009 (SB 678, Leno), commonly referred

to as SB 678, was enacted to improve outcomes for certain individuals supervised by probation departments by giving counties a fiscal incentive to reduce the number of such offenders who violate the terms of their supervision and are incarcerated. For example, SB 678 provides counties a share of the state prison and parole savings that occur when such offenders are successful and not sent to state prison. Because Proposition 47 reduces the total population of offenders under community supervision by counties, it could reduce the population that is eligible for grant funds. As a result, it is possible the size of the grant that each county probation department receives will decline. Alternatively, it is possible that the size of each county's grant will increase as a result of Proposition 47. For example, if the remaining individuals supervised by a county probation department have higher rates of success, that county's grant could increase. As a result, it is possible that some counties could see an increase in SB 678 grants while other counties could see a decline, depending on differences in their probation population. Because of limitations on the data available, it is not possible for us to determine at this time whether SB 678 probation grants are likely to increase or decrease statewide as a result of Proposition 47.

### **Effects on Other County Departments**

As discussed above, the reduction in penalties from Proposition 47 will increase court workload associated with resentencing and reclassification of offenders over the next few years. As a result, county district attorneys' and public defenders' offices (who participate in these processes) and county sheriffs (who provide court security) could experience a temporary increase in workload. However, Proposition 47 will reduce on an ongoing basis the workload for these local agencies associated with both felony filings and other court hearings (such as for offenders who break the rules of their

community supervision). However, these effects on county workload are unlikely to generate significant costs or savings.

### Effects on 2011 Realignment

As discussed above, the 2011 realignment shifted responsibility for thousands of less serious felony offenders from the state to counties. The state provided counties around \$1 billion to support this increased responsibility. Proposition 47 reduces the sentences for some of the realigned offenders.

Specifically, realigned offenders who have committed an offense specified in the proposition will be subject to misdemeanor, rather than felony penalties. As a result, some of the workload reduction to counties discussed above is related to realigned offenders. While detailed data on the specific number of realigned offenders affected by Proposition 47 is currently unavailable at this time, the number could be substantial because both the 2011 realignment and Proposition 47 generally affect the same types of less serious felony offenders.

## HOW MUCH SAVINGS WILL BE DEPOSITED INTO THE SNSF?

As discussed earlier, Proposition 47 requires that the annual savings to the state from the measure be annually transferred to the SNSF. The actual amount of funding deposited into the SNSF can vary significantly depending primarily on (1) the estimated size of the reduction in the state prison population and (2) whether and how the state reduces prison capacity in response to a decline in the inmate population.

***Reduction in State Prison Population.*** The impact of Proposition 47 on the state's prison population will significantly depend on both the prospective penalty reductions and the resentencing provisions in the measure. The actual impact of the penalty reductions in Proposition 47 will be difficult to determine with certainty because of data limitations. An estimate of the impact will depend heavily on the number of offenders historically sentenced to state prison for crimes affected by the measure. While CDCR has information on the types of crimes for which offenders are sent to prison, it lacks the data needed to make a precise estimate (such as the dollar value involved in certain theft related crimes). In addition, county sentencing practices could change

in the future, which would further impact the effects of the prospective penalty reductions. The impact of the resentencing of inmates currently in prison is also difficult to predict. For example, the size of this impact on the prison population will depend heavily on how many inmates are eligible for resentencing, which is uncertain due to the above data limitations. In addition, each resentencing application is subject to judicial review and it is difficult to predict the outcome and timing of court decisions.

***Reduction in Prison Capacity.*** The size of the deposit into the SNSF could also vary significantly depending on whether and how the state reduces prison capacity in response to a decline in the prison population. In particular, the state could take one (or some combination) of three possible approaches that would result in varying levels of savings. First, the state could attempt to close a prison and achieve the greatest amount of savings—perhaps as much as \$50,000 annually per inmate. Second, the state could reduce its use of contract beds, which would achieve less savings—about \$28,000 annually per inmate. Finally, the state could keep all of its 34 prisons open but reduce the

number of inmates housed in them, which would achieve the least amount of savings—about \$9,500 annually per inmate.

***SNSF Deposit Could Be Significant.*** Based on historic sentencing practices, we estimate that the total annual deposit into the SNSF will

likely range from \$100 million to \$200 million beginning in 2016-17. Because the state savings from the resentencing provisions in the measure are temporary in nature, the deposit in future years could be somewhat smaller, but will still likely fall within the \$100 million to \$200 million range.

## HOW WILL SNSF FUNDS BE SPENT?

Although Proposition 47 states that the monies in the SNSF shall be allocated to particular departments based on specific percentages for particular purposes, the Legislature has the opportunity to provide some direction on how the funds are spent in a manner that furthers the purpose of the proposition. In particular we have identified a couple of key policy questions for legislative consideration. Specifically, the Legislature could weigh in on (1) how the individual departments should distribute the funds and (2) how much state oversight to provide to ensure that the funds are being spent effectively. In our view, the appropriate answers to these questions will vary depending on the program area. To the extent the Legislature wishes to weigh in on these issues, it has a couple of options. For example, the Legislature could hold hearings and ask the administration to present its plans for allocating the funds. The Legislature could also pass legislation directing the administration to allocate the funds consistent with its priorities. (We would note that, depending on the specific language, it is possible that such legislation could require a two-thirds majority vote of the Legislature, based on the provisions of the proposition.) In order to give the departments and potential grant recipients time to plan, we recommend that the Legislature begin addressing these issues in the near term. Below, we recommend some possible approaches the Legislature could consider for each of the three program areas that will receive funding under Proposition 47—mental

health and substance use treatment, K-12 truancy and dropout prevention programs, and victim services.

### Mental Health and Substance Use Treatment Services

As discussed previously, Proposition 47 states that 65 percent of the SNSF shall be allocated to BSCC to administer a grant program for public agencies to support mental health treatment and substance use treatment to reduce recidivism, particularly for individuals convicted of less serious crimes, such as those affected by the measure. (The BSCC is responsible for administering various criminal justice grant programs and providing technical assistance to local authorities, among other responsibilities.) We estimate funding available for this grant program will likely total between \$65 million and \$130 million annually beginning in 2016-17.

#### Existing Mental Health and Substance Use Treatment Services

Currently, mental health and substance use treatment services are provided to individuals in the state by a variety of programs with services provided by both private and public providers. These programs are supported from state, local, federal, and private funds. For example, these programs receive funding from private insurers, Medi-Cal, federal block grants, and Proposition 63 (also known as the Mental Health Services Act).

We also note that many of these programs have overlapping target populations. In fact, many of the individuals that would be eligible for services funded by the SNSF are also eligible for services provided by the current mental health and substance use treatment system. Public spending in California on mental health and substance use treatment services is roughly \$8 billion annually.

### **LAO Recommendations**

In order to ensure that BSCC distributes SNSF funds in an effective manner, we recommend that the Legislature direct BSCC to (1) coordinate SNSF funding with existing funding sources, (2) allocate funds in a manner that maximizes their impact, and (3) evaluate grant recipients' ability to achieve recidivism reduction goals.

***Coordinate With Existing Programs and Funding Sources.*** As noted above, there are currently many state, local, and private programs that deliver mental health and substance use services, including those that focus on individuals in the criminal justice system. Individuals may participate in several programs, and programs may receive funding from several sources. As such, it is important that the SNSF grant program for these services be structured to complement these existing programs. In considering how the SNSF fits into the existing system, there are several factors to consider: (1) many individuals in need of treatment do not have access to existing programs, (2) many existing programs could serve additional individuals or provide additional services with increased funding, and (3) given that many providers receive funding from multiple sources, there may be significant difficulty associated with managing multiple grants and billing sources. To coordinate SNSF funds with the existing programs and funding sources in a manner that addresses these concerns, we recommend that the Legislature direct BSCC to:

- ***Target Underserved Populations.*** Although there are a variety of mental health and substance use treatment programs currently provided in the state, some individuals may not have access to or be eligible for these programs. For example, Medi-Cal funds a variety of mental health services, but jail inmates are not eligible for Medi-Cal services. In addition, some individuals live in areas that have a limited number of services and providers—making it difficult for them to access treatment or find providers. Given these limitations, the Legislature could direct BSCC to require applicants to demonstrate that they target underserved populations, or the Legislature could specify which populations BSCC should target (such as jail inmates or individuals living in areas with few treatment options) when distributing SNSF funding.
- ***Target Programs That Lack Other Funding Sources.*** Given that there are already funds available for certain mental health and substance use treatment services, the Legislature may want to direct BSCC to prioritize programs or services that have difficulty obtaining funding from existing sources. For example, some residential treatment programs are not eligible for Medi-Cal funding, which limits the availability of those programs. The Legislature could direct BSCC to identify programs and services that do not have access to existing mental health and substance use treatment funding and target SNSF grants toward those programs, or could identify which specific programs (such as jail-based programs) that the BSCC should prioritize when distributing SNSF funding.

- **Minimize Administrative Burden.** Many mental health and substance use treatment service providers receive funding from multiple sources, which can create administrative burdens for these providers. For example, such providers may be required to submit several different grant applications and bill different entities for the services provided. In order to minimize the potential burdens of applications and reporting associated with the newly established SNSF grant program, the Legislature could require BSCC to streamline the grant process (such as by establishing standardized applications to ensure that administrative processes are as streamlined as possible). The Legislature could also require BSCC to coordinate the SNSF grant program with other grants administered by the state to minimize the administrative burdens placed on providers.

***Allocate Funds to Maximize Impact.***

We also recommend the Legislature direct BSCC to prioritize the use of SNSF grants for programs that are shown to be cost-effective. There is a significant body of research on mental health and substance use programs that can reduce recidivism in a cost-effective manner if implemented in accordance with best practices. These are programs that have been delivered in the past and found to reduce recidivism and result in costs savings. Such programs include offender education programs, inpatient drug treatment, and work release programs. Given the limited funding available, the Legislature could direct BSCC to fund *only* programs that have been proven to be cost-effective. Alternatively, some funds could be set aside for programs that are

likely to be effective, but currently lack sufficient data to show that they are in fact cost-effective.

***Evaluate Grant Recipients Based on Outcomes.*** In order to ensure that SNSF dollars are being used effectively, we recommend that the Legislature require the evaluation of recipients and the outcomes they achieve. This would serve two major purposes. First, it would ensure that programs are achieving the intended recidivism reduction goals in a cost-effective manner. Second, it would allow programs that have not previously been proven to reduce recidivism cost-effectively to demonstrate their ability to do so. In order to facilitate such evaluation, the Legislature could direct BSCC to establish a periodic evaluation process for grant recipients. For example, BSCC could require grant recipients to submit specific performance information, including cost, participation, completion, and recidivism reduction data. The Legislature could have BSCC periodically report on the outcomes achieved. The BSCC could use the information gathered to inform future funding decisions.

## **K-12 Truancy and Dropout Prevention**

Proposition 47 requires that 25 percent of the SNSF go to CDE to administer a grant program to reduce truancy, high school dropout, and student victimization rates. We estimate funding available for this grant will likely total between \$25 million and \$50 million annually beginning in 2016-17. Recently enacted changes to the way the state funds and oversees school districts provide important context for the Legislature's decisions regarding SNSF funds. This new school funding paradigm leads us to recommend a somewhat more flexible approach for the education portion of the SNSF as compared to the other grant programs authorized by the proposition.

## Existing Funding for K-12 Education

***State Recently Adopted New Funding and Accountability System for Schools.*** Prior to 2013-14, the state allocated a notable portion of school funding via a number of discrete “categorical” grants, each of which had an associated set of requirements and allowable activities. In enacting the Local Control Funding Formula (LCFF), the state replaced that categorical-based approach with a formula-based system that allocates funding according to certain student characteristics. Specifically, the LCFF provides a base per-pupil grant to every district, then allocates supplemental funds based on the number of English learners, low-income, or foster youth (EL/LI) students each district serves. Districts with particularly high concentrations of EL/LI students (at least 55 percent of enrollment) receive an additional allocation. Districts generally have broad flexibility over how they may spend LCFF dollars, although they must use the supplemental and concentration funds the state provides on behalf of EL/LI students in ways that “principally benefit” those student groups. In 2014-15, the state awarded a total of \$47 billion to districts via the LCFF. (Because fully funding the new formula would cost an additional \$9 billion, implementation is being phased in over the next several years.) In conjunction with the LCFF, the state also adopted a new system of planning, support, and intervention to help ensure that districts are held accountable for meeting certain student outcomes. Under this system, districts must report their progress on certain measures, including student achievement, attendance, and dropout rates. Districts that do not meet established performance expectations in these areas will receive additional support and intervention. (For more detailed information about the LCFF and the new state accountability system, please see our report, *An Overview of the Local Control Funding Formula*.)

## LAO Recommendations

***LCFF Changes Context for Allocating SNSF Funds to Districts.*** The state’s new focus on local control over school spending makes it somewhat more complicated for the Legislature to also satisfy the intent outlined in Proposition 47—that the funds be targeted for improving student outcomes, reducing truancy, and supporting certain at-risk student groups. Based on historical practice, the state could create a new, discrete categorical program for districts that agree to use the funds for a specific list of state-established, allowable activities focused on these goals. Such a prescriptive approach, however, would deviate from the state’s recent effort to eliminate most unique state education grants linked to particular activities.

***Allocate Funds to Districts With High Concentrations of At-Risk Students.*** We recommend the Legislature allocate SNSF funds to districts that have notably high concentrations of EL/LI students. This allocation method would create a new grant separate from the LCFF, yet would be consistent with the LCFF principle of providing additional funds to districts serving students with certain characteristics. While this approach does not allocate funds explicitly based on districts displaying the poor student outcomes described in the measure, research indicates that EL/LI students are at higher risk than other students for truancy, dropout, and victimization. Moreover, districts with high concentrations of these student groups frequently display poorer outcomes. For example, Figure 4 (see next page) illustrates that as California districts’ concentrations of EL/LI students increase, so do their dropout rates. Increasing funding for such districts therefore could help improve such outcomes. To target the districts with the greatest need and provide grants large enough to support meaningful local efforts, we recommend setting a relatively high eligibility threshold for

receiving the SNSF funds (higher than the LCFF concentration threshold of 55 percent). Per-pupil funding rates would depend upon which threshold is established, with stricter thresholds resulting in higher per-pupil rates (but serving fewer students). For example, we estimate setting the threshold at 65 percent EL/LI enrollment would provide about \$25 per student for 2.4 million EL/LI students in about 450 districts. In contrast, funding only districts enrolling at least 85 percent EL/LI students would provide about \$75 per student for about 830,000 EL/LI students in 180 districts. (These amounts still are notably less than the roughly \$1,600 per EL/LI student districts will receive in supplemental LCFF funds when the formula is fully implemented.)

***Focus on Outcomes, Not Spending***

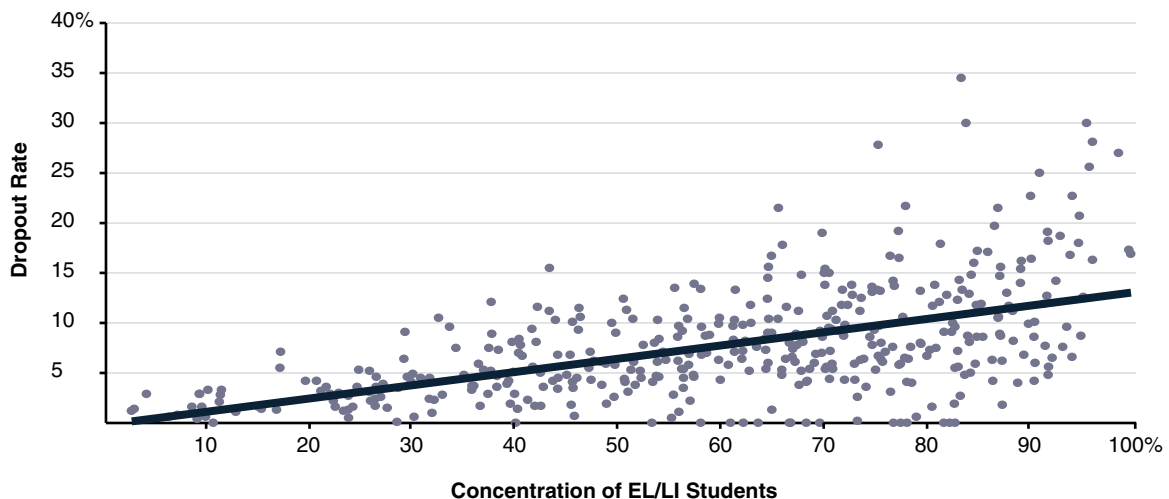
**Requirements.** Consistent with the regulations governing LCFF expenditures, we recommend the Legislature impose a broad requirement

that districts use SNSF funds to principally benefit students at risk of truancy, dropout, or victimization while still permitting local district leaders to determine which specific activities to undertake. Instead of tracking expenditures of the funds, we recommend the state rely on its newly adopted accountability system to monitor student outcomes and intervene in districts that fail to meet expectations for the targeted student groups. The state still is in the process of defining exactly how it will identify which districts are in need of additional assistance to improve student outcomes and the method by which such assistance will be provided. Student engagement—including absenteeism, dropout, and graduation rates—has been identified as a key state priority area, however, so the issues emphasized by Proposition 47 likely will be key areas of state oversight within the new system. (The accountability system should be more fully defined by 2016-17 when SNSF funds become

**Figure 4**

**Districts with Higher Concentrations of EL/LI Students Display Higher Dropout Rates<sup>a</sup>**

2012-13



<sup>a</sup> Based on data from 414 school districts. Excludes elementary school districts, which typically do not report dropout data.

EL/LI = English learner, low-income, and foster youth.

available.) The state could consider adding special oversight emphasis on these outcomes for districts receiving SNSF funds to ensure they receive additional state intervention if they struggle to make improvements in these areas after receiving additional funding.

## Victim Services

Proposition 47 requires that 10 percent of the SNSF go to VCGCB to administer a grant program to TRCs. We estimate funding available for this grant will likely total between \$10 million and \$20 million annually beginning in 2016-17. Below, we provide background information on the state's existing TRCs and other victim programs, and make recommendations regarding this new funding for TRCs.

### Existing Victim Services Programs

**Existing TRCs.** TRCs are centers that directly assist victims in coping with a traumatic event (such as by providing mental health care and substance use treatment). For example, victims may receive weekly counselling sessions with a licensed mental health professional at a TRC for a specified amount of time. The centers also sometimes help victims connect with other services provided in their community and by the state. While some of the TRCs existed before receiving state support, the state first began funding TRCs in 2001 with a grant to the San Francisco TRC. Since then, three other TRCs have also received state funding—one in Long Beach and two in Los Angeles. Currently, VCGCB provides a total of \$2 million annually in grants to four TRCs.

- **San Francisco TRC.** The San Francisco TRC is affiliated with San Francisco General Hospital—a level I trauma center—and the University of California, San Francisco. (A level I trauma center is a 24-hour research and teaching hospital

with the surgical and medical capabilities to handle the most severely injured patients.)

- **Long Beach TRC.** The Long Beach TRC is affiliated with Dignity Health St. Mary Medical Center—a level II trauma center—and California State University Long Beach. (A level II trauma center is 24-hour hospital with the surgical and medical capabilities to handle severely injured patients).
- **Los Angeles TRC—Special Service for Groups.** The first Los Angeles TRC to receive state funding is affiliated with a community-based organization, Special Service for Groups, which provides a wide array of services, such as substance use treatment, mental health counselling, and housing assistance.
- **Los Angeles TRC—Downtown Women's Center.** The second Los Angeles TRC to receive state funding is affiliated with a community-based organization, the Downtown Women's Center, which provides housing assistance and other supportive services in an effort to end homelessness for women.

**Other Existing State Victim Programs.** The majority of the state's spending for victim services is through other programs that have existed for many years. Specifically, the state spends about \$100 million annually on the victim compensation program, which reimburses some expenses (such as those related to mental health services) incurred by victims of certain crimes. This program is administered by VCGCB. In addition, the state spends another roughly \$100 million annually on numerous smaller grant programs, primarily administered by the Office of Emergency Services,

that provide funding primarily to local agencies and nonprofit organizations for various victim services, such as funding for victim advocates in district attorneys' offices who focus on assisting victims through the legal process.

### **LAO Recommendations**

Given that the state only began funding TRCs in recent years and because of their limited number, we recommend that the Legislature provide additional guidance to VCGCB on the use of the SNSF to ensure that funds are used effectively to further the purposes of Proposition 47.

#### ***Structure Grants to Ensure Effectiveness.***

We recommend that the Legislature structure the grants for TRCs to ensure that funds are spent in a manner that effectively and efficiently provides services to victims. Specifically, the Legislature could consider:

- ***Requiring a "Trauma Informed" Approach.*** The Legislature could require that TRCs use a trauma-informed approach—an approach to delivering services that takes into account the unique needs of individuals suffering a trauma (such as providing multiple services from one location in order to limit the number of times victims must retell the story of their victimization in order to apply for assistance). Similarly, the Legislature could require that TRCs provide treatment with licensed mental health professionals who have the appropriate training necessary to work with victims of violent crimes. We are informed that the San Francisco TRC already uses such an approach.
- ***Establish Multiyear Grants.*** The Legislature could consider specifying the length of grants in order to ensure that new TRCs have a sufficient amount of time to

get established before needing to apply for a renewal of their grant, or requiring the VCGCB to take such timing issues into consideration.

- ***Prioritizing Certain Qualifying Organizations.*** The Legislature could prioritize which types of organizations will receive grant funds in the event that more grant applications are received than can be funded with available Proposition 47 monies. For example, establishing TRCs affiliated with trauma hospitals (as is the case with two of the state—funded TRCs) provides a point of access to recovery services for the most severely injured crime victims, as these victims will likely be taken to a trauma hospital for medical treatment.

***Ensure Receipt of Federal Reimbursement Funds.*** Under the federal Victims of Crime Act (VOCA) grant program, the state is eligible to receive a federal reimbursement of 60 cents for every state dollar spent on qualifying victim services. Examples of qualifying victim services include mental health counselling and medical expenses. Some of the services TRCs are likely to provide to crime victims are eligible for federal VOCA funds. If the state is able to get VOCA funds for its expenditures on TRCs, it could increase the funding for victim services resulting from Proposition 47 by up to 60 percent. Accordingly, we recommend that the Legislature direct the VCGCB to ensure that the state receives all eligible federal VOCA funds for services provided through TRCs. For example, the Legislature could consider requiring VCGCB to collect information on eligible expenditures from grant recipients and include these amounts when applying for federal VOCA funds.

***Evaluate Grant Recipients Based on***

**Outcomes.** In order to ensure that SNSF dollars are being used effectively, we recommend the Legislature require the evaluation of TRC grant recipients and the outcomes they achieve. The Legislature could specify certain basic evaluation criteria (such as the number of victims served, types of services provided, and improvements in victims' mental health) and require VCGCB to develop additional criteria that it deems necessary. The Legislature could also have the VCGCB periodically report on the outcomes achieved and any changes made to the grant program as a result of the findings. The VCGCB could use the information gathered to inform future funding decisions. This would help ensure that TRCs are delivering services to victims effectively.

***Consider How Funding Fits Into Broader***

**Victims Programs.** Grants to TRCs are only one of many state programs that assists victims. Accordingly, we recommend that the Legislature consider how this additional funding and the corresponding expansion in the number of TRCs fits into the state's broader provision of services to crime victims. For example, the Legislature could consider requiring TRCs to assist victims with applying to the victim compensation program or create streamlined processes for TRCs that provide such assistance. Similarly, the Legislature could review existing programs to ensure that they are not duplicating the efforts of the new TRCs and that the overall administration of victim programs is well coordinated.

## CONCLUSION

Proposition 47 represents a significant change to the state's criminal justice system. In the next few years, the Legislature will be faced with major decisions related to the implementation of Proposition 47. Most significantly, the Legislature will have to decide how to manage the reduction in the size of the prison population and how the state savings from the measure should be used to provide services to offenders, students, and victims. We recommend that the Legislature begin considering

these issues now to ensure that the potential benefits to the state are maximized. Specifically, we recommend that the Legislature direct CDCR, the judicial branch, and counties to provide it with the necessary information to effectively address the various issues raised by the implementation of Proposition 47. In addition, we recommend that the Legislature begin deciding now how to use the state savings created by Proposition 47 in a manner that will most improve (1) recidivism rates, (2) truancy and dropout rates, and (3) services to victims.

### Contact Information

---

|                                   |  |
|-----------------------------------|--|
| Aaron Edwards                     | State Corrections and Sentencing                   |
| Natasha Collins and Rachel Ehlers | K-12 Truancy and Dropout Prevention                |
| Sarah Larson                      | Mental Health and Substance Use Treatment Services |
| Anita Lee                         | State Courts                                       |
| Jessica Peters                    | County Corrections and Victim Services             |

### LAO Publications

---

This report was reviewed by Drew Soderborg. The Legislative Analyst's Office (LAO) is a nonpartisan office that provides fiscal and policy information and advice to the Legislature.

To request publications call (916) 445-4656. This report and others, as well as an e-mail subscription service, are available on the LAO's website at [www.lao.ca.gov](http://www.lao.ca.gov). The LAO is located at 925 L Street, Suite 1000, Sacramento, CA 95814.