

The San Francisco Sentencing Commission

City & County of San Francisco

(Administrative Code 5.250 through 5.250-3)

AGENDA

December 14, 2016

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 September 14, 2016 (discussion & possible action).
4. Staff Report on Sentencing Commission Activities (discussion & possible action).
5. Young Adult Court, Law Enforcement Assisted Diversion (LEAD), and Recidivism Workgroup Updates (discussion & possible action).
6. Presentation on California Sentencing Ballot Initiatives and Legislation by Selena Teji, Californians for Safety and Justice (discussion & possible action).
7. Presentation on the Criminal Mental Health Project by Judge Steven Leifman (discussion & possible action).
8. Presentation on Government-University Research Collaborations: Examples and Current Projects at the University of California by Dr. Steven Raphael, University of California, Berkeley (discussion & possible action).
9. San Francisco Sentencing Commission 2016 Annual Report (discussion & possible action).
10. Members' Comments, Questions, and Requests for Future Agenda Items.
11. Public Comment on Any Item Listed Above, as well as Items Not Listed on the Agenda.
12. Adjournment.

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**The San Francisco Sentencing Commission
City and County of San Francisco**
(Administrative Code 5.250 through 5.250-3)

**Meeting Minutes
Wednesday, September 14, 2015
10:00 a.m. – 12:00 p.m.
Hall of Justice, Room 322, DA Law Library
San Francisco, CA 94102**

Members in Attendance: George Gascón, San Francisco District Attorney; Simin Shamji (San Francisco Public Defender's Office); Karen Roye (Reentry Council); Colleen Chawla (Department of Public Health); Sara Schumann (Juvenile Probation Department); Vicki Hennessey (San Francisco Sheriff); Jerel McCrary (Family Violence Council); Lee Hudson (Adult Probation); Greg McEachern (San Francisco Police Department); Benson Fairow (BART Police Department); Theshia Naidoo (Drug Policy Alliance).

1. Call or Order; Roll Call

At 10:07 a.m., District Attorney George Gascón called the meeting to order and welcomed commission members and members of the public to the San Francisco Sentencing Commission meeting.

2. Public Comment (discussion only)

No public comments received.

3. Review & Adoption of Meeting Minutes from June 15, 2016 (discussion & possible action)

District Attorney Gascón asked commission members to review minutes from the previous commission meeting and asked whether anyone had comments or edits.

Tara Anderson recommended that a section that attributed comments to Chief Nance be corrected to be attributed to Chief Rainey.

Lee Hudson noted that comments/questions on page 16 were incorrectly attributed to her and recommended this be changed.

Greg McEachern made a motion to accept the minutes from June 15, 2016 with the amendments suggested; the motion was seconded by Vicki Hennessy.

4. Staff Report on Sentencing Commission Activities (discussion & possible action)

Tara Anderson provided an update from the District Attorney's office.

The Recidivism Work Group met on August 2, 2016 as a follow-up from the June meeting. They completed an 18-month analysis of dispositions that led to supervision, jail time, or state confinement.

The group felt this was an important first step to narrow the cohort that they would be following. As a reminder, the group previously agreed on an umbrella of subsequent criminal justice contact including rearrest, arraignment, and reconviction. Mia Bird, from the Public Policy Institute of California (PPIC) has offered to transfer San Francisco data that has been cleaned for the multi-county study PPIC is completing for the Work Group to use in its local analysis. This has been a tremendous offer to their efforts to have a level of research support as they move forward.

As mentioned in the June meeting, Alissa Skog and Anderson are participating in GovLab, a data-driven criminal justice initiative housed at New York University. They are using it as an opportunity to inform the design and operational set-up of an eventual San Francisco recidivism dashboard. The final project pitch will occur in September; after which they expect to receive ongoing technical assistance to make this dashboard a reality. Previous recommendations from the Sentencing Commission have included the expansion of the capacity of JUSTIS to move beyond helping people connect to the hub, to potentially include activities, such as hosting a recidivism dashboard. These are conversations that the Recidivism Work Group is continuing to engage in and explore through further analysis.

A note about other work associated with GovLab: there are other agencies that have been selected to participate, including the Judicial Council, Center on Juvenile and Criminal Justice (CJCJ), and the California Department of Justice. After a regional meeting to discuss their projects, and the Work Group is hopeful that there will be an ongoing effort toward data sharing amongst these agencies.

Anderson also provided an update on the Sentencing Commission white paper, which is near publication. The white paper was put on the agenda roughly two years ago as a task for the Commission, and it is slated for release before the December meeting. Part of the reasoning for releasing it before the meeting is to take advantage of educating people at the state level to potentially inform any legislative strategy that takes place for the next year. Once the paper is published, it will be made available to all members and publicly available on the Sentencing Commission website.

The next update was related to the Juvenile Probation Department data, presented by Chief Allen Nance, at the June Sentencing Commission meeting. Every year, the JPD provides a sentencing trends overview, but several questions were raised—in particular about booking, charging, pleading data points, and out-of-home placements. Following the Sentencing Commission's motion during the June meeting, staff examined the JPD data and data from the DA's Office, collaborating to revise some of the slides that were presented in June. Slides that were changed include those relating to: petitions filed, petitions sustained, and the disposition breakdown of adjudicated youth. Anderson extended a special thanks to everyone at JPD who worked with her team to dig deeper into the data, and Managing Attorney Jean Roland, who pulled paper files and reviewed them so staff could have a better understanding of case outcomes for the Juvenile division. As a result, staff found several cases that were represented incorrectly.

The major revisions with regard to the petitions filed data were small percentage changes, namely: 76% of petitions filed were felonies; the number of African American felony petitions decreased from 80% to 74%; the number of Hispanic felony petitions filed for males and females were 26% and 15%, respectively.

The major revision with regard to the petitions sustained data was that the number of petitions sustained is actually greater than the 71.5% originally presented. 88% of petitions were sustained. Females still make up a greater proportion of sustained petitions than males do, but small additional corrections were made to the values reported.

The major revision with respect to dispositions for adjudicated youth was to replace the bar chart originally used to present the data in two pie charts. This change was made to reflect the greater volume of dispositions in 2010 as compared to 2015, and the importance of representing the relative use of each disposition in a given year. Absent a few data points, there is not a great deal of variation across the time period. Anderson noted that the Sentencing Commission had, however, expressed a desire to better understand the use of out-of-home placement as a disposition. She is continuing to work with JPD on that analysis and will report back to the Commission in December on that item.

Anderson moved to the next update, the Department of Children, Youth, and their Families (DCYF) letter, which was presented to the Sentencing Commission members for their consideration following presentations from Project WHAT! and the San Francisco Children of Incarcerated Parents (SFCIP) partnership at the June 2016 Sentencing Commission meeting. Both presentations documented the effects that a parent's incarceration can have on a child and steps that San Francisco can take to improve the services and policies that impact this population. The Commission unanimously passed motions supporting Project WHAT! and SFCIP. Anderson met subsequently with DCYF, who recently completed their Community Needs Assessment (CNA), a comprehensive overview of the needs of children from birth to age 24 and their families in San Francisco. The CNA recognized that children of incarcerated parents have unmet emotional needs and often face extreme social stigmatization. The assessment also found that the current service providers lack adequate training on the unique set of issues facing our young people with justice-involved parents. The next phase of this process is the Service Allocation Plan (SAP).

The letter before the Sentencing Commission is directed toward DCYF in prioritizing children of incarcerated parents as they considered their priorities in the SAP. DCYF is one of the first social service agencies, next to the San Francisco Sheriff's Department to support programming, through monetary funding, for children of incarcerated parents. Anderson noted that she sees DCYF as a partner in prioritizing the needs of this population, and that the Department supported issuing this letter as a means of communicating the Sentencing Commission's interest in supporting children of incarcerated parents. Anderson went on to say that, as DA Gascón had mentioned before, the Sentencing Commission has seen through Young Adult Court (YAC) and in practice that there are great service needs that remain for the 18-24-year-old population.

As such, she recommended that today's motion include not only approval of the letter before the Commission, if appropriate, but also further consideration and research by District Attorney's Office staff in working with the YAC Work Group to identify any other priorities that we would want to draw to the attention of DCYF.

DA Gascón asked if there was any comment from the members of the Sentencing Commission concerning these reports. Receiving none, he moved to approve and submit the letter to DCYF, and asked that additional analysis concerning 18-24 year olds also be included.

Simin Samji asked for clarification if the age range was 18-24 or 18-25 year olds.

Anderson replied that, per DCYF standards, the range is 18-24. She noted that the Commission could extend the range to 25 years old for their purposes.

Samji noted that this extended range would be consistent with the YAC population.

DA Gascón agreed that the Commission could extend their request to an 18-25-year-old population.

Sara Schumann made a motion to approve and submit the letter, including the Service Allocation Plan for 18-25 year olds, to DCYF. Theshia Naidoo seconded the motion. The motion passed unanimously.

Anderson opened the floor to representatives from Project WHAT! who wished to make a brief statement.

Alisha Murdock, the Program Coordinator for Project WHAT!, and an alumna of the program herself, expressed her thanks for the Sentencing Commission's support of the policy recommendations made by Project WHAT! She noted that Project WHAT! fully supports everything that Anderson presented and are hopeful about DCYF's findings and support of children of incarcerated parents.

Anderson then turned the floor over to Jerel McCrary for updates from the Family Violence Council (FVC).

McCrary explained that the last meeting of the FVC took place on August 31, 2016. The principle subject of that meeting was the presentation of a draft comprehensive report on family violence in San Francisco for 2015. The Council largely reviewed their policy recommendations for 2016, which fall into three specific categories: (1) protocols and practice, (2) training, and (3) planning.

In the first category—protocols and practice—there were three items remaining from the 2015 recommendations, which the Council wishes to see as a continuing priority during 2016. Those issues were: (1) language access concerns in departments across the city; (2) finalizing protocol between the San Francisco Police Department and Adult Protective Services on reporting and investigating elder abuse; and (3) an annual review of the Special Victims Unit of the Police Department. Additional policy recommendations in this category include:

- a review of investigation and prosecution of stalking cases;
- establishing standard criteria for death review teams on which cases should be considered domestic violence, child abuse, and/or elder abuse (for example, there may be a case in which a suicide has occurred in the context of domestic violence, but may not be classified as domestic violence by death review teams);
- supporting the work of the Children's Advocacy Center on practices for sharing information during investigations of child abuse;
- finalizing a protocol for call-on-arrival for the San Francisco Police Department;
- finalizing new healthcare mandatory report for injuries due to abuse;
- implementation of a firearms surrender protocol, which the San Francisco Sheriff's Department has already been working on;
- ensuring there is a batterer intervention program in Cantonese, which doesn't currently exist in San Francisco;
- ensuring there is a batterer intervention program for persons with mental health issues;
- finalizing an elder abuse investigation tool for the Special Victims Unit.

In the training category, recommendations included:

- collecting information on which trainings FVC agencies are currently receiving to ensure they are comprehensive and to understand which trainings should be supplemented;
- establishing community agency participation in trainings regarding domestic violence, child abuse, and elder abuse for the Police Department (NB: there is currently an agreement to do presentations with the Police Academy);

- building a roadmap for implementation of a 5-year plan on Family Violence, which the San Francisco Mayor's Office mandated the FVC and the San Francisco Department on the Status of Women create earlier this year. That plan will appear as an index to the Family Violence Council report, which is still in draft version, but will be available on the FVC website.

McCrary concluded his update by noting that the final meeting of the FVC for 2016 will take place on November 16, from 3-5 pm, at 400 McAllister.

Karen Roye then presented updates from the Reentry Council, which met on June 30, 2016.

Roye noted that there was follow-up discussion on the Hayward Burns Report, which described racial and ethnic disparities in San Francisco's criminal justice system. She outlined next steps as follows: each criminal justice department on the Council will create a decision point and action plan to reduce racial and ethnic disparities. This plan is set to be announced at the November 3, 2016 meeting of the Council. The Council also recommended that this item on racial and ethnic disparities become a standing agenda item of future meetings for further discussion.

Roye also noted that at the Council's November 3, 2016 meeting, the San Francisco Mayor's Office will present an action plan that will outline steps towards criminal justice data collection improvements, including consistency and benchmarking.

Finally, during each year's budget process, the Reentry Council members will come together to support reentry services for people with criminal histories and submit a letter to the Mayor and the Board of Supervisors that recommends additional funding streams for these services.

Roye closed her updates, noting that the next Reentry Council meeting, scheduled for November 3, 2016, will begin at 10 am in the Milton Marks Auditorium at 455 Golden Gate Avenue.

Anderson concluded the updates from the DA's Office and its sister bodies.

5. Law Enforcement Assisted Diversion Workgroup Update by Laura Thomas, Drug Policy Alliance (discussion & possible action)

DA Gascón introduced Laura Thomas, from the Drug Policy Alliance (DPA), to provide updates on Law Enforcement Assisted Diversion (LEAD).

Thomas reported that the DPA, along with its partners, secured \$15 million in the California state budget for a pre-arrest diversion pilot program. The funding is for three pilot localities across the state of California, and San Francisco is well-positioned to be competitive as one of the localities for the pilot, as the city has done much of the necessary groundwork for eligibility. A funding announcement will be made toward the end of 2016, with money becoming available in May of 2017 for two years' worth of funding. This money can be used for training, staffing, and/or services. Given prior concerns about the name of the program, the budget language is written with respect to the goals and policies of the program rather than a specific name, so that, regardless of what San Francisco chooses to call the program, it will still be eligible for funding.

DPA has been holding stakeholder meetings, which they put on hold for the moment. They will be resuming these meetings and continuing work with the Seattle National Technical Assistance Bureau moving forward. Thomas noted that the Bureau has presented in California before and that some members

of the Commission may have visited Seattle to see the Bureau present. The Bureau is currently running on a very limited capacity, making it difficult for the DPA to work around their schedule and engage Bureau staffers to come to California and provide technical assistance. While this stretched capacity is good in the sense that there are many groups and jurisdictions interested in LEAD around the country, it is nevertheless challenging for DPA to collaborate with the Bureau. Thomas also noted that while BART has been particularly enthusiastic about moving forward with LEAD, it has been difficult to bring Seattle staff to the Bay Area to help develop focus groups for the program.

Thomas noted that next steps from the DPA as the technical assistance convener include working with each of the individual stakeholders to do a better assessment of current conditions. In addition, they must reconvene stakeholder meetings to develop the policies and procedures they need to have in place to be ready to apply for the LEAD funds and put the program into operation by May 2017.

Theshia Naidoo added that there are a number of other jurisdictions interested in applying for LEAD funding. San Francisco is the furthest developed with respect to modeling a program after LEAD, going to Seattle to learn more, etc., but funding remains up to the Bureau of State and Community Corrections (BSCC) who will be issuing a Request for Proposal (RFP) shortly. Then, it will be the responsibility of the LEAD coordinating group in San Francisco to take up the application process as soon as the RFP is available.

DA Gascón noted that it is very important that San Francisco's efforts be coordinated and prepared for the LEAD RFP.

Simin Samji asked if it would make sense to develop a proposal before the RFP is issued. She recognized that it would take a long time, but clearly the process is going to be competitive one. And while San Francisco is positioned strongly in the process, she suggested that it may be helpful to have a pilot in place ready to go so the city can be ready to submit an application.

Colleen Chawala noted that the Department of Public Health would be happy to secure funding to support the DPA in the LEAD pilot planning phase to hire staff to develop protocols and procedures, as the funding from the BSCC is not intended to include the planning phase. This might allow San Francisco to be better prepared to acquire the funding, since the city will have completed this important pre-work for the pilot when the RFP comes out.

DA Gascón commented that BART is fairly ahead of the curve, which might enhance the attractiveness of its application, even if the San Francisco Police Department is not fully ready. One of the good things is that this funding came from Proposition 47, so that San Francisco should be viewed very favorably, because the city is well-structured in its approach and is not being pulled in a hundred different directions. He also noted that he insists there should be fidelity to the LEAD name because the name implies a national approach to this work. The city needs to stick to the name that has been used at the state and national level.

Thomas responded that people ask her about LEAD, and they know what the program is. They do not necessarily know what Assistance Before Law Enforcement (ABLE) is; the name does not have a particular branding. In San Francisco, we should determine what works best for us, but there is definitely an advantage to being seen as part of a national movement. Nevertheless, she noted that she understood that the city often wants to put its own mark on things.

Samji asked for clarification, noting that she thought the Sentencing Commission had agreed on LEAD as a name.

DA Gascón responded that yes, the Commission had taken a vote and decided on LEAD. He went on to say that he felt it was important for San Francisco to use a nationally-recognizable name. When he has used the name ABLE in other meetings, people express confusion. Using the name LEAD is about using a common language; it is about more than just San Francisco. It is about showing that this model can work. It is important that San Francisco understands it is not an island, and that it is part of a larger ecosystem. San Francisco can create a great environment to show how conversations around these issues can move, and if the city wants to be a national leader, it has to be a national leader.

Naidoo interjected to note that DPA is also working at the federal level to secure national funding. They have been successful at the state level, which is great, but for the longevity of the LEAD program, they need dedicated federal funding as well. The name LEAD resonates at the federal level.

Samji responded that the city could use the name LEAD-SF or SF-LEAD to distinguish itself.

DA Gascón noted that the program naming issue had been decided at a prior meeting, and suggested that the Commission move on to other topics, thanking Ms. Thomas for the balance her presentation offered. He asked if there were any other comments.

Anderson added that she had some information that was not shared at the last meeting. San Francisco receives an allocation directly from the Department of Justice through the Bureau of Justice Assistance. Usually this amount of money is based on crime trends and population, and the idea is to support jurisdictions to innovate. Typically, the city uses this money for Drug Court and drug diversion interventions, and some enforcement activities. Based on the last application that was submitted to the federal government, the money San Francisco has (which is overseen by DCYF due to unique circumstances), included the capacity for the San Francisco Police Department to use those funds to support overtime associated with LEAD. So all the planning-stage activities that might create a new undue burden on police resources are supported with additional resources to support training or any further meetings that may be required as the city gears up for the new LEAD program.

DA Gascón asked for any further comments. Receiving none, he moved onto the next agenda item.

6. Presentation on Risk/Needs Assessment 101 by Michael Thompson, Council of State Governments Justice Center (discussion & possible action).

District Attorney Gascón introduced Michael Thompson, a representative from the Council of State Governments Justice Center. Thompson has been a leader in criminal justice reform for many years.

Thompson introduced himself and expressed his excitement to meet with criminal justice leaders in San Francisco, noting the city's strengths with regard to building cross-agency collaborations and developing a huge volume of evidence-driven initiatives. He noted that he has been working in criminal justice policy for over 20 years, and that San Francisco is impressive for checking so many boxes off the reform agenda. Moreover, he said, San Francisco has an impact on state policy that he has not seen elsewhere. To see a city and county that is so bold as to discuss sentencing reform, and one that can show it is actually making a change at the state and county level, is very impressive. It is unsurprising, then, that San Francisco is a magnet for federal and state investments in reform. He expressed his congratulations on the Commission's good work.

Thompson then offered a review of risk assessment, inmate behavioral health needs, and the state of people in jails with mental health issues. He noted that having Dr. Jennifer Skeem, the national authority on the intersection of these matters, would be an excellent follow-up to his presentation.

Thompson provided an overview on the first slide of his presentation, noting in particular the concept of the Risk Principle, and how it is applied to the goal of reducing the number of people with mental illnesses in jail. He would then talk about the statewide initiative Step Up, California, and how San Francisco would fit into that program.

On the second slide, Thompson showed the Commission research that was produced by Dr. Edward Latessa at the University of Cincinnati. The state of Ohio spent about \$100 million on community-based correctional programs designed to reduce recidivism. The idea is that judges put people in community-based treatment programs with a goal towards reducing recidivism. When Dr. Latessa and his colleagues at the University of Cincinnati studied those programs, they found actual increases in recidivism, illustrated by red lines, for people who were put into those programs. The blue lines on the graph illustrate decreases in recidivism. Overall, the state experienced a 3-4% increase in recidivism by people who were being put into these community-based treatment programs. Thompson noted that we treatment providers were dismayed to see the research outcomes. They commented that the findings were hard to believe because they were actually running community-based treatment programs that adhere to evidence-based practices and treatment models, so it did not make sense that the research produced these unexpected results.

What researchers found when they examined who *should* have gone to the programs, was that those individuals did well. In fact, what was happening was that judges, in concert with prosecutors, defense attorneys, probation officers, etc., were putting the wrong people into these programs. They were putting low- and medium-risk people into the programs, such that low-risk people came into contact with individuals who were medium- to high-risk. As a result, they picked up the bad habits of those people. Alternately, we might imagine that if someone trying to repair his life was assigned to the intensive community-based treatment program, the program would actually break his bonds with family, a job, etc., and he would therefore end up focusing on bad behaviors rather than good ones.

Moving to the third slide, Thompson explained how researchers found that if we placed the right people with the right programs, we could have much better impact. Knowing that it is very important to know about risk when we put people in programs, we must clearly define what we mean by risk. While elected officials might equate risk with the type of crime that someone committed, members of the Sentencing Commission understand that risk in this context refers not to dangerousness or violence, but rather failure to appear or violations of the conditions of one's supervision, or of re-offense. Risk assessments used at other stages of the criminal justice process may have other purposes, but risk in this context refers to the context defined earlier.

On the fourth slide, Thompson noted that when we talk about what drives risk, there are some things that a person has no control over. For instance, young people are more likely to be engaged in crime than someone older. The age of first arrest has some predictive value. These are factors that we cannot control—they have already occurred. There are, however, a number of dynamic factors we can influence. Historically, we might have just focused on finding someone a job or a safe place to live; those things will actually help someone not re-offend. Those factors are involved, and they are certainly important, but to actually assess risk, we need to examine factors, illustrated in the blue circle, such as thinking, who someone is spending time with, and one's personality. For those of us who have dealt with people in the criminal justice system, this thinking makes sense. Who a former offender is spending time with, how a former offender thinks through things—these factors are subject to change, and these patterns and behaviors are ones that are most associated with risk of re-offense.

On the fifth slide, Thompson explained that the goal is to put the population of offenders in categories of low, moderate, and high risk of re-offense. Within those categories, we know if someone is more likely to recidivate.

On the sixth slide, Thompson noted that researchers and practitioners are getting better and better at using tools across the country. More jurisdictions are using tools for risk assessment, but the push now is to ensure that we are actually using the results of those tools. People are getting more systematic about conducting risk assessment, but then we face the process of actually getting judges, prosecutors, defense attorneys, etc., to actually use the results of those assessments to inform their decision-making. That process has proven far more difficult because while people appreciate the risk assessment tools, they nevertheless fall back on their 30+ years of work experience instead of the assessment results. He said to keep in mind that researchers have done studies of risk assessment in Ohio and Pennsylvania relying on people's quote-unquote "great judgement," and have ultimately wasted hundreds of millions of dollars because we are putting the wrong people in the wrong programs. He emphasized that the risk assessment approach is definitely better than simply relying on people's good experience and judgment.

On slide seven, Thompson raised the issues of needs and responsivity, with respect to behavioral health.

On slide eight, Thompson mentioned that it was highly likely that the San Francisco Sheriff's Department was facing challenges with respect to the growing number of people with mental illness in jail. In his experience, law enforcement raises this issue time and time again, often in the context of engaging with people on the street. According to some studies, roughly 17% of people in jail have mental health needs, the vast majority of whom have co-occurring substance abuse issues. These are people who are often self-medicating, trying to suppress symptoms of mental illness.

On slide nine, Thompson stated that, thanks to the great research by Dr. Skeem, we talk about these issues in a much more sophisticated fashion than when he first began work in criminal justice policy. We used to say that a person has mental illness and we need to get them treatment or mental health services, and then they would not come into contact with the system. For example, we might have thought that if a person stops hearing voices in their head, then police will not be arresting them in the park, and conditions will improve. It turns out that, through Dr. Skeem's research and others, that we now know that a huge number of people with mental illness who are getting arrested are not getting arrested because the voices in their head told them to commit a crime. Instead, they have a lot of the risky behaviors and patterns mentioned earlier, on top of the mental illness. Not only are they hearing voices in their head, and the voices in their head are telling them to steal a loaf of bread; they are also hanging out with the "wrong" people, or they have poor decision-making skills, etc. Thompson emphasized, it is not just the mental illness—it is the criminogenic factors that are of importance. And of course, we also see many of these individuals using and abusing drugs. So we have three issues coming together, which makes this population a very tricky one to deal with. We know that if we are not thinking about these three issues in concert, we are not going to have an impact. So, we might see many programs that are just thinking about mental health services or just criminogenic risk. And as a result, we do not see the impact we would like to see.

On slide 10, Thompson went into further detail regarding how to address dynamic needs. Typically, when we refer someone, a judge sends someone to a mental health treatment program. The issues listed in white—family and rural marital discord, school and work performance, leisure and recreational activities—mental health service providers are accustomed to helping someone in those areas in addition to their mental health treatment. But when we need to address the factors in red—antisocial behaviors, antisocial cognition, and all of the services required to deal with those matters—mental health providers

often remark that these are not issues they address. And what about providing the co-occurring substance abuse treatment? While we see these issues treated more and more, it's still rather rare that mental health service providers offer integrated mental health and substance abuse treatment. So we can see here that we have providers that are not typically thinking about all of these services in concert with one another; they are only thinking about one subset of issues. And if they are not thinking about substance abuse treatment and the issues of criminogenic risk, we are not actually going to change the kinds of factors that are getting people involved in the criminal justice system.

On slide 11, Thompson noted that he was using colloquialisms and simple examples to describe the responsivity principle. If, for instance, we have someone who hears voices in their head, we will not be able to talk to them about different kinds of antisocial behavior. The first thing we will need to do is to make sure we are treating the symptoms of schizophrenia. We will also need to ensure we are dealing with the issues of heroin use or other kinds of illegal drug use. Then we move into the issues of criminogenic thinking and patterns. We should be prepared to address these three sets of issues, such that dealing with the mental illness itself is more of a question of responsivity. We have a risk, need, and responsivity model, and we need to understand how they come together when we are talking about someone with mental health needs, substance abuse, and criminogenic risk.

On slide 12, Thompson offered a framework. He noted that it is extremely important that when we are sending someone to jail, the first thing to think about is someone's criminogenic risk—low, medium, or high. Then we need to think about substance abuse. As many members on the Commission may know, we often encounter court officials and others who think that because someone is caught with an illegal drug, they may have an acute drug problem. However, we know there is a whole range of drug problems and patterns. Thompson remarked on his own experience in corrections, where staff would refer to someone as “off,” meaning they needed mental health services. But being “off” is not an official mental health diagnosis. Mental health service professionals do not like someone referred to them on the basis of a claim that “something seems off about this person.” Instead, we need to be thinking about all different kinds of gradations of mental illness in this publicly funded treatment system. If we do not start actually splicing the population more carefully, we will end up spending a lot of money on some very expensive programs, and we could actually make someone worse. There is a likelihood that we could actually make someone further involved in the justice system.

On slide 13, Thompson again emphasized the need to think strategically about these different risks and needs, and to ensure that we are targeting people appropriately. So we might think, based on the research, that counties across the country are preparing to screen people for criminogenic risk, mental health need, and substance abuse need.

On slide 14, Thompson described the first major challenge of risk assessment implementation. Having been to many counties across the country, he has yet to find a single county that is actually screening offenders immediately after booking. And if these counties are not doing so, how do we know that they are actually providing services to the right people? We do not, and that is a huge problem. However, we are seeing many counties move in this direction. While many counties may be off to a good start, they are still not addressing every one of the issues raised in this presentation.

On slide 15, Thompson described the second major challenge of risk assessment implementation. For those counties that are doing a better job of screening and assessing offenders, we know what offenders need and put them in the appropriate programs. But there are very few programs that are fully equipped to provide the integrated services that this population actually needs.

On slide 16, Thompson described the third major challenge of risk assessment implementation—the data. He displayed a sequential intercept map of Los Angeles County. He characterized it as the most complicated one-page visual he had ever seen. Instead of this huge slew of text, we need numbers to show what we really need. He illustrated his point using Franklin County, Ohio, where the city of Columbus is located. This county has roughly 10,500 people booked into jail each year. The county informed researchers that they had an effective approach to screening and assessment. After researchers applied further scrutiny to Franklin County's system, they decided that the system was not, in fact, all that effective. While the county had curbed suicide in an effective way, they had not necessarily addressed mental health need. Dr. Osher, one of the lead researchers, suggested that one of the ways in which they might confidently assess mental health need would be to determine what percentage of people had contact with a publicly-funded mental health system. So, researchers matched those who had contact with the mental health system prior to admission to jail and found a total of 969 offenders in that time period. They then asked, in the year following, how many of those 969 people had subsequent contact with the mental health system. Only 609 had. Somehow, the county had lost a third of this population following release.

Researchers showed this information to a county jail administrator, and he said there was no way there are just 969 people in his jail with mental health issues. He assumed that his jail held at least the same proportion of offenders with mental illness as any other county in the region, which is roughly 20%. Thus, researchers held the Franklin County jail population consistent with national estimates, assuming roughly 2,300 people with mental illness. That means there are 1,700 people coming out of the jail each year with a significant or serious mental health need, but no contact with the mental health system prior to release. Once they assessed the population's criminogenic risk, they found that over 1,000 of those individuals posed a medium or high risk of re-offense. Researchers then showed these findings to the Franklin County Board of County Commissioners, who told the researchers to keep the findings confidential until the county had a plan in place to deal with the problem—over 1,000 medium- to high-risk mental health needs being dumped onto the street having had no subsequent contact with the mental health service system. Thompson then asked of the Sentencing Commission, "How do we get that kind of data in front of our decision-makers, rather than simply talking about a pilot program for 30 people or a need that is so enormous that we need billions of dollars to fix the healthcare system?" He noted that these are two poles that are very hard to deal with, but nevertheless the direction we are trying to get more and more jurisdictions to think in.

On slides 17 and 18, Thompson showed the Sentencing Commission the Los Angeles Sequential Intercept Map. He noted that it is a useful device, but that it does not offer the kind of actionable numbers we need to make a case for risk assessment. Furthermore, presumably these investments are being made to reduce the number of people with mental illness in jail. In order to do that, we need to know the number of people with mental illness booked into jail, how long they stay, what percentage of that population is connected to treatment, and whether they recidivate. He stated that he does not know of a single county in the country that can offer all of these data points on an annual basis. How can we show, then, that the investments in risk assessment are having any of their intended effect, if we cannot generate these numbers? He emphasized that this is a crucially important challenge for counties across the country.

On slide 19, Thompson began to describe the Step Up, California initiative. He said that the program was meant to bond together Republicans and Democrats, sheriffs, prosecutors, mental health professionals, etc., to reach the goal of fewer people with mental illness in jail—a very concrete goal. He noted that in California, the state has really embraced this goal, and that all the key statewide agencies and associations related to the effort have banded together in the Step Up California initiative.

On slide 20, Thompson showed that 21 counties' Boards of Supervisors in the state have passed resolutions committing themselves to the goal of reducing the number of people with mental illness in jail. San Francisco is not among those counties. Thompson noted that he and his colleagues would love to see the county pass a resolution. Four counties came to a national summit held in Washington, D.C.

On slide 21, Thompson explained that the Council of State Governments Justice Center is focused on six questions for each county:

- (1) Is your leadership committed
- (2) Do you have timely assessment?
- (3) Do you have baseline data, such as metrics about the number of people with mental illness being booked into jail, how long they stay, their rates of recidivism, etc.?
- (4) Have you conducted a comprehensive service and process inventory?
- (5) Do you have funding recommendations based on answers to Questions 3 and 4?
- (6) How do you track your progress?

On slide 22, Thompson explained that these questions are being distributed to all county leaders across the country. They conducted a statewide survey in California regarding these six questions. All counties participated, and they will be releasing the results soon.

On slide 23, Thompson noted that when researchers asked California counties, "Is this a problem that is better or worse for you, as a jail administrator, than in previous years?," counties across the state overwhelmingly responded that while there are generally fewer people in jail, there are more people in jail with mental illness. This is a more acute problem than it was a few years ago, and is certainly a priority for counties.

On slide 24, Thompson described the statewide summit that will take place on January 18-19, 2017, in which counties from across the state will be participating. He noted that he hoped to see a team from San Francisco there. Attendees will be discussing these six questions and what counties should do to address them. Thompson went further to say that San Francisco has always been on the cutting edge of this sort of work, and that he wants to see the city and county weigh in, not just on the topic of criminogenic risk, but also of integrating it with behavioral health needs. Further, he wants San Francisco to consider a strategy, not just for a pilot program, but one that actually has across-the-board results.

Thompson concluded by thanking the audience for their time.

District Attorney Gascón asked if there were any questions or comments from the Sentencing Commission members. Receiving none, he asked Thompson when the Commission might get copies of his report.

Thompson responded that he would work with Tara Anderson to get that information to the District Attorney's Office and the Sentencing Commission.

DA Gascón asked again if there were any further comments or questions.

DA Gascón concluded by reiterating that he would make sure everyone on the Sentencing Commission receives a copy of Thompson's presentation and report. He noted that one of the very important points of the presentation is the importance of data, which should not be overlooked. While we may have a tendency to want to trust our experience, the reality is what the data shows, over and over again, through the accumulation of information and processing through algorithms. He mentioned an interaction with a

bench officer, who spoke about not trusting a risk assessment tool; the officer said that he had seen about 2,000 cases in his lifetime. DA Gascón noted that he had to gently remind the bench officer that the assessments made by the tool are based on analysis of over 400,000 cases—it is literally impossible for a human being to accumulate that much information over their lifetime. We have to begin to break away from thinking we know better than these tools. That is not to say that we cannot override these tools. Obviously we have human input into the development of these tools and their calibration. But we have to move away from thinking that our collective experience is going to be better than some of this work, because the data shows over and over again that we make mistakes in judgement when we rely purely on our intuition. DA Gascón then asked for clarification about the \$100 million spent in Ohio, characterizing it as wasted product.

Thompson responded that yes, this was the case. Nevertheless, he noted that he commended Ohio for doing the study in the first place. In Pennsylvania, the Council of State Governments Justice Center did a similar study and got the same results.

DA Gascón interjected that San Francisco may have several billion dollars on the line because the city uses funds from the federal and state levels, as well as foundations and other funding streams. He noted that San Francisco is very fortunate in receiving these funds, but that it is not always clear if the money is well-spent. He concluded his comment by thanking Thompson for his presentation, and then moved on to the next agenda item.

7. Presentation on Risk, Race & Recidivism: Predictive Bias and Disparate Impact by Jennifer Skeem, UC Berkeley (discussion & possible action).

District Attorney Gascón introduced the next speaker, Dr. Jennifer Skeem, a psychologist who works at the University of California, Berkeley School of Social Welfare and the Goldman School of Public Policy. She is one of the nationally recognized experts on the issues of mental health and their intersections with the criminal justice system.

Skeem thanked DA Gascón for the introduction and noted that it is great to see many familiar faces in the room, especially those representing national level interests.

She then went on to say that she was going to speak to an issue that is much more narrow in scope than what Michael Thompson had presented on earlier. She offered some further information on the background of her talk. She is a clinical psychologist by training and noted that there is a lot of emphasis on psychological testing. Often, psychological testing is controversial—for instance, high-stakes cognitive testing like the SATs or GEDs or other tests to determine college or graduate school admissions. There is a lot of focus on trying to understand if the test we are using to make high-stakes decisions are fair. Fair by ethnicity, fair by socioeconomic status, fair by gender, etc. So, although risk assessment has really come to the foreground in the justice system recently, it has not been without controversy. Her presentation goes directly to the heart of that issue, and will describe what we know, from a database perspective, about how the risk assessment tools she has studied can inform fair decision-making.

Skeem continued providing further context. A lot of her work has been focused on why people with social and emotional problems get involved in the justice system, and how we can identify people who have behavioral problems and reduce their risk. Risk assessment and risk reduction is really at the core of all of that work. What we have seen happen over the past 5-10 years is that there is a powerful current towards using risk assessment in a lot of different domains. It has always been a standard of practice in probation

and parole. We want to make sure we use these tools to make wise decisions about who to release to the community, for example, after a stay in prison. So we already use risk assessment in those contexts. More recently, there has been interest in using risk assessment to inform front-end decision-making about sentences that people should serve. This is the point at which most of the controversy has erupted, even though one might easily argue that issues of equity and fairness are as applicable to decisions about who gets treatment as they are to what kinds of sentences are imposed.

Skeem emphasized that the issues she will talk about are very much couched in terms of front-end sentencing, because that is where the controversy has erupted. She also noted that she wanted to flag the other uses to which we put risk assessment as well. What we have seen over the past several years is that, across the US, there have been a number of statutes and regulations that have been passed requiring the use of risk assessments to identify low-risk individuals for release, very much following the model that Michael Thompson presented previously. High-risk individuals are identified for treatment or risk reduction, etc. We hope also that the assessments are being used to inform the type of services that people get, although that is the final frontier in many ways.

Skeem said that she and John Monahan wrote a paper several years ago that talked about the resurgence of risk assessment in the justice system. She noted that she used the term resurgence because there was a period of time when risk assessment was used quite heavily in the justice system, and then a long period of time focused on backward-looking assessments regarding the crime committed, the offender, etc. Now, again, there is a resurgence of interest in forward-looking considerations about risk of future harm. The reason for resurgence is not that hard to guess. The reason we are interested in risk assessment at many levels is that it can scaffold a lot of reform efforts that are underway to unwind mass incarceration. We have recognized that American exceptionalism on this front is not desirable; mass incarceration has not been an effective policy solution. If we really want to unwind mass incarceration without compromising public safety, what better way than to identify the people who are least likely to return to custody and supervise them less? This way, risk assessment can be part of a net narrowing process to bolster reform. So, what is the controversy about? Partly, it is about discomfort—a shift to try to be more explicit about the forward-thinking part of sentencing. If there is a dominant model of sentencing in the US, it is limited retributivism, which means that we first consider blameworthiness (how culpable someone is for the crime for which they have been convicted) and then consider utilitarian concerns (public safety, future dangerousness, etc.). This model of limited retributivism addresses what future considerations can and should take place in bounds that are set by how culpable or blameworthy the person is. To put it in a more straightforward fashion, if someone, based on culpability concerns, might be eligible for a prison term of 5-9 years, we might use the forward-looking concerns to determine how long within that range—5, 6, 7, 8, or 9 years—would be an appropriate sentence. For a high-risk offender, it might be at the upper end of that morally acceptable range. For a lower-risk offender, it would be closer to the bottom. Skeem noted that she wanted to offer that detailed explanation as context, because it is very important for understanding her presentation.

Skeem then asked how many members of the Sentencing Commission and audience had heard of the ProPublica report, noting that it received a tremendous amount of press, and remarking that most people had likely heard of or read the report. She explained that Eric Holder, the previous US Attorney General, made a statement that expressed serious concern about the use of risk assessment in sentencing. He said he was concerned that undue reliance on risk assessment may exacerbate unwanted and unjust disparities that are far too common. Criminal sentences must be based on the facts, the law, the crime committed, the circumstances surrounding each case, and the defendant's history of criminal conduct. They should not be based on unchangeable factors that a person cannot control, or on the possibility of a future crime that has not taken place. This was his statement, which got a fair amount of press in 2014. Professor Sonja Starr has also written a number of papers that are consistent with this perspective. She has argued that

sentences based on risk assessment instruments are likely to be discriminatory. This is speculation. Her claim is that when we assess an individual's risk of future reoffending, many of the tools we use not only rely on criminal history, which she and Eric Holder believe is appropriate, but also illegitimately, in their view, focus on things like marital history, employment status, education, neighborhood, financial background, etc. The argument is that those factors can be proxies for minority race or low socioeconomic status. This is the concern. Again, Skeem noted, it is hard to really convey just how big a concern this is; it is really the reason she is focused on this topic, specifically.

The first thing to point out is the question of whether risk assessment used in sentencing exacerbates disparities, as Holder and Starr suggest, or whether it actually mitigates those disparities or has no effect at all—that is an empirical question. We can use data to answer that question, and Skeem believes we should because we are at an opportune moment in history to try to use these tools to scaffold change.

Skeem explained that she has three lines of research that are ongoing regarding this topic. The big one presents judges with different forms of information to determine if risk assessment makes a difference when it comes to disparities. What she is going to focus on today, though, is one element, which is the instrument itself. There are really great guidelines for getting out of this kind of box. In 2015, there was a fairly reputable outlet that had the headline, “Risk Assessment or Race Assessment?” That puts the issue in stark terms. What Skeem and her colleagues did in this study was to get past that rhetoric and use data to start answering questions about this issue.

Skeem noted that there is a lot of guidance from the educational testing literature, given the issues of fairness when it comes to high-stakes cognitive testing. There are actually standards for cognitive testing that specify empirical criteria for whether and how an instrument can scaffold fair decisions. There are really two issues, Skeem stated, and those are what she intends to address in her presentation.

The first is, is the instrument, and the risk factors it includes, free of predictive bias by race? Skeem showed a graph to illustrate the question. Is the risk assessment score corresponding to the probability of recidivism regardless of whether someone is black or white, male or female? Skeem reiterated that she is focusing on race in this presentation, to keep it simple. But the simple question is whether the risk assessment instrument predicts recidivism with similar accuracy across groups and with similar form, so that a similar score on this instrument means the same thing, regardless of which group a person belongs to. If we cannot achieve this goal, we have essentially flunked on utilitarian grounds. We do not want to move forward because it is not useful across groups, looking ahead at likely recidivism.

The second issue is not an empirical issue. It is a moral issue that relates to the use of the test. Does the instrument yield average differences in scores, suggesting disparate impact? It could be that we have a test or risk assessment tool that predicts recidivism very strongly across groups. It could even perfectly predict recidivism. And yet there might be scores between groups that have nothing to do with test bias, but it would concern us about whether the use of the test, as in college admissions, might create disparate impact for one group compared to the other group. These are two different issues. The easiest way to communicate these issues, Skeem noted, was using the following analogy: think about your bathroom scale. If we weighed everyone in this room on the scale, we would probably find differences by men and women in their weight. That does not mean that the scale is inaccurate; there can be real differences in groups in things like risk. That is an important thing to recognize. Focusing on race for the moment, race in the US reflects deep and long-standing patterns of social and economic inequality, and while poverty and inequality do not inevitably lead to crime, they involve circumstances that contribute to criminal behavior. So, group differences could be valid differences in risk scores and yet we might still be worried about the use of the instrument in particular contexts.

The other thing researchers wanted to know is that if there were group differences in scores—not test bias, but simply differences—which risk factors contribute the most to those? There is a lot of argument from people who have criticized risk assessment that is confusing. Some people, such as Bernard Harcourt, argue that we cannot use certain risk factors such as criminal history to inform sentencing decisions because it is correlated with race. Other people, like Holder and Starr, argue that we should definitely use criminal history, as we have been for a long time to determine sentencing. This makes sense because criminal history is relevant to blameworthiness. We assume that the person has something to do with that. But what Holder and Starr forbid is factors that do not correspond to blameworthiness; they increase your risk, but you are no more or less blameworthy for a crime because you have low education, for example. There are also controversies about using risk factors that are beyond an individual's control. In the language that Michael Thompson introduced to the Sentencing Commission previously, Holder might be happier with dynamic or changeable risk factors—things that the defendant can do something about—than something they cannot control, like the age they first started committing crime. These controversies form the reason why Skeem and her colleagues wanted to investigate risk factors as well.

Skeem explained that she would show the Commission the best, most comprehensive first study that she and her team did. For this study, Skeem and her colleagues used a cohort of roughly 35,000 federal offenders, partly because the data is fantastic and partly because they use a risk assessment tool called the Post-Conviction Risk Assessment (PCRA) that uses a lot of controversial risk factors and risk factors that are used by many other instruments, including the COMPAS, for example. Researchers looked at scores for black and white federal offenders on the PCRA and then looked forward to whether or not they were rearrested over a one-year period. They isolated violent rearrest because that is least subject to selection factors. One might argue that there are racial disparities among the police in whether they arrest people for a given offense; that criticism is much less true for violent arrest, where much less discretion can be used.

The most important takeaway is that, if we are interested in test fairness, the PCRA is a fair test. It strongly predicts violent arrest and any rearrest for both black and white offenders. The area under the curve (AUC) was 0.74 and 0.72, respectively—indistinguishable from one another, statistically. When researchers modeled the predictive utility of the instrument, illustrated in a graph, we can see that a PCRA score of 10 translates into a probability of arrest over one year of roughly 40% regardless of whether the offender is black (the dotted line) or white (the dark line). Skeem then showed the Commission a different representation of the graphic, illustrating rearrest rates by PCRA score for black and white offenders across the scale. We can see that they are essentially equal with respect to predictive utility. But researchers have also added the proportion of people with each PCRA score who are black in this second representation. We can see that there is a modest slope—meaning that, as the PCRA score increases, the percent of people with that PCRA score who are black also increases. This is a small difference. Statistically, if we examine the distribution of PCRA scores for black and white offenders, and offense rates for violent arrest or any rearrest, the thing to notice is that there is 73% overlap between the groups. The vast majority of PCRA scores between black and white offenders are overlapping. But, we can see that there is 27% non-overlap, and that is in the direction of black offenders tending to obtain higher scores and white offenders tending to obtain lower scores. Again, there is no predictive bias; we have test fairness. But there are some small group differences in scores.

How we interpret those small group differences in scores is a matter of policy. Skeem reminded the Commission that she wanted to investigate which risk factors contributed the most to the differences in scores between black and white offenders. The reason we are interested in that information is because we can predict recidivism in many ways, and if there is a risk factor that can be dropped that is contributing to group score differences, without compromising predictive utility, that is exactly what we should do to ensure both predictive fairness and limited mean score differences. Skeem presented a list of risk factor

scales: criminal history, employment, education, substance use, social networks, attitudes, etc. What we find is that, of the small difference in total scores between black and white offenders, 69% of it is based on differences in criminal history, which are already embedded in most sentencing guidelines. There is a small proportion, 24%, which reflects differences in education and employment, but that is a changeable risk factor. So, of the people who have high risk scores on employment and education problems on the PCRA today, 85% of them will fall out of that category in the next six months, if they are on probation in the federal system. It is a changeable risk factor that, arguably, is of less concern.

Skeem and her colleagues concluded we cannot reduce risk assessment to race. There is actually a very small relationship between the two. They also found that state data on about 10,000 offenders across four states which showed the same findings. Skeem reiterated the conclusion that a risk score has the same meaning—the probability of rearrest—regardless of whether or not an offender is black or white. The second conclusion is that there are small, but potentially meaningful, differences in risk scores between black and white offenders. Disparate impact is about test use. That score difference may be of greater or lesser concern depending on what we use the score to do and the decisions we are using it to inform. This is why some jurisdictions are doing racial impact statements when talking about changes involving risk assessment. Most of the racial differences in risk score is attributable to criminal history, which, again, is something we have been using in most jurisdictions to inform sentencing already.

Skeem noted that this disparate impact is a common dilemma. There is guidance from the cognitive testing literature regarding what we can do about it. What we can say is that we have looked at risk assessment instruments across four states and federally, and it is very clear that one of the things we need to start doing is testing instruments and risk factors routinely. We need to look at predictive fairness, we need to look at mean score differences, and we need to do that within jurisdictions. Skeem said that her next statement to the Sentencing Commission was motivated by a lot of passion, because she had seen a federal sentencing commission making many poor decisions: they should not blindly eradicate controversial risk scores from an instrument because they think they are bad. The conversation at the Federal Sentencing Commission meeting changed tone over the course of the day from a celebration of how terrific risk assessment tools are for unwinding mass incarceration to a conversation about eliminating various risk factors and only focusing on criminal history as a primary predictive risk factor. This pattern would land the Federal Sentencing Commission in the very trap they hoped to avoid. Skeem offered this example as a note of caution to identify which risk factors are and are not contributing to score differences.

She went on to describe what she and her research team are doing now. There are different strategies for attempting to balance predictive utility with mean score differences; the team is writing a paper on strategies jurisdictions can use to strike this balance. Skeem explained that when she spoke to researcher Edward Latessa (mentioned earlier by Michael Thompson), he mentioned that he responds to reporters' questions about whether risk assessment will exacerbate racial disparities by saying that racial disparities in incarceration already exist in the justice system.

In the absence of risk assessment being heavily relied on, we are in a place where racial disparities are a very big concern. We have not touched the “compared to what” question. We know that the outcomes of risk assessment will vary based on the baseline sentencing guideline context. What practices are we replacing? Some common denominators of what we will be replacing are judges informal considerations of risk. We know from research that when we use risk assessment tools, we are demonstrably going to be more accurate than any intuitive judgment, even if it is based on 2,000+ cases that someone has seen. Part of the “compared to what” is judges' informal consideration of risk. If we look at studies, they always consider this—we often cannot help but consider it as part of human judgment. The thing is that those considerations are inaccurate compared to structured approaches. They are also opaque. We cannot look

under the hood to see whether and how race is influencing those decisions. The second “compared to what” is sentencing guidelines. These vary heavily, although they emphasize criminal history across the board. Skeem commented that Richard Frase did an analysis in Minnesota to show that sentencing guidelines in Minnesota have contributed to the majority of racial disparities in that state due to their reliance on criminal history.

Skeem reiterated that, in her view, curtailing risk assessment would be incredibly myopic at this point. It is a promising tool for safely unwinding mass incarceration. We must address these issues of fairness, and we are generating the data that will allow us to do that. She concluded by thanking Chris Lowenkamp, John Monahan, and Chris Slobogin, with whom she has done much of her research.

District Attorney Gascón thanked Skeem and asked if there were any questions or comments.

Cristine Soto DeBerry (Chief of Staff, San Francisco District Attorney) asked if a jurisdiction is using a tool and has fidelity to it, but wants to reduce the impact—the 27% where criminal history is having a disparate impact—can expect strategies or guidance from any upcoming papers Skeem is working on to address these issues. Would there, perhaps be a weighted score that an office could consider?

Skeem responded that her team is using the PCRA data to examine three proposed strategies to change the way that an instrument is scored. They will be able to provide some guidance on which strategies seem to be the most promising, meaning which have the least compromise in predictive utility but also reduce the score differences by the greatest value. She also noted that if we are talking about a validated risk assessment tool, which has been independently studied and vetted by multiple jurisdictions and been shown to have predictive utility, those tools are interchangeable with one another. They all predict recidivism equally well. The important rider to that statement, though, is the notion of validation. The COMPAS is somewhat questionable on that front. She and her team strongly encourage individual jurisdictions to examine predictive utility in their own setting. And if they are doing that, they will already have the data to evaluate racial fairness.

DA Gascón asked if there were any further questions. Receiving none, he thanked Skeem for her presentation and moved on to the next agenda item.

8. Presentation on COMPAS Validation with Mentally Ill Offenders by Sarah Picard-Fritsche and Warren Reich, Center for Court Innovation (discussion & possible action)

Tara Anderson explained that this presentation would take place by conference call, with an accompanying PowerPoint.

District Attorney Gascón introduced Sara Picard-Fritsche and Warren Reich from the Center for Court Innovation. The two are recognized experts in the area of mentally illness among criminal offenders, especially in the use of actuarial risk assessments in the justice system.

Picard-Fritsche provided further background on her work, saying that she works in the Research and Practice Department, where she and her colleagues examine the intersections of research and the everyday practice of work in justice. She noted that she and Reich have been working for a couple of years on the study they will be presenting to the Sentencing Commission. The Center for Court Innovation has a working relationship with the Brooklyn Mental Health Court and has done some earlier research with that and other courts. This research led some people to ask questions about what the mental health court model was based on. It is based on the idea that the diagnosis was in some way causally

connected to the criminal behavior. Some of the older research has cast doubt on this idea. Without questioning the utility of these courts, which they strongly believe in and have seen that they reduce recidivism, they are curious to see to what extent the Risk-Needs-Responsivity (RNR) model or related predictive models predict risk in the mental health court population.

The Center started looking at the use of COMPAS in the mental health court population in New York City based on a three-court study. They have a diverse mix of misdemeanor, felony, and violent felony offenders, all of whom have serious and persistent mental illness, and all of whom have been accepted into mental health court diversion programs. The study is a classic validation to see how well COMPAS does in predicting re-offense and what the distribution of risk and needs of this population is in the population of interest. Picard-Fritsche expressed excitement at the Sentencing Commission's interest in their research.

Reich echoed Skeem's recommendation for local validation, and noted that, that is essentially what the Center is doing in their study. Sometimes the findings are interesting and surprising, and local—there are things illustrated in this study that would not be found in a national validation study.

On slide two, Reich reviewed the research questions of the study. He noted that the Center researchers used a mental health court population in the study, which is a highly selective population. It is not a given that the same factors would predict rearrest for a validation study. Researchers wanted to know what the distribution of risk of rearrest among the NYC mental health court participants would be according to the COMPAS guidelines for partitioning low-, medium-, and high-risk offenders. Is the percentage of defendants in each category roughly what COMPAS was designed to identify? Second, which of the COMPAS domain scores are most prevalent among adult participants? And finally, is the COMPAS an accurate predictor of rearrest among mental health court participants?

On slide three, Reich described the sample. There were 242 participants in the study, which is not large, but large enough to run some basic statistics. Of the three mental health courts in New York City, two were already using the COMPAS. Researchers used existing records of this data and administered the COMPAS themselves to the final court. They also used criminal history and rearrest data to match anonymously with these assessment results.

Picard-Fritsche interjected to check the Sentencing Commission's familiarity with the COMPAS tool.

District Attorney Gascón responded that the San Francisco Probation Department uses it.

On slide four, Reich described the population demographics. The sample was young and primarily male. It was evenly divided by race and ethnicity. The sample also showed an even split by diagnoses. He noted that diagnosis did not predict anything, which is not unexpected. Notably, nearly 6 in 10 individuals had diagnoses with a co-occurring substance abuse issue. He noted 7 in 10 individuals had a prior arrest; and just over 4 in 10 had a prior conviction.

On slide five, Reich reported on the two-year rearrest rate, citing that it is the normal window of time for examining this data, find that 42% of individuals were rearrested. Most would typically experience their first rearrest a little more than a year after release.

On slide six, Reich showed the answer to the first research question, the distribution of risk according to COMPAS.

On slide seven, Reich described the COMPAS scoring system. The COMPAS assigns a score from 1-10, called deciles. The assumption in using the deciles is that we expect to see that roughly 10% of the population assigned a given score. These deciles are based on national norms, around which the COMPAS was built. There are both general and violent recidivism scores. Scores of 1-4 are coded “low risk,” scores of 5-7 are coded “medium risk,” and scores of 8-10 are coded “high risk.” The COMPAS is fairly opaque when trying to understand what factors contribute to the general recidivism scale, but it includes criminal history, known criminal associates, drug involvement, juvenile delinquency, and vocational/educational scaling. We do not know how these factors are weighted.

Picard-Fritsche interjected to say that there are roughly 120 questions in a COMPAS assessment, and not all of them are used to determine recidivism.

Reich continued. In addition to the basic risk score, the COMPAS Community Assessment has 17 domain scales, parts of which contribute to the general recidivism risk scale. The domain scales are assumed to be criminogenic risks. In other words, there is an assumption that they are all correlated with rearrest. They are useful for clinical and treatment planning purposes.

On slide eight, Reich showed that we expect roughly 40% of the population to be assigned to the low-risk category, and 30% of the population to be assigned to each medium- and high-risk categories. In the NYC mental health courts, this clearly was not the case (as illustrated by the distribution on the slide). The study distribution was skewed low, which reaffirmed the need for local validation. Researchers are not sure how much this skew has to do with selection into the mental health courts, or with the outcome that about 4 in 10 participants in the mental health courts are rearrested in two years. So low-, medium-, and high-risk are relative terms, even despite the fact that both felony and violent felony cases are being taken to court.

Picard-Fritsche noted that whatever population the COMPAS was developed on, their study population was lower risk in general, so they get more low-risk scores. The researchers do not know exactly why this trend is occurring, but they do feel that they have a fairly high rate of rearrest in this population, which gives them pause. Even if the instrument is a good predictor, they might think about how it is calibrated in terms of low-, medium-, and high-risk categorization. Another jurisdiction might think about that as well, with their specific population.

Reich said that this finding would be especially true for making treatment decisions based on risk categorizations. Risk is a slippery term, and a construct that is not always well defined. We want to see a reasonable proportion of people categorized as low-, medium-, or high-risk.

On slide nine, he noted that for the domain scores that are most prevalent, serious mental illness does not reliably predict rearrest. Mental health usually comes along with a host of other risk factors. The COMPAS offers analysis of the most salient criminogenic needs or other characteristics of interest.

On slide 10, Reich showed the COMPAS domain scores using a more granular table displaying criminal personality, criminal thinking, and substance abuse. There was some validation of the prevalence of substance abuse, as 6 in 10 study participants had a co-occurring substance abuse issue—so we would expect substance abuse to be flagged by the COMPAS as a very common high risk factor, and it is in the sample. Criminal personality and criminal thinking are interesting to think about in that these factors may well overlap with the construct of serious mental illness, where criminal personality is characterized by impulsivity, lack of guilt, violent temper, and selfishness; and criminal thinking is described as cognitions that justify and support criminal behavior. For example, some people must be treated roughly to send them a message, and the law does not help average people. Our sample is predominantly high-risk or in a

high category in terms of these flags. Of the three of these factors—criminal personality, criminal thinking, and substance abuse—only substance abuse is correlated with rearrest.

On slide 11, Reich describes the COMPAS domain scores classified as low risk per the COMPAS guidelines, keeping in mind the low risk skew of the study sample. Domains included criminal involvement, socialization failure (meaning that one had parents involved in crime, one may have dropped out of school, or one had so-called early indicators of juvenile delinquency), history of violence, criminal associates, social adjustment problems, residential instability, and current violence. Reich noted that this latter domain is interesting because it refers to the violence present in the current offense.

On slide 12, Reich reviewed the third research question—the degree to which the COMPAS is an accurate predictor of rearrest.

On slide 13, he offered the short answer: yes, pretty much. The low-risk offenders are being rearrested at a statistically significantly lower rate than the medium- and high-risk offenders. Medium- and high-risk offenders are being arrested at roughly the same rate. Perhaps this is a calibration issue. Reich suggested that for exploratory purposes, the research team imposed different cut-off points for categorizing risk, as 30% of the mental health court sample scored in the first decile; the skew towards low-risk was that dramatic. When they moved the cut-off points around, the researchers were able to find a much more linear trend. Nevertheless, they found the correlations to be significant. The correlation was 0.39 for arrest in two years, which is about as strong as the correlation is ever going to be.

Picard-Fritsche clarified that this correlation means that the higher someone scores on the tool, the higher their probability of rearrest.

On slide 14, Reich showed the area under the curve (AUC), which is a metric index of how good a device is. The area the Center research team found ranged between 0.73 and 0.67, depending on whether they used the full 10-point COMPAS scale or whether they used the low/medium/high risk category scale. He explained that a score of 0.7 is the standard for acceptability, and the COMPAS hovers around that value. The risk categories value is a little lower, in part because the risk categories that are assigned only differentiate by low, medium, and high. He said it was worth noting that low-risk individuals were still being rearrested; they are only slightly less likely to be rearrested than their medium- and high-risk peers. The violent recidivism scale showed roughly the same results. The most robust individual category to predict rearrest was socialization failure. Other than substance abuse, most of what is predicting rearrest are static factors—those that are not changed. COMPAS treatment recommendations, therefore, address more how to cope with the history rather than how to change it.

On slide 15, Reich reviewed the study conclusions. The study sample was skewed toward a low-risk classification, suggesting that the utility of the COMPAS might be improved by adjusting the standards for classification. The sample displayed a variety of risks and needs, especially with regard to those factors that are likely to get someone diagnosed with mental illness or to be rearrested. The COMPAS is an acceptable risk assessment by conventional standards. In a general sense, it is good enough in a mental health court population. There is nothing about this highly selective population that diminishes the performance of the COMPAS. Reich made a brief note for future conversation, noting that the Center researchers did examine racial differences. Keeping in mind the small sample, they noted that the area under the curve looked roughly equal for black and non-black mental health court participants. Other indices such as sensitivity were roughly equal as well. With due respect to the ProPublica and Northpoint reports, in their highly selective sample, they did not see such disparities. To Dr. Skeem's point, however, black race did correlate—not strongly, but significantly—with risk score. Black race did not correlate with 24-month rearrest. In fact, the correlation was roughly 0.05. So, black defendants are getting scored

at a higher risk level than non-black defendants, but black race is not correlated with rearrest. Disparate impact is subtle if it is there. In terms of the overall performance of the COMPAS, researchers did not find any significant disparities.

District Attorney Gascón asked if there were any questions for Picard-Fritsche or Reich. Receiving none, he thanked the researchers for their presentation, commenting that their work is an obvious area of interest to the San Francisco jurisdiction and everyone else around the country.

DA Gascón clarified that there were no motions related to this agenda item, and then moved on to the next agenda item.

9. Public Comment (discussion only)

Theshia Naidoo stated that, since the next Sentencing Commission meeting would be after the November 8 general election, it would be helpful to have a round-up of all the ballot measures and legislation that have a criminal justice impact and to consider items for next year's agenda.

DA Gascón asked if there was a motion to bring the results of the election concerning criminal justice to the next Commission meeting.

Simin Samji made the motion, which Naidoo seconded. The vote on the motion passed unanimously.

DA Gascón asked if there were further comments from the Sentencing Commission members. Receiving none, he opened the floor to public comment.

Two PhD students from the University of California, Berkeley Departments of Economics and Statistics, Evan Rose and Yotam Shemtov introduced themselves, saying that they are working on research similar to Dr. Skeem's about identifying racial bias in predictive risk assessments. They have been thinking carefully about how existing tools or new tools could be adapted to eliminate any potential bias that may be in the score. They think there is cause for concern in some contexts, and with some scores, about racial issues. Fortunately, they think the fix for these problems is fairly simple and that some scores can be adapted to explicitly recognize race-neutral constraints. Rose explained that there is a document attached to the Sentencing Commission's agenda packet with a brief summary of their research. He said they would be available after the meeting, and that their contact information was listed along with the research summary, if Commission members would like to learn more about their research.

DA Gascón asked for clarification about the title of the document. Rose responded that the document is titled "Building Powerful, Unbiased Risk Scores."

Simin Samji thanked Rose and Shemtov for their presentation.

DA Gascón clarified that the PhD candidates would be staying for a short time following the meeting and thanked them for their presentation.

He then asked if there were any further comments. Receiving none, he moved on to the adjournment of the meeting.

10. Adjournment

Greg McEachern moved to adjourn the meeting at 12:02 pm; DA Gascón seconded. Meeting adjourned.

Safeguarding Criminal Justice Reform in California: The Case for a California Justice Policy Center

Executive Summary

California has undergone significant criminal justice reform in response to decades of “tough on crime” policies that escalated incarceration rates, bloated the corrections budget, and continue to disproportionately affect people of color. The corrections crisis reached its zenith in 2009, when a three-judge panel of the federal Ninth Circuit ruled that the state’s prison overcrowding and healthcare deficits violated the constitutional protection against cruel and unusual punishment. California was mandated to reduce its prison population from 202 percent to 137.5 percent of design capacity. The State Legislature passed Public Safety Realignment (AB109) in 2011, which shifted responsibility for thousands of non-serious, non-violent offenders and parolees to counties. Separately, California’s electorate took action, and passed ballot measures to limit the infamous Three Strikes Law and reduce a variety of property and drug crimes from felonies to misdemeanors. These reforms, combined with prison construction and out-of-state transfers, brought California’s prison population below the Court-mandated maximum in 2015.

And yet, many of California’s prisons and jails remain overcrowded. Racial and ethnic disparities are evident throughout county and state arrest and incarceration rates. The system continues to drain the state’s resources: the Governor’s 2016 budget included the largest corrections appropriation to date. In order to consolidate the reforms already passed, and systematically address the challenges that remain, California must establish a body with the authority and empirical evidence necessary to evaluate the results of the state’s reform efforts, determine how to effectively apportion limited corrections resources, identify evidence-based innovations to prevent re-victimization, and continue the reduction of unnecessary and ineffective incarceration.

Research entities, such as the Little Hoover Commission, and elected officials have made previous advocacy and legislative attempts to create such a body. The bills were defeated due to concerns that it would duplicate existing agency efforts or autonomously dictate statewide criminal justice policy. In spite of these challenges, the majority of stakeholders interviewed in the development of this white paper reaffirmed the need to establish a statewide body to consolidate and expand criminal justice research and policy efforts. The San Francisco Sentencing Commission joins a long-line of voices to call for the establishment of a **California Justice Policy Center**. The San Francisco Sentencing Commission considers the prior attempts and challenges experienced, which ultimately influence the structure and functions proposed. Furthermore, this white paper draws on best practices from the local San Francisco Sentencing Commission and select nationwide entities. The San Francisco Sentencing Commission recommends the establishment of a California Justice Policy Center mandated with the following three minimum functions:

1. Utilize empirical evidence and data to **review and make recommendations to improve existing sentencing structures and criminal justice practices**.
2. In collaboration with existing agencies, establish a **single criminal justice database** to collect, store, and analyze state and county-level data.
3. Provide a space to **incubate innovative criminal justice reforms** that have demonstrated success in California’s counties or in other states.

California's Wave of Criminal Justice Reform

A major change in the efficacy and sustainability of criminal justice policy has been underway in California in response to decades of escalating incarceration rates. The enactment of Determinate Sentencing Law (DSL) in 1977 and subsequent passage of numerous “tough on crime” policies contributed to a statewide incarceration crisis. One of the most significant changes was the introduction of Three Strikes, which mandated a sentence of 25 years to life for any defendant who received a third felony conviction. During this period, high numbers of inmates released to parole cycled back into the state prison for subsequent crimes, some that were new crimes but many of which were administrative violations.¹

California embarked upon a prison building spree to keep pace with the growing rate of incarceration, and expanded from 11 to 33 prison facilities between 1980 and 2006.² Yet supply was unable to keep up with demand, leaving the system dangerously overcrowded. Consequently, one avoidable inmate death was documented each week due to insufficient care.³ A three-judge panel of the federal Ninth Circuit ruled in 2009 that California reduce its prison population to 137.5 percent of design capacity. Two years later, the Supreme Court sustained the lower court's ruling, holding that the state's prison overcrowding and healthcare deficits violated the constitutional protection against cruel and unusual punishment. California has since reduced its prison population below the mandated level, primarily as a result of significant legislative and ballot reforms, combined with prison construction and out-of-state transfers. As of July 13, 2016, the prison population stood at 113,442 inmates, which is approximately 135.2% percent of capacity.⁴

A sequence of reforms commenced with the passage of Public Safety Realignment (AB109) in 2011, which shifted responsibility for thousands of non-serious, non-violent offenders and parolees from the state to the counties. Realignment reduced the prison population by approximately 27,400 in its first year, still not sufficient to reach the Court-mandated population caps.⁵ The voters passed a ballot measure (Proposition 36) the following year to limit California's infamous Three Strikes Law. As of April 2014, 1,613 individuals serving extended sentences for their third strike were released as a result.⁶ Two years after Proposition 36, California voters overwhelmingly passed the Safe Neighborhoods and Schools Act (Proposition 47), reducing a variety of property crimes valued at less than \$950 and drug possession for personal use from felonies to misdemeanors.⁷

¹ Weisberg, Robert. 2011. “California's De Facto Sentencing Commissions.” *Stanford Law Review* 64:1.

² Executive Department State of California. *A Proclamation by the Governor of the State of California*. 2006. Available at [www.gov.ca.gov/docs/Terminating_Prison_Overcrowding_Emergency_Proclamation_\(10-4-06\).pdf](http://www.gov.ca.gov/docs/Terminating_Prison_Overcrowding_Emergency_Proclamation_(10-4-06).pdf).

³ Little Hoover Commission. *Sensible Sentencing for a Safer California*. 2014. Available at www.lhc.ca.gov/studies/219/report219.html

⁴ Office of the Attorney General of California. Case 3:01-CV-0135-TEH, Filed 07/15/16. Available at <http://www.cdcr.ca.gov/News/docs/3JP-Jul-2016.PDF>

⁵ Lofstrom, Magnus and Brandon Martin. 2016. “California's Future: Corrections.” Available at www.ppic.org/main/publication.asp?i=1021.

⁶ Stanford Law School Three Strikes Project and the NAACP Legal Defense Fund. *Proposition 36 Progress Report: Over 1,500 Prisoners Released*. 2014. Available at <http://law.stanford.edu/wp-content/uploads/sites/default/files/child-page/595365/doc/slspublic/ThreeStrikesReport.pdf>

⁷ Smith, Dan. “Voters Approve Sentencing Changes in Prop 47.” *Sacramento Bee*. 2014. Available at <http://www.sacbee.com/news/politics-government/election/article3570684.html>

Proposition 47 is attributed with reducing the state prison population by an additional 3,000, which pushed the number of inmates below 137.5 percent of design capacity.⁸

In November 2016, voters passed two initiatives that are expected to impact populations of both state prisons and county jails. California Parole for Non-Violent Criminals and Juvenile Court Trial Requirements Initiative (Proposition 57), will increase parole opportunities for felons convicted of nonviolent crimes, likely decreasing the state prison population. Additionally, the legalization of marijuana (Proposition 64) could reduce county jail intakes.

These reforms are important steps, but there is still work to do. Despite the decline in inmate numbers, at \$10.1 billion, the 2016 corrections budget is the largest in California's history. The annual cost per prisoner has risen from \$49,000 in 2011 to almost \$64,000 five years later.⁹ Many of California's prisons and jails remain overcrowded, and people of color are disproportionately represented across the criminal justice system. Approximately 6 percent of California's population is African American, yet this group represents almost 29 percent of prison population.¹⁰

In addition, California is falling short in collecting much of the essential data required to inform criminal justice policy decisions. Public Safety Realignment does not require counties to provide standardized data.¹¹ In the absence of a consistent method for calculating the amount of savings from Proposition 47, the Governor's calculation of Prop 47 savings from 2015-16 - \$40 million – is well below the \$100 million calculated by the LAO.¹² While state entities do collect important aggregate data, there is no single repository containing individual case-level data, from the state and all 58 counties, on arrest, arraignment, and sentencing outcomes.¹³

To achieve sustainable change, California needs to overhaul its criminal justice system by utilizing sound, statewide data to analyze and evaluate the effect of criminal justice and sentencing policy decisions. Reliable data will provide the empirical evidence necessary to evaluate reform efforts, determine how to effectively apportion the limited justice system and corrections resources, identify evidence-based innovations to prevent re-victimization, and continue the reduction of unnecessary and ineffective prosecution and incarceration. To meet these ends, California needs a statewide Justice Policy Center to ensure its criminal justice system operates to achieve public safety goals in the most effective manner.

⁸ Lofstrom, Magnus and Brandon Martin. 2015. "How California Reduced its Prison Population." Public Policy Institute of California. Available at: www.ppic.org/main/blog_detail.asp?i=1676

⁹ Ibid, Respaut.

¹⁰ Nellis, Ashley. 2016. "The Color of Justice and Racial and Ethnic Disparity in State Prisons." The Sentencing Project Available at www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons.

¹¹ Ibid, Little Hoover.

¹² Graves, Scott. 2016. "Five Facts About the Governor's Calculation of State Savings from Proposition 47." California Budget and Policy Center. Available at: <http://calbudgetcenter.org/blog/five-facts-governors-calculation-state-savings-proposition-47/>

¹³ Dansky, Kara. 2010. "A Blueprint for a California Sentencing Commission." *Federal Sentencing Reporter* 22.3: 158-164.

Sentencing Commissions throughout the United States¹⁴

The 1970s and 1980s gave rise to a “tough on crime” mentality across the United States. In many states and the federal system, discretion was removed from the judiciary and parole boards: sentencing laws became determinate, parole was abolished, and mandatory minimums were increasingly introduced. In response to these policies, many states began to establish Sentencing Commissions to examine and analyze sentencing patterns.

Currently, 21 states, the City and County of San Francisco, the District of Columbia, and the federal government have established Sentencing Commissions or a similar governmental body charged with sentencing and criminal justice policy responsibilities.¹⁵ The early Commissions were enacted with the sole mandate to establish and monitor sentencing guidelines. These guidelines can be legally binding, with deviation permitted when sufficient justification is provided, as is the case in North Carolina. The Virginia Criminal Sentencing Commission, on the other hand, proscribes voluntary guidelines, which preserves the judge as the ultimate decision-making authority.

Many of the younger Sentencing Commissions have opted not to establish sentencing guidelines. Instead, they are directed to examine criminal justice and sentencing policy in broader terms. These

There are **24 Sentencing Commissions** across the country: 21 states, 1 county, the District of Columbia, and the Federal Government.

jurisdictions are taking advantage of more sophisticated data and assessment instruments to create evidence-based policies that explore alternatives to incarceration, address prison overcrowding, and improve reentry strategies, among other issues. Oftentimes the legislative or executive branch directs the Commission to assess the feasibility of potential reforms or evaluate existing policies and practices. However, many of these Commissions also identify their

own priorities and conduct analysis, and they issue independent policy reforms or recommend changes to operational policy and agency philosophy.

San Francisco, through an initiative of the District Attorney’s Office, launched the first county-level Sentencing Commission to analyze sentencing patterns and outcomes and advise local officials on the best approaches to reduce recidivism and reform sentencing practices.¹⁶ The Commission provides a space for criminal justice agencies to discuss citywide trends and emerging research, and analyze opportunities to bring policy reforms to San Francisco that have demonstrated success elsewhere. Ultimately, the Commission makes recommendations to the Mayor and Board of Supervisors.

The specific powers and duties of a Sentencing Commission are typically embedded within the enabling statute. Commissions are housed within all branches of government, and some are independent bodies. The ability of a Commission to provide objective, accurate, and reliable information about criminal justice and sentencing policy is critical to the success of Commissions

¹⁴ Many of the newer bodies are moving away from the Sentencing Commission name, including the Colorado Criminal and Juvenile Justice Institute, Delaware Sentencing Accountability Commission, Illinois Sentencing Policy Advisory Council, among other. This paper will continue to utilize “Sentencing Commission” when speaking in the aggregate, or in general terms, about these entities.

¹⁵ Sentencing Commissions or similar bodies exist in the following states: AK, AL, AR, CT, DE, IL, KS, LA, MA, MD, MI, MN, MO, NC, NM, NY, OR, PA, UT, VA, and WA.

¹⁶ San Francisco Administrative Code Article 25, Sections 5.250 through 5.250-3.

across all jurisdictions.¹⁷ Further information about select Commission functions and administrative structures is included in Appendix I.

The following sections consider the lessons learned from existing Commissions to recommend the mandate and administrative structures of a California Justice Policy Center.

Elements of a California Justice Policy Center

Among the potential functions of a California Justice Policy Center, three emerge as essential. The Center should collaborate with existing agencies to establish a single database to collect, store, and analyze state and county-level criminal justice data to inform responsible policies. Utilizing this data, the Center should review and make recommendations to improve existing criminal justice practices and sentencing structures. Lastly, the Center should provide a space to incubate evidence-based innovative criminal justice reforms. Further details of each functional area are summarized below.

I. Establish an Integrated California Justice Database

California, like many states, has struggled to capture much of the essential data required to inform criminal justice policy decisions. The state has partnered with research institutions to rectify this problem. Of note is the Multi-County Study (MCS) currently underway by the Bureau of State and Community Corrections (BSCC), California Department of Justice (Cal DOJ), California Department of Corrections and Rehabilitation (CDCR), Public Policy Institute of California (PPIC), and 12 counties to understand the impact of recent reforms on recidivism and other outcomes of interest, such as health care enrollment.¹⁸ The BSCC also produces a monthly overview of the county jail and juvenile detention populations. CDCR provides a similar analysis of the state corrections population and also utilizes historical trend data to project the prison and supervision populations over a five-year period. In 2015, Attorney General Kamala Harris launched the Open Justice portal, which provides public access to arrest and booking data. Yet, significant gaps remain.

It is not the role of a California Justice Policy Center to duplicate or assume data collection efforts already underway. Rather, the Center can facilitate the establishment and maintenance of a sophisticated statewide criminal justice data repository that integrates existing agency data and collects missing data; performs complex data analysis; and uses data to inform policy. Currently, state and local agencies operate in silos, lacking standardized variables and definitions. A single database that can link, and update, individual data across all agencies can ensure precise and consistent collection of California's criminal justice data. The Center will also help to standardize the criminal justice definitions and indicators used by state and county justice partners.

¹⁷ Tombs-Souvey, Barbara. "The Role of Sentencing Commissions." The Robina Institute. Available at www.sentencing.umn.edu/content/role-sentencing-commissions.

¹⁸ Bird, Mia, Sonya Tafoya, Ryken Grattet, and Viet Nguyen. 2016. "How has Proposition 47 Affected California's Jail Population?" Public Policy Institute of California. Available at www.ppic.org/content/pubs/other/0316MB3R_appendix.pdf.

As the central data clearinghouse, the Center can identify systemic data collection challenges – as well as best practices - across both state and local agencies. Jurisdictions may lack the technical skills and/or resources required to comply with state data collection and reporting recommendations. A California Justice Policy Center, staffed with research and statistical experts, can help bridge these gaps. Counties can approach the Center for assistance, but the Center should also engage counties directly. Specific opportunities for technical assistance could include, but are not limited to, the following:

- Collaborate with the BSCC and PPIC to provide technical support to the counties not included in the MCS to improve data collection and evaluation abilities.
- Assist counties to design jail and supervision population projection surveys, similar to the state prison and parole projections issued by the CDCR.
- Operationalize the recommendations made by the California Juvenile Justice Data Working Group¹⁹ to improve “interagency coordination, modernization and upgrading of state and local juvenile justice data and information systems.”²⁰
- Bolster the BSCC’s Jail Profile Survey, as it lacks data from five jurisdictions that are unable to disaggregate their average daily population by crime type (misdemeanor or felony) and does not include data for individuals assigned to sheriff’s parole, alternative custody programs, or day reporting centers. Similarly, the Judicial Council’s Court Realignment data reports lack critical figures from a handful of counties.
- Train agencies in the tools and methodologies to conduct their own analyses, which may further enhance local ownership over corrections policies and resources.²¹

The Commission can also help develop data sharing protocols and process, which will in turn improve offender management and evaluation of services. In Colorado, the Commission on Criminal and Juvenile Justice’s (CCJJ) Data Sharing Task Force held focus groups with Pretrial Case Managers, Community Corrections Case Managers, Community Corrections Board Directors, and Probation Supervisors to better understand the data gaps each actor faces, practicalities of increased data sharing, and potential impact on the correctional outcomes. Based on these findings, the Task Force is recommending revisions to the state’s data sharing protocols and processes that enhance access while maintaining privacy and security.²²

It is standard for Commissions to submit an annual report to the state legislature and executive branches, summarizing critical indicators, such as the corrections population and recidivism rates, broken down by demographic. The authorizing statute of the California Center will need to clearly outline its reporting responsibilities. However, given the existing authority of several agencies to collect and report criminal justice data in California, it will be imperative to establish clear reporting responsibilities and data sharing expectations in the enabling statute to avoid duplication

¹⁹ The Juvenile Justice Data Working Group was established by statute enacted in 2014 (AB 1468) to advise the California Assembly.

²⁰ *Rebuilding California’s Juvenile Justice Data System: Recommendations to Improve Data Collection, Performance Measures and Outcomes for California Youth*. 2016. Juvenile Justice Data Working Group. Available at www.bscc.ca.gov/downloads/JJDWG%20Report%20FINAL%201-11-16.pdf.

²¹ One such tool could be the Jail Population Policy Impact Tool, developed by Michael Wilson Consulting and currently piloted in select California counties. For more information see the following article by the Crime and Justice Institute: <http://www.crj.org/cji/pages/jail-population-tool>.

²² “Data Sharing Task Force: Summary of Focus Group Results.” 2015. Colorado Commission for Criminal and Juvenile Justice. Available at www.cdpsdocs.state.co.us/ccjj/Committees/DSTF/2015-08-25_DSTF-FocusGrpSumm.pdf.

of efforts and enhance access to information for all interested parties. The California Justice Policy Center should collaborate with other justice system actors to explore opportunities to make as much of the raw, deidentified data, publicly accessible as is possible.

II. Review and Recommend Improvements to Criminal Justice Policy and Practice

The core mandate of the California Justice Policy Center should be to conduct empirical, non-partisan analysis and research to evaluate and recommend improvements to the state's criminal justice policy and practice. Establishing the statewide criminal justice database and housing it within the Center will provide the empirical base from which recommendations will emanate. Such a robust database is necessary to validate the Center's analysis as reliable and independent. There are three distinct spheres of research that the Center should undertake: a) impact statements for any proposed legislation or ballot initiative that impacts arrest, prosecution, or sentencing; b) issue-specific analysis at the behest of the legislature and/or executive branch; and c) long-term studies to advance priority reforms as identified by the Center itself.

Impact Statements: The Justice Policy Center should be mandated to conduct impact statements of any proposed legislation or ballot initiative that impacts arrest, prosecution, and sentencing. At a minimum, this analysis should project the impact these measures will have on both the state and county's incarcerated and supervision population. This analysis would go beyond the Legislative Analyst's Office's current mandate to estimate the fiscal effect that the proposed ballot initiatives have at both the state and county levels. The State Senate has also institutionalized a policy to assess impact of legislation on prison overcrowding: The Receivership/Overcrowding Crisis Aggravation (ROCA) policy. This policy could be repealed if the prison population becomes more manageable, and is a further reason why the Justice Policy Center should be responsible for impact statements.

Impact statements have been shown to prevent **superfluous legislation** in Virginia and, since their introduction, **crime has continued to decline**.

The Virginia Sentencing Commission offers a good model for California. The Commission prepares fiscal impact statements that are attached to any bill that may result in increased terms of imprisonment. These statements examine the operating costs, required appropriations, and any necessary adjustments to existing sentencing guidelines (which are not relevant in the California context).²³ During the 2013 legislative term, the Virginia Commission prepared 342 impact statements.²⁴ Studies show that the requirement to produce such statements has prevented the passage of superfluous bills, which may

largely be attributed to the requirement that a bill's sponsor must identify a revenue stream to cover the implementation costs before moving it to a full vote.²⁵ Importantly, Virginia's crime rate has continued to drop since it began requiring fiscal impact statements²⁶. Informed, cost-benefit analyses will help California to allocate its finite corrections resources in the most efficient and effective manner possible.

²³ Code of Virginia, Section 30-19.1:4.

²⁴ Virginia Sentencing Commission. 2013. *Annual Report*. Available at <http://www.vsc.virginia.gov/2013AnnualReport.pdf>.

²⁵ Wilhelm, Daniel F. 2004. "Sentencing Policy in Tough Budget Times: What Are States Doing?" Vera Institute of Justice. Available at http://www.purdue.edu/hhs/hdfs/fii/wp-content/uploads/2015/07/s_wifis19c02.pdf.

²⁶ Wilhelm, Ibid.

The California Justice Policy Center could go one step further than Virginia and assess proposed legislation against the offense criteria established by the penal code, with an aim of preventing duplicative legislation and unnecessary complexity. Governor Jerry Brown vetoed several public safety bills in 2015 that created new crimes and penalties, which were already addressed by the current Penal Code. California's penal code has more than 5,000 provisions and such additions, according to the Governor, create "increasing complexity without commensurate benefit."²⁷ The Center, rather than taking a position on the merits of the proposed legislation or proposition, can conduct an impartial analysis, intended to provide information and transparency to the process. The Center could also use its analysis to identify and recommend legislation that clarifies and streamlines the penal code.

In addition, the California Justice Policy Center should evaluate the potential racial disparities that may arise from proposed legislation. Racial impact statements enable policymakers to detect unforeseen disparate impact, enabling them to modify the legislation proactively. Such analysis is important to ensure the benefits of proposed reforms are equitably distributed and to avoid the exacerbation of existing system-wide disparities. Connecticut, Oregon, and Iowa are currently the only three states with formalized procedures to prepare and analyze racial impact statements, and other states are beginning to follow suit.²⁸

Externally-Driven Analysis: The Center should provide criminal justice research support and draft legislation at the behest of the legislature or executive branch. Currently, the Senate Office of Research and the California Bureau of Research are tasked with this responsibility. However, it is more appropriate to assign this responsibility to the Center, given the criminal justice policy and sentencing expertise of its staff and direct access to the statewide database.

Providing rigorous analysis to policymakers is a central function of many Commissions throughout the country. Oftentimes the legislature requests analytical support to inform and/or author legislation that addresses a known, concrete issue. For example, the Connecticut General Assembly tasked its local commission to assess current gaps facing crime victims. The Commission found victims would further benefit by having an understanding of a defendant's term of imprisonment and potential release date at the time of sentencing.²⁹ These findings were incorporated into a bill – HB-5631, An Act Concerning the Recommendations of the Connecticut Sentencing Commission with Respect to Victim Notification – and after passing the House, is currently under consideration by the Connecticut Senate.

The legislature and executive branches also direct Commissions to conduct studies on broader sentencing policy and practice, which extend beyond a single legislative act. Such analysis can be much longer in duration and is undertaken by specified sub-working groups, which may involve external experts as approved by the Commission. In Pennsylvania, the Governor signed into law

²⁷ Veto: SB 333. 2015. Available at: http://www.leginfo.ca.gov/pub/15-16/bill/sen/sb_0301-0350/sb_333_vt_20151003.html

²⁸ Porter, Nicole D. 2014. "Racial Impact Statements." The Sentencing Project. Available at: <http://www.sentencingproject.org/publications/racial-impact-statements>.

²⁹ "Testimony of Leland J. Moore before the Judiciary Committee on HB 5631, An Act Concerning the Recommendations of the Connecticut Sentencing Commission with Respect to Victim Notification." Available at www.ct.gov/ctsc/lib/ctsc/CTSCTestimonyon5631.pdf.

Act 95 of 2010, mandating the Pennsylvania Commission on Sentencing to develop a risk assessment instrument that courts can utilize at the time of sentencing.³⁰ In response the Commission is undertaking extensive empirical analysis to inform the development of the risk assessment tool, along with continued evaluation and modification.

Center-Driven Analysis: Sentencing Commissions draw on the deep expertise and experience of their members to identify gaps and opportunities in current criminal justice policies. The California Justice Policy Center should do the same. In particular, working groups within the Center should conduct empirical analysis on selected topics and present to the full body for consideration and action. If the recommendations enjoy Center support, they should be presented to the legislature and/or executive branch for consideration.

Sentencing Commissions established in recent years have taken a more proactive approach to the policymaking process. The Colorado Commission on Criminal and Juvenile Justice (CCJJ) holds annual strategic planning meetings to evaluate established priorities and determine whether the policy context necessitates the inclusion of additional issues. One example of a CCJJ-driven initiative is the Comprehensive Sentencing Task Force, which launched in 2010. During its tenure, the Task Force produced a variety of recommendations that led to sentencing modifications, including an expansion of the availability of pretrial diversion programs and statutory changes to drug and theft laws.³¹ The CCJJ disbanded the Comprehensive Sentencing Task Force in 2014, after achieving key sentencing milestones and deciding to prioritize other policy areas, namely reentry and data sharing.

III. An Incubator for Evidence-Based Criminal Justice Reform

The California Justice Policy Center can utilize its meetings to create a space to explore best practices in criminal justice reform and sentencing throughout the country and incubate new ideas. Such conversations can further the Center's existing reform priorities or provide an opportunity to explore new policy areas of interest. While this is not commonly a core mandate of a Sentencing Commission, those in San Francisco, Connecticut, and Colorado in particular have demonstrated such dialogues are essential to spur policy change.

In San Francisco, the county's Sentencing Commission is helping facilitate conversations with a variety of criminal justice stakeholders about innovative approaches that can be adopted from other contexts. One example is the successful pilot Law Enforcement Assisted Diversion program (LEAD) in Seattle, which diverts low-level drug and prostitution offenders into community-based treatment and support services. The Sentencing Commission hosted the Seattle LEAD implementation team at commission meetings, visited Seattle to meet with stakeholders and observe LEAD operations and invited the evaluation team to present their findings and discuss strategies to pilot a similar model in San Francisco. These efforts complemented successful efforts at the state level to secure state-level funding for LEAD. The Governor's 2016-2017 Budget allocates \$15 million to establish

The San Francisco Sentencing Commission has facilitated **innovative reform** initiatives, from **Law Enforcement Assisted Diversion** to the **Young Adult Court**.

³⁰ Pennsylvania General Assembly § An Act of 27, 2010 P.L. 931, No. 95.

³¹ Colorado Commission on Criminal and Juvenile Justice.

California LEAD pilot programs. Grants will be awarded to three jurisdictions to support three-year pilot programs modeled after Seattle LEAD, a welcome move to reduce counties' reliance on incarceration and enhance access to community-based treatment programs and resources.³²

Further, in recognition of the positive impact alternative courts are having on recidivism rates, the San Francisco Sentencing Commission supported the creation of the Young Adult Court (YAC) in 2015. This court was established to align opportunities for accountability and rehabilitation with the unique needs and developmental stage of 18 to 25-year-olds. As the first young adult court in the nation to handle serious and violent cases, it provides a model to be replicated as a powerful alternative to incarceration for an age group at a particularly high risk of recidivating.

In Colorado, the monthly Commission meetings also provide a platform for ongoing education and information sharing on local and national criminal justice trends and issues. Invited experts in 2015 spoke on issues ranging from cost-benefit analysis in criminal justice to anti-human trafficking efforts. Such spaces provide an opportunity for Commissioners to better understand the intricacies of specific reforms that the Commission seeks to enact. For example, the CCJJ was mandated to study minority over representation in the Colorado criminal justice system. However, current data collection creates a significant impediment as most agencies collect either race or ethnicity data, and rarely both.³³ The CCJJ convened a panel presentation that highlighted many of the challenges concerning race and ethnicity data collection, such as the variation in ethnicity and race definitions across agencies and categorizing individuals of mixed race and/or ethnic backgrounds.³⁴ The panel helped Commission members understand that the ultimate resolution of these important problems would require multiple stakeholders, be expensive, and require long-term implementation. Thus, Commissions can have an important role both envisioning criminal justice reforms, as well as clarifying the intricacies and mechanics needed for implementation.

Administrative Structure

A California Justice Policy Center could be established through the legislature, executive action, or a ballot initiative. The enabling statute should outline its core objectives, authority, rules for selecting Center members, and staffing and financial requirements. Additional documentation, likely a Memorandum of Understanding (MOU), will also be necessary to distinguish roles and responsibilities, as well as outline data sharing agreements, between the Commission and existing agencies that collect criminal justice data. The Center should be permanent, reflecting the understanding that temporary bodies have been less effective in implementing long-term sentencing reform.³⁵ The Center must also adhere to principles of non-partisanship, relying on evidence rather than politics to inform its recommendations.

The precise location of California's Justice Policy Center is less important than its authority and independence. Sentencing Commissions can be effective, and do exist, in all three branches of government. Some states, like Arkansas, have established Commissions as fully independent

³² Bureau of State and Community Corrections. 2016. "BSCC Seeks ESC for Innovative Diversion Program." Available at: <http://www.bscc.ca.gov/news.php?id=90>

³³ One example provided was the fact that some agencies collect race data only, which results in Hispanic ethnicity being included in the White race category.

³⁴ Ibid, Colorado Commission on Criminal and Juvenile Justice.

³⁵ Ibid, Dansky.

criminal justice agencies.³⁶ Whatever form a California Justice Policy Center takes, its members must represent all elements of the criminal justice community. The most successful state Sentencing Commissions have diverse memberships ensuring system-wide perspectives and relevant expertise. A Commission's membership must, at minimum, include representatives from all three branches of government, along with law enforcement, county probation, sheriffs, corrections, prosecutors, public defenders, victims' organization, and community treatment providers. It is also increasingly common, and extremely beneficial, to allocate at least one seat to a formerly incarcerated person.

The Justice Policy Center needs sufficient funding and staff to effectively perform its duties. Adequate resources are needed to develop sophisticated data systems and simulation models and conduct data analyses. The Center should be led by an individual who is reform-minded at the core, with an in-depth knowledge of evidence-based and cutting edge practices in criminal justice. An ideal candidate would also be familiar with California's penal code, legislative process, and existing corrections agencies, such as the BSCC and CDCR. The California Center will also require a small team with expertise in statistics and programming to establish an effective central database and provide technical assistance to counties. Additional staff could include policy and research experts, legal scholars, and all other administrative staff necessary to function.

Conclusion

California's corrections system has gone through significant change over the past forty years. The state's "tough on crime policies" have been supplanted by policies that seek to limit the use of incarceration for those deemed low risk, and rather prioritize rehabilitation and reentry services. While these reforms have enabled California to reduce its prison population below the Supreme Court-mandated level, problems still remain. Minorities are disproportionately represented in the state's corrections system, many prisons and jails still exceed capacity, and the 2016 corrections budget is the largest to date.

In the past few years, California turned the tide on the state's overreliance on incarceration and emerged as a national leader in the effort to rethink and reform justice, corrections and supervision policies. A California Justice Policy Center is required to consolidate the empirical data and establish the authority necessary for California to continue pioneering sustainable criminal justice reform. Such a body will not only better enable the state to assess performance and identify successful, cost-effective policies, but can also become a repository of evidence-based reforms that can encourage and inform reform efforts in other states.

³⁶ Arkansas Code Ann. § 16-90-802(d)(8) (2015). See Commission Membership, Arkansas Sentencing Commission.

Appendix I

There are currently 24 active Sentencing Commissions throughout the United States, each with a unique mandate and structure. Five different Commissions are highlighted below. Oregon and Virginia represent the original emergence of Sentencing Commissions, each with a different approach to the implementation of sentencing guidelines. Colorado, Connecticut, and Illinois are part of the newer generation, which has moved away from guidelines. Rather, they offer a holistic review of the criminal justice system and develop robust data collection and analysis apparatuses to inform evidence-based policy. Additional information is summarized for each Commission in the table below.³⁷

<u>Commission</u>	<u>Branch</u>	<u>Commission Members</u>	<u>Staff</u>	<u>Responsibilities</u>
Colorado Commission on Criminal and Juvenile Justice	Executive	26 voting members and 1 ex-officio. Designated members serve without term limit while appointed members serve no more than two consecutive full terms.	Seven full-time staff, including one research director, supported by several statistical analysts and research analysts.	<ul style="list-style-type: none"> • Collect and analyze evidence-based data on sentencing policies and practices; • Investigate alternatives to incarceration, recidivism, and cost-effective crime prevention programs; • Issue annual reports of findings and recommendations; • Study opportunities to reduce racial and ethnic disparities.
Connecticut Sentencing Commission	Executive, Office of Policy and Management.	23 voting members, including a representative from Mental Health and Addiction Services	Two permanent staff members: an Executive Director and Staff Attorney.	<ul style="list-style-type: none"> • Develop and maintain a statewide sentencing database and utilize it to review criminal justice legislation; • Evaluate existing statutes, policies, and practices; • Analyze sentencing trends; • Provide training regarding sentencing related issues, policies, and practices; • Perform fiscal analyses on proposed criminal justice legislation; • Identify potential areas of sentencing disparity related to racial, ethnic, gender, and socioeconomic status.
Illinois Sentencing Policy Advisory Council (SPAC)	Executive.	19 nonpartisan state and local criminal justice stakeholders, including both active and retired judicial officers.	Four staff members, including an executive director, research director, outreach advisor, and data manager.	<ul style="list-style-type: none"> • Conduct and analyze information such as sentencing data, crime trends, and existing correctional resources to inform executive or legislative action; • Prepare corrections resource statements that identify the fiscal and practical effects of proposed criminal sentencing legislation; • Conduct additional analysis as requested by the Governor or Illinois General Assembly.

³⁷ For a more detailed overview of the functions and organization of various Sentencing Commissions, please visit the Robina Institute's Sentencing Guidelines Resource Center, available at: www.sentencing.umn.edu.

Oregon Criminal Justice Commission	Independent, but reports to the Oregon legislature.	Eight members, including representatives from the Public Defender, District Attorney, Judiciary, legislature, and an academic institution.	Eight staff, including an executive director, research analyst, criminologist, grants coordinators, and administrative support staff.	<ul style="list-style-type: none"> • Develop and maintain state criminal justice policy; • Analyze capacity and use of state prison and local jails; • Provide federal agencies with Oregon's criminal justice data; • Report on the fiscal and racial/ethnic impact of pending legislation; • Fund, evaluate, and expand drug court programs • Maintain and update sentencing guidelines.
Virginia Criminal Sentencing Commission	Judiciary	17 members who are appointed by the Chief Justice, the Governor and the General Assembly. One seat is reserved for a victim of crime or crime victims' organization.	Nine staff, including a director, research, and administrative personnel.	<ul style="list-style-type: none"> • Develop and administer sentencing guidelines; • Conduct regular seminars about the sentencing guidelines. • Research a variety of criminal justice subjects, including offender risk assessment, probation violations, and recidivism. • Conduct impact analyses of the fiscal and corrections population impact of proposed criminal justice legislation.

Appendix II

Interviews conducted for this paper:

Alison Anderson
Chief Counsel, California Senate Public Safety Committee

Mia Bird
Research Fellow, Public Policy Institute of California

Mark Bergstrom
Executive Director, Pennsylvania Commission on Sentencing

Milena Blake
Policy and Legislative Advocate, Californians for Safety and Justice

Alex Busansky
President, Impact Justice

Kara Dansky
Senior Counsel, ACLU Center for Justice; former Executive Director, Stanford Criminal Justice Center

Carole D'Elia
Executive Director, Little Hoover Commission

Judge George Eskin
Santa Barbara Superior Court Judge (Ret.)

Meredith Farrar Owens
Director, Virginia Criminal Sentencing Commission

Richard Frase
Benjamin N. Berger Professor in Criminal Law, University of Minnesota; Co-Director, Robina Institute of Criminal Law & Criminal Justice

Shannon Hovis
Senior Legislative Aide to Assembly Member Raul Bocanegra at California State Assembly

Marc Mauer
Executive Director, The Sentencing Project

Kelly Mitchell
Executive Director, Robina Institute of Criminal Law and Criminal Justice, University of Minnesota Law School

Steven Raphael

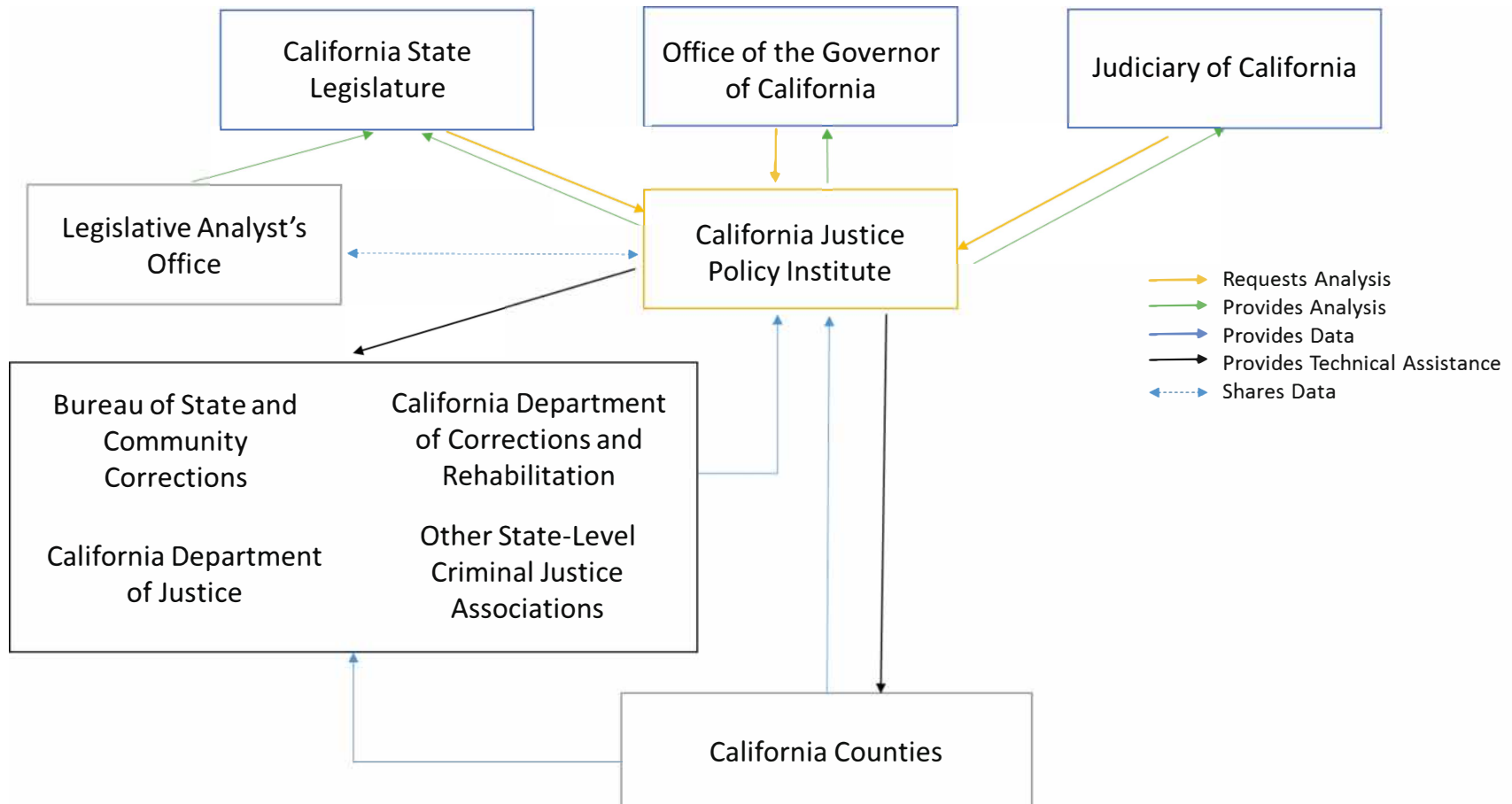
Professor of Public Policy, Goldman School of Public Policy, University of California Berkeley

Robert Weisberg

Edwin E. Huddleson, J. Professor of Law and Faculty Co-Director, Stanford Criminal Justice Center

Appendix III

This below infographic provides an illustrative summary of the relationship between the proposed California Justice Policy Center and existing agencies.



Appendix IV

The below table summarizes proposed data collection and analysis and those already undertaken by existing agencies.

	California Justice Policy Center	Current Efforts
Corrections Population Census	Develop single repository to merge current population data, including storage and data cleaning processes. Recommend improved processes to assist state and local agencies.	BSCC: Jail Profile Survey; County Supervision; and Juvenile Detention Survey. CDCR: Weekly CA Corrections System Population and Parole Reports.
Correctional System Projections	Technical assistance to support counties that seek to develop (or improve) jail & supervision projections.	CDCR: CA Corrections System Population Projections Authority.
Arrests and Bookings	Technical assistance and collaboration with Open Justice on transparency initiatives.	OAG: Open Justice and Annual Crime in California Report.
Victims of Crime Trends and Services	Collaborate with existing agencies to systematize collection of data regarding demographics, frequency and type of victimization, self-assessed needs, and utilization of available services.	OAG: Annual Crime in California Report (crime data comes from the FBI's UCR Program). CALOES: Joint Legislative Budget Committee Report, lists award value, program, and outcomes of criminal justice and victim services grant programs.
Disposition & Sentencing Trends	Sentencing policy analysis, including evaluation of the impact of existing policies and utilizing historical data to project effects of proposed policies.	CDCR: Upper Term Sentencing analysis. AOC: Superior Court Disposition trends.
Recidivism	Single, individual-level recidivism reporting capturing all state prison and county jail releases. Provision of technical assistance, in accordance with BSCC, to help counties implement the MCS and other technical and analytical support.	BSCC: BSCC-PPIC Multi County Study. CDCR: Recidivism Rate / Outcome Report. OAG: California Recidivism Index
Resource Management	Support agencies track program, grant, and other criminal justice expenditures, as requested. Utilize data already collected to inform cost benefit analyses of existing and proposed sentencing and supervision policies.	BSCC: Realignment Resources Database
Legislative Analysis	Impact statements, respond to research requests from Executive & Legislative Branch, and internally-driven analysis.	LAO: Ballot Initiative Analysis, Annual Budget Analysis, and ad hoc research requests. Senate Office of Research: Respond to Ad Hoc Research Requests from Senate. California Research Bureau: Respond to Ad Hoc Research Requests from Governor, his/he staff, and both legislative bodies.

Authority

BSCC: Legislative - California Penal Code § 6027(a).

CDCR: Agency - CDCR Operating Manual 15080.03 establishes Office of Research, which leads these initiatives.

OAG: Agency - Both listed functions were launched as initiatives of AG Kamala Harris.

AOC: Legislative- California Penal Code §13155

LAO: Legislative - Established in 1941 by the California Legislature; and Ballot - Political Reform Act (1974) established authority to conduct ballot initiative analysis.

Senate Office of Research: Legislative- Established by the California Senate Rules Committee. Responsive to requests.

California Research Bureau: Legislative and Executive - Responsive to requests.

San Francisco Recidivism Workgroup

An Initiative of the San Francisco Sentencing Commission

I. Overview

The San Francisco Sentencing Commission passed a motion to convene a Recidivism Workgroup on December 18, 2014. The Workgroup is comprised of representatives from a cross-section of City and County departments and an academic researcher. The goals of the Workgroup are to:

- Recommend a recidivism definition for San Francisco that includes multiple measures;
- Design and pilot a cohort study to better understand outcomes across all defined recidivism measures in San Francisco;
- Establish protocols for data collection, review, and analysis to enable San Francisco to standardize and institutionalize the tracking of recidivism outcomes;
- Develop a plan for dissemination of this information to City and County departments and the public.

II. Guiding Principles

The Recidivism Workgroup is guided by the four steps outlined in Ryan King's presentation to the Sentencing Commission to improve recidivism as a performance measure:¹

- **Definition:** Utilize multiple indicators of success carefully calibrated to the outcomes intended to measure.
- **Collection:** Develop protocols to ensure recidivism data collections are consistent, accurate, and timely.
- **Analysis:** Utilize statistical techniques that account for the underlying composition of the population being studied.
- **Dissemination:** Package recidivism findings succinctly to maximize impact and disseminate to key decision makers to influence policy and practice.

III. Completed

The Recidivism Workgroup has convened several times over the past few years, with four meetings in 2016. Below is a summary of the key accomplishments achieved in pursuit of the overall goals.

Develop a Recidivism Measure for San Francisco

In an effort to standardize measurement of and operationalize responses to recidivism in the city, the Sentencing Commission approved a multi-component definition of recidivism that allows all criminal justice agencies to monitor key points of 'subsequent criminal justice system contact.' This shift away from a singular definition of recidivism to 'subsequent criminal justice system contact' is a means to create a cohesive understanding between City and County departments, while maintaining individual department mandates and reporting requirements. San Francisco will track and report outcomes on three measures: rearrest, rearraignment, and reconviction.

¹ King, Ryan and Brian Elderbroom. "Improving Recidivism as a Performance Measure." Urban Institute. October 2014. Available at: <https://www.bja.gov/Publications/UI-ImprovingRecidivism.pdf>.

Table One: Subsequent Criminal Justice System Contact Measures

Subsequent Contact	Measurement	Policy Implications
Rearrest	First instance of arrest after an inmate is released from state prison or local custody.	System input that can inform enforcement, supervision, and clinical strategies.
Rearraignment	First arraignment after release.	Provides opportunity to track subsequent use of court and custody resources.
Reconviction	First conviction after release.	Most commonly accepted subsequent contact point used by California state agencies for measuring recidivism. This ultimate case outcome is the most resource intensive subsequent system contact.

Survey of State and National Recidivism Cohort Studies

The Workgroup analyzed a cross-section of recidivism studies conducted by government agencies, think tanks, and academic researchers. This survey elucidated the key decision points that San Francisco needs to answer in defining its cohort, such as cohort and recidivism window. A matrix of sample recidivism cohorts can be found in **Appendix I**.

Average Monthly Sentences to County Supervision

To help define the cohort, the Workgroup analyzed 18-months² of data for dispositions that resulted in county supervision or jail time.³ This analysis was undertaken to help members better understand court disposition trends, crime type, racial/ethnic and gender breakdowns, APD supervision type, and COMPAS risk score. However, this analysis was restricted to what was available through Damion, the DA's internal case management system, and some questions were not answered. The following trends were evident from the analysis:

- County Jail with Probation was the most frequent disposition that resulted in some form of supervision (73%).
- Males comprise the majority of the sample (85%).
- The most common crime type is DUI (20%), followed by Assault (10%), and Drug (8%).

San Francisco Data Source Mapping

San Francisco will rely upon multiple agencies and data systems to obtain the necessary information to create the cohort study. The below table summarizes the key data point, data source, authority, and rationale for each event that will be captured in the study.

Table Two: Data Source Mapping

Event	Data Points	Data Source	Lead	Rationale
Recidivism Window Opens	(1) Out of custody and conviction sustained	Court Management System (CMS)	CMS Committee	Defines cohort
	(2) Release from jail, following conviction	Jail Management System (JMS)	Sheriff	
	(3) Release from state prison to PRCS	Adult Probation Files	Adult Probation	

² The time period captures cases with disposition dates between January 1, 2015 and June 30, 2016.

³ The Workgroup does not have access to identified state data; thus restrained the analysis to dispositions whose outcome was measurable. [Note: amend if we do get DOJ data to state we did not expect access to this information at the time the analysis was conducted].

Rearrest (includes both custodial arrests & misdemeanor citations)	(4) Arrest in San Francisco	DAMION	SFDA	Represents law enforcement activity
	(5) Arrest in California (outside of San Francisco)	California Law Enforcement Telecommunication System (CLETS)	CA DOJ	
Rearraignment (includes both new filings and discharges to MTR)	(6) Arraignment for a new charge	DAMION	SFDA	Represents court activity
Reconviction	(7) Convicted of a new crime in San Francisco	CMS	CMS Committee	Impacts number in jail or on supervision
	(8) Convicted of a new crime in California (outside of San Francisco)	Rap sheets outside of SF, CLETS	Cal DOJ	

IV. In Process

The Recidivism Workgroup has several tasks remaining to fulfill its mandate. Each item includes an estimated timeline and required participants.

Cohort Design – Timeline and Next Steps

The Recidivism Workgroup plans to present its initial cohort analysis at the June 2017 Sentencing Commission meeting. The necessary steps and assigned responsibilities to ensure completion prior to June are highlighted below. However, these are subject to change due to funding and resource ability. The Sentencing Commission staff will provide an update on progress at the March 2017 Commission meeting.

- **Methodology:** Sentencing Commission Fellow, with support from Steve Raphael and Tara Anderson, is developing a guide of key questions and considerations for jurisdictions undertaking a recidivism analysis. This document will be completed by February 2017 and circulated to Workgroup members for review and input.
- **Data:** The Recidivism Workgroup currently has two data options:
 - **PPIC Data:** PPIC has offered to return San Francisco's clean and identified recidivism data⁴ used in the Multi-County Study (MCS). Additionally, PPIC hopes to provide San Francisco with summary level DOJ data for its residents, including recidivism rates by county. The estimated timeline is early 2017, but subject to change.
 - **CMS & JMS Data:** as an alternative, programming support from a trusted academic partner, such as UC Berkeley, can match CMS and JMS records to create the dataset necessary for the cohort.
- **Cohort Design:** The Recidivism Workgroup will convene in February 2017 to agree upon cohort design, using the developed methodology questionnaire. The cohort(s) will be designed by the end of March 2017.

⁴ PPIC received data from both CMS and JMS.

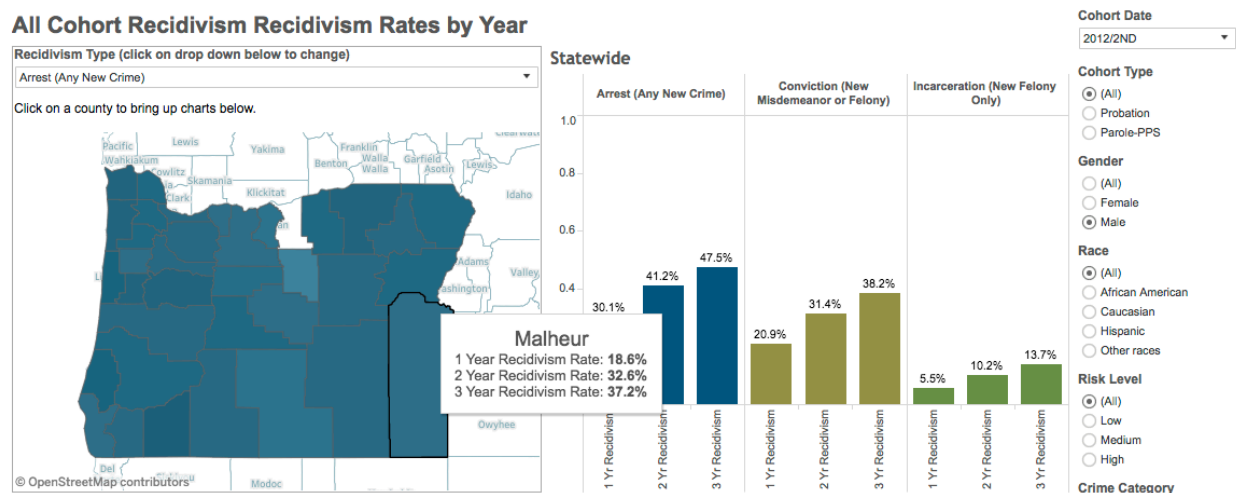
- **Recidivism Analysis:** The recidivism analysis will be conducted in April 2017. The Workgroup will convene in May to review results prior to presentation at the June Commission meeting.

Recidivism Dashboard Design

The Recidivism Dashboard is a collaborative data sharing project between local criminal justice agencies. Ultimately the Dashboard will be a web-based, self-service criminal justice system outcome analysis tool. The user would be able to customize the tool by time period, intervention, sub-population, and recidivism type. Ideally the dynamic interface will serve both government and the public at large to understand key outcomes at all major decision points in the criminal justice system. Moreover, by regularly reviewing outcomes and isolating for demographic information such as gender, and race, the dashboard can serve as a tool for assessing progress toward reducing disparities in the system.

The foundational work performed by the Recidivism Workgroup will inform the Dashboard design. Separately, as noted in the previous section, the Workgroup will use both internal and external expertise to develop the recidivism cohorts, which will populate the Dashboard. Additionally, Adult Probation (APD), as the convener of the San Francisco Reentry Council will serve to ensure that equity measures integrated into the Recidivism Dashboard align with the objectives of San Francisco's Justice Reinvestment Initiative priority focus on reducing racial and ethnic disparities in the criminal justice system.

The Oregon Criminal Justice Commission (CJC) created a statewide Recidivism Dashboard that offers a potential model for San Francisco.⁵ The Tableau dashboard is easily accessible online and users can toggle different details to see outcomes for specific cohorts of interest (see picture below). The Recidivism Workgroup also learned PPIC plans to create local dashboards with the MCS data to help counties visualize and manipulate their own data. Similarly, PPIC plans to use Tableau to host this platform. The Recidivism Workgroup will continue to coordinate with PPIC to better understand if their platform can be manipulated to achieve the objectives of the Recidivism Dashboard.



⁵ The Oregon Recidivism Dashboard can be accessed at: <http://www.oregon.gov/cjc/data/Pages/recidivism.aspx>

Bill Number	Sponsor	Text	Summary	Support / Opposition	Action
AB 813	Gonzalez	Criminal procedure: post-conviction relief	Creates a mechanism of post-conviction relief for a person to vacate a conviction following a guilty plea based on error damaging his or her ability to meaningfully understand, defend against, or knowingly accept the immigration consequences of the conviction.	Support: ACLU, LCCR, Haywood Burns Institute Opponents: Alameda County District Attorney, Judicial Council of California	9/28/16: Chaptered by Secretary of State. Chapter 739, Statutes of 2016.
AB 1597	Stone	County jails: performance milestone credits	Allows an inmate in the county jail, who has not been sentenced, to earn program credit reductions for successfully completing specific program performance objectives, otherwise known as "milestones."	Support: CSAC, ACLU, California Peace Officers' Association, California State Sheriffs' Association Opposition: N/A	6/27/16: Chaptered by Secretary of State - Chapter 36, Statutes of 2016.
AB 2590	Weber	Sentencing: restorative justice	Finds and declares that the purpose of sentencing is public safety achieved through accountability, rehabilitation, and restorative justice.	Support: California Public Defenders Association Opposition: California District Attorneys Association	9/27/16: Chaptered by Secretary of State - Chapter 696, Statutes of 2016.
AB 2765	Weber	Proposition 47: sentence reduction	This bill extends the filing for relief for persons seeking reductions of prior felony convictions to misdemeanors under Proposition 47 to November 4, 2022, or later upon a showing of good cause.	Support: Californians for Safety and Justice, California Public Defenders Association Opposition: N/A	9/28/16: Chaptered by Secretary of State - Chapter 767, Statutes of 2016.
AB 2839	Thurmond	Criminal penalties: nonpayment of fines	This bill clarifies that when a criminal defendant is ordered imprisoned for non-payment of a non-restitution criminal fine, that only the base fine is used when determining the term of imprisonment.	Support: Conference of California Bar Associations Opposition: N/A	9/28/16: Chaptered by Secretary of State - Chapter 769, Statutes of 2016.
AB 2888	Low and Dodd	Sex crimes: mandatory prison sentence	Amends Penal Code Section 1203.065 to include to the list of offenses that are ineligible for probation, all sexual assaults felonies perpetrated against intoxicated and unconscious victims."	Support: Santa Clara County D.A, California Police Chiefs Association Opposition: ACLU	9/30/16: Chaptered by Secretary of State - Chapter 863, Statutes of 2016.

2016 Legislative and Ballot Initiative Summary

SB 6	Galgiani	Parole: medical parole: compassionate release	This bill makes an individual who killed a peace officer ineligible for compassionate release or medical parole.	Support: California State Sheriffs' Association, Crime Victims United Opposition: ACLU	9/30/16: Chaptered by Secretary of State. Chapter 886, Statutes of 2016.
SB 266	Block	Probation and mandatory supervision: flash incarceration	This bill authorizes the use of a sanction known as "flash incarceration" for defendants granted probation or placed on mandatory supervision.	Support: California Probation Officers of California Opposition: California Public Defenders Association	9/27/16: Chaptered by Secretary of State. Chapter 706, Statutes of 2016.
SB 420	Huff	Prostitution	This bill defines and divides the crime of prostitution into three separate forms: 1) receipt of compensation in exchange for a lewd act; 2) provision of compensation to an adult in exchange for a lewd act; and 3) provision of compensation to a minor in exchange for a lewd act.	Support: California District Attorneys Association, California Police Chiefs Association Opposition: California Public Defenders Association	9/127/16: Chaptered by Secretary of State. Chapter 734, Statutes of 2016.
SB 843	Committee on Budget and Fiscal Review	Public Safety	This bill makes statutory changes necessary to enact the public safety provisions of the Budget Act 2016. Changes of interest include: 1) LEAD pilot; and 2) Reduces the number of peremptory challenges for misdemeanor jury trials from ten to six.	Support: None received Opposition: None received	6/27/16: Chaptered by Secretary of State. Chapter 33, Statutes of 2016.
SB 883	Roth	Domestic violence: protective orders	Conforms the punishment for a violation of a protection order issued after conviction of an offense involving domestic violence to the punishment for other similar protective orders.	Support: Riverside County DA Opposition: California Public Defenders Association	9/13/16: Chaptered by Secretary of State. Chapter 342, Statutes of 2016.
SB1004	Hill	Young adults: deferred entry of judgment pilot program.	This bill authorizes the Counties of Alameda, Butte, Napa, Nevada and Santa Clara, until January 1, 2020, to operate a deferred entry of judgment pilot program whereby certain convicted young adult offenders would serve time in juvenile hall rather than county jail.	Support: California Police Chiefs Association, California Public Defenders Association, Opposition: The Juvenile Justice Program	9/30/16: Chaptered by Secretary of State. Chapter 865, Statutes of 2016.

2016 Legislative and Ballot Initiative Summary

SB 1016	Monning	Sentencing	This bill extends the sunset provisions from January 1, 2017 to January 1, 2022 on specified basic sentencing provisions.	Support: California Police Chiefs Association Opposition: California Attorneys for Criminal Justice	9/30/16: Chaptered by Secretary of State. Chapter 887, Statutes of 2016.
SB 1129	Monning	Prostitution: sanctions	This bill repeals statutory provisions imposing mandatory minimum prostitution jail terms, including for those who accept prostitution, for repeat offenders.	Support: CA Public Defenders Association, ACLU Opponents: N/A	9/27/16: Chaptered by Secretary of State. Chapter 724, Statutes of 2016.
SB1322	Mitchell	Commercial sex acts: minors	This bill provides that a minor engaged in commercial sexual activity will not be arrested for a prostitution offense; (2) directs law enforcement office to report the conduct or situation to county social services as abuse or neglect; and (3) provides that the minor may be adjudged a dependent child of the juvenile court and taken into temporary custody.	Support: ACLU, California Attorneys for Criminal Justice, National Center for Youth Law Opposition: California District Attorneys Association	9/26/16: Chaptered by Secretary of State. Chapter 654, Statutes of 2016.
Prop 57	Governor Jerry Brown	Parole for Non-Violent Criminals and Juvenile Court Trial Requirements (2016)	Prop 57 increases parole chances for felons convicted of nonviolent crimes and give them more opportunities to earn credits for good behavior. It also allowed judges, not prosecutors, to decide whether to try certain juveniles as adults in court.	Support: California State Law Enforcement Association, Crime Survivors for Safety & Justice Opposition: CDAA, California Republican Party, California Peace Officers' Association	11/8/16: Approved by voters.
Prop 66	Californians for Death Penalty Savings and Reform	Death Penalty Reform and Savings Act of 2016	Changes the procedures governing state court appeals and petitions that challenge death penalty sentences by shortening the duration of these challenges to a maximum of 5 years.	Support: California Republican Party, California Peace Officers' Association, CDAA, etc. Opposition: ACLU of California, California Democratic Party, California Attorneys for Criminal Justice, etc.	11/8/16: Approved by voters.



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Perspective

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Decriminalizing Mental Illness — The Miami Model

John K. Iglehart

U.S. correctional institutions, local courts, and police officers frequently encounter people with untreated or undertreated serious mental illnesses, often coupled with substance-use

disorders. These encounters usually stem from the alleged commission of a misdemeanor — trespassing, panhandling, petty theft — or a minor, nonviolent felony. Each year, about 11.4 million people are booked into local U.S. jails, where on any given day, 745,000 of them are held. An estimated 16.9% of jail detainees have a serious mental illness,¹ which means that nearly 2 million people with such illnesses are arrested each year.

Florida's Miami-Dade County faces a particular challenge because, among large U.S. communities, it has the highest percentage of residents with serious mental

illnesses, but Florida ranks 48th nationally in state funding for community mental health services. According to county judge Steven Leifman, approximately 9.1% of the county's population (192,000 adults and 50,000 children) — two to three times the national average — has serious mental illness, but only about 1% receives services in the public mental health system. Moreover, roughly one third of the county's under-65 population lacks health care coverage.² In general, indigent people receive treatment only when they're in extreme crisis and present an imminent risk of harm to themselves or others,

or when they enter the criminal justice system.

Many communities have developed strategies to redirect people with mental illnesses away from the criminal justice system. Though these approaches reduce inappropriate arrests and incarcerations, their effect on communities' public health and safety is often limited because they reside primarily within the legal system. What sets Miami-Dade County apart is its 15-year effort to develop a comprehensive, coordinated response to what's recognized as a shared community problem requiring a shared community solution. This effort leverages diverse expertise and resources to divert people with mental illnesses from the criminal justice system to community-based mental health services, aiming to improve community outcomes.

In addition to grappling with inadequate funding, the local mental health system is hampered by fragmented service delivery and poor coordination, which make it difficult to navigate. Some additional funding has been secured from governmental and private sources, but the initiative's success is largely attributable to an effort to structure patterns of service delivery and deploy existing resources in ways that are better aligned with the needs of people coming out of the justice system.

These efforts have helped to reduce the size of the county's jailed population and the number of police officers injured in the

idea I would become the gatekeeper to the largest psychiatric facility in the State of Florida. . . . Of the roughly 100,000 bookings into the [county] jail every year, nearly 20,000 involve people with serious mental illnesses requiring intensive psychiatric treatment while incarcerated. . . . Because community-based delivery systems are often fragmented, difficult to navigate, and slow to respond to critical needs, many individuals with the most severe and disabling forms of mental illnesses . . . fall through the cracks and land in the criminal justice or state hospital systems" that emphasize crisis resolution rather than "promoting

largest police departments have responded to about 50,000 mental health crisis calls that resulted in 9000 diversions to crisis units and only 109 arrests. The average daily census in the county jail system has dropped from 7200 to 4000, one jail facility has been closed, and fatal shootings and injuries of mentally ill people by police officers have been dramatically reduced.

Participation in treatment for persons diverted pre-booking is based on the state's civil commitment laws and the person's desire to receive treatment. If someone appears to meet criteria for civil commitment, the treatment provider may petition the court for authorization for involuntary outpatient or inpatient placement. More often, however, diverted people do not meet these criteria and are simply provided referrals and linkages for follow-up care.

The post-booking program involves identifying people in acute psychiatric distress who've been booked into the county jail. After screening them for eligibility, judges can approve defendants' transfer from jail to a crisis unit, where they receive treatment while the court monitors their progress and case managers employed by the courts and the South Florida Behavioral Health Network work with community-based service providers to arrange ongoing treatment and housing. All participants are assessed for criminogenic risk factors and treatment needs using evidence-based tools. Once participants return to the community, case managers continue to monitor them and their treatment providers for 1 year. Participants who are eligible to apply for federal

***Over the past decade, the CMHP
has facilitated about 4000 diversions
of defendants with mental illness
from the county jail into community-based
treatment and support services.***

line of duty and to improve public safety. Now, Miami-Dade plans to open a facility that it says "will expand the capacity to divert individuals from the county jail into a seamless continuum of comprehensive, community-based treatment programs that leverage local, state and federal resources."³

Miami-Dade's initiative was launched in 2000, when Judge Leifman, frustrated by the fact that people with mental disorders were cycling through his court repeatedly, created the Eleventh Judicial Circuit Criminal Mental Health Project (CMHP). As Leifman explained, "When I became a judge . . . I had no

ongoing stable recovery and community integration."⁴

The CMHP includes pre-booking and post-booking jail-diversion programs. The pre-booking part follows the Crisis Intervention Team model, in which mentally ill people who may otherwise be arrested for minor offenses are diverted to crisis units to receive treatment. Law-enforcement officers undergo 40 hours of training in recognizing signs of mental illness in distressed persons and deescalating potentially violent situations. Some 4600 officers serving in Miami-Dade's 36 municipalities and in county public schools have been trained. In 5 years, officers from the two

entitlement benefits are assisted in preparing and submitting applications.

People referred to the postbooking diversion program who appear to meet criteria for examination under Florida's civil commitment laws may initially enter treatment on an involuntary basis. Once stabilized, they are asked for consent to continue participation; 80% of them agree because participation may mean more favorable disposition of their legal cases, and it provides access to resources and supports that may otherwise be out of reach. The cases of those who refuse treatment or participation follow the normal criminal justice process.

Initially, the CMHP served only people charged with misdemeanors. In 2008, the postbooking program was expanded to include defendants arrested for less serious, nonviolent felonies, who are screened by the state attorney's office before enrollment to ensure that they have no significant history of violence and are unlikely to threaten public safety. Over the past decade, the CMHP has facilitated about 4000 diversions of defendants with mental illness from the county jail into community-based treatment and support services. The annual recidivism rate has been about 20% among participants who committed a misdemeanor, as compared with roughly 75% among defendants not in the program. Participants

charged with minor felonies have 75% fewer jail bookings and jail days after enrollment in the program than they had beforehand, and their recidivism rate is much lower than that of their counterparts outside the program.

Like most mental health programs, the CMHP relies on multiple sources of support, and no program is more important than Medicaid. Unfortunately, Florida is one of 19 states that have declined to expand their Medicaid programs under the Affordable Care Act, leaving some 3 million adults with incomes at or below 138% of the federal poverty level without insurance coverage. About 567,000 Floridians fall into this coverage gap and remain uninsured. "Expanding Medicaid would have had a profound impact on keeping people with a serious mental illness out of both the criminal justice system and the acute mental health system," Leifman told me. Although Florida provides little funding for community mental health services, it "spends exorbitantly to house people with mental illnesses in criminal-justice settings."⁵

Miami-Dade County stakeholders actively support the initiative's replication in other communities. In 2015, the Council of State Governments Justice Center, the National Association of Counties, and the American Psychiatric Association Foundation launched "Stepping Up: A National Initiative to Reduce the Number of People with Mental Ill-

nesses in Jails." Miami-Dade, chosen as one of four launch sites, has been helping with planning and development. More than 240 counties in 41 states have passed resolutions to advance the goal of reducing the prevalence of people with mental illnesses in their jails, and representatives of 50 jurisdictions in 37 states recently attended a Stepping Up Summit meant to help them achieve that aim.

Disclosure forms provided by the author are available with the full text of this article at NEJM.org.

Mr. Iglehart is a national correspondent for the *Journal*.

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STEPPING UP: A National Initiative to Reduce the Number of People with Mental Illnesses in Jails

THERE WAS A TIME WHEN NEWS OF JAILS serving more people with mental illnesses than in-patient treatment facilities was shocking. Now, it is not surprising to hear that jails across the nation serve an estimated 2 million people with serious mental illnesses each year¹—almost three-quarters of whom also have substance use disorders²—or that the prevalence of people with serious mental illnesses in jails is three to six times higher than for the general population.³ Once incarcerated, they tend to stay longer in jail and upon release are at a higher risk of returning than individuals without these disorders.

The human toll—and its cost to taxpayers—is staggering. Jails spend two to three times more on adults with mental illnesses that require intervention than on people without those needs,⁴ yet often do not see improvements in recidivism or recovery. Despite counties' tremendous efforts to address this problem, they are often thwarted by significant obstacles, such as coordinating multiple systems and operating with minimal resources. Without change, large numbers of people with mental illnesses will continue to cycle through the criminal justice system, often resulting in missed opportunities to link them to treatment, tragic outcomes, inefficient use of funding, and failure to improve public safety.

The National Initiative

Recognizing the critical role local and state officials play in supporting change, the [National Association of Counties \(NACo\)](#), the [Council of State Governments \(CSG\) Justice Center](#), and the [American Psychiatric Foundation \(APF\)](#) have come together to lead a national initiative to help advance counties' efforts to reduce the number of adults with mental and co-occurring substance use disorders in jails. With support from the U.S. Justice Department's [Bureau of Justice Assistance](#), the initiative will build on the many innovative and proven practices being implemented across the country. The initiative engages a diverse group of organizations with expertise on these issues, including those representing sheriffs, jail administrators, judges, community corrections professionals, treatment providers, people with mental illnesses and their families, mental health and substance use program directors, and other stakeholders.

The initiative is about creating a long-term, national movement—not a moment in time—to raise awareness of the factors contributing to the over-representation of people with mental illnesses in jails, and then using practices and strategies that work to drive those numbers down. The initiative has two key components:

1. **A CALL TO ACTION** demonstrating strong county and state leadership and a shared commitment to a multi-step planning process that can achieve concrete results for jails in counties of all sizes.

The Call to Action is more than a vague promise for reform; it focuses on developing an actionable plan that can be used to achieve county and state system changes. As part of this Call to Action, county elected officials are being asked to pass a resolution and work with other leaders (e.g., the sheriff, district attorney, treatment providers, and state policymakers), people with mental illnesses and their advocates, and other stakeholders on the following six actions:

- **Convene or draw on a diverse team** of leaders and decision makers from multiple agencies committed to safely reducing the number of people with mental illnesses in jails.

- **Collect and review prevalence numbers and assess individuals' needs** to better identify adults entering jails with mental illnesses and their recidivism risk, and use that baseline information to guide decision making at the system, program, and case levels.
- **Examine treatment and service capacity** to determine which programs and services are available in the county for people with mental illnesses and co-occurring substance use disorders, and identify state and local policy and funding barriers to minimizing contact with the justice system and providing treatment and supports in the community.
- **Develop a plan** with measurable outcomes that draws on the jail assessment and prevalence data and the examination of available treatment and service capacity, while considering identified barriers.
- **Implement research-based approaches** that advance the plan.
- **Create a process to track progress** using data and information systems, and to report on successes.

In addition to county leaders, national and state associations, criminal justice and behavioral health professionals, state and local policymakers, others with jail authority, and individuals committed to reducing the number of people with mental illnesses in jails should sign on to the Call to Action. Stepping Up participants will receive an online toolkit keyed to the six actions, with a series of exercises and related distance-learning opportunities, peer-to-peer exchanges, and key resources from initiative partners.⁵ The online toolkit will include self-assessment checklists and information to assist participants working in counties in identifying how much progress they have already made and a planning template to help county teams develop data-driven strategies that are tailored to local needs.

2. **A NATIONAL SUMMIT** to advance county-led plans to reduce the number of people with mental illnesses in jails.

Supported by the American Psychiatric Foundation, a summit will be convened in the spring of 2016 in Washington, DC, that includes counties that have signed on to the Call to Action, as well as state officials and community stakeholders such as criminal justice professionals, treatment providers, people with mental illnesses and their advocates, and other subject-matter experts. The summit will help counties advance their plans and measure progress, and identify a core group of counties that are poised to lead others in their regions. Follow-up assistance will be provided to participants to help refine strategies that can be used in counties across the nation. After the 2016 summit, participants will be notified of potential opportunities for sites to be selected for more intensive assistance through federal and private grant programs.

Although much of the initiative focuses on county efforts, states will be engaged at every step to ensure that their legislative mandates, policies, and resource-allocation decisions do not create barriers to plan implementation.

To learn more about the initiative or to join the Call to Action, go to StepUpTogether.org.

Endnotes

1. Steadman, Henry, et al., "Prevalence of Serious Mental Illness among Jail Inmates." *Psychiatric Services* 60, no. 6 (2009): 761–765. These numbers refer to jail admissions. Even greater numbers of individuals have mental illnesses that are not "serious" mental illnesses, but still require resource-intensive responses.
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4. See, e.g., Swanson, Jeffery, et al., *Costs of Criminal Justice Involvement in Connecticut: Final Report* (Durham: Duke University School of Medicine, 2011).
5. Among the key partners are the [National Alliance on Mental Illness](#); [Major County Sheriffs' Association](#); [National Association of County Behavioral Health & Developmental Disability Directors](#); [National Association of State Alcohol and Drug Abuse Directors](#); [National Association of State Mental Health Program Directors](#); [National Council for Behavioral Health](#); [National Sheriffs' Association](#); and [Policy Research Associates](#).

Government-University Research Collaborations: Examples and Current Projects at the University of California

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Berkeley
UNIVERSITY OF CALIFORNIA

Potential benefits from formal ongoing research collaborations between state and local government and universities

- Build data infrastructure
 - Physical and otherwise
- Identify policy problems and questions where research methods can aid public decision making
- Facilitate experimentation and innovation
- Channel energy and talent on university campuses towards real-world problems
- Cost effective for public sector partners

Berkeley
UNIVERSITY OF CALIFORNIA

Examples of Data Warehouse Efforts and Policy Labs

- Texas Education Research Center (UT)
 - Have created linked longitudinal data sets involving confidential K-12, higher education, and workforce administrative records for the state of Texas. Data is stored on site.
 - Projects reviewed and approved by formal advisory board.
- Rhode Island Institute and Innovation Policy Lab (Brown University)
 - Focused on data analytics, economic evaluation and technical assistance to state agencies.
 - Smart policy consultancy program (place MPA students in various state agencies including Department of Health, Department of Labor and Training, Department of Human Services, Department of Education)

Examples of Data Warehouse Efforts and Policy Labs

- North Carolina Education Research Data Center (Duke University)
 - Stores and manages data on state's public schools, students and teachers.
 - Maintains confidential records, has an approval process for proposed research projects originating with academics, non-profit organizations, and government agencies.
- Camden Arise (Coalition of health care providers)
 - Have linked arrest and public health data on emergency room admissions and seeking to link to other administrative data sets
 - Partnering with the Abdul Latif Jameel Poverty Action Lab.

The Urban Labs at the University of Chicago

- Focus on crime, education, health, poverty, education, and the environment.
- Currently have extensive connections and data sharing agreements in two cities
 - Chicago: data from 7 city agencies, 4 county agencies, and 7 state agencies
 - New York City: Data from 5 city agencies, 1 county agency, and 3 state agencies
- Has provided technical assistance to local government (risk tool for JISC), facilitated investigatory-initiated research (Aizer and Doyle 2013), conducted RCT evaluation of innovated projects.

RCT evaluations from the Crime Lab

- Becoming a Man –School-based CBT program designed to minimize violent encounters
 - 50 % reduction in violent arrests
 - 19% increase in graduation rates
 - Benefit-cost ratio of \$30 to \$1
- One Summer Chicago Plus –Youth Employment Programming Coupled with Mentoring
 - 43% reduction in violent crime arrests in sixteen months following an eight-week summer intervention

Partnership between the Urban Labs and Chicago Beyond

- Innovation Challenge Competition (a race-to-the-top type competition involving a large awarded grant coupled with the requirement that the effort be rigorously evaluate by the Urban Labs)
 - Dovetail project
 - Storey Catchers Theater: Changing Voices

The California Policy Lab (CPL)

- Partnership between UC Berkeley and UCLA
- Initial one-year planning grant with resources for research assistants and funding for APAs.
- On the UC Berkeley campus, involves a collaboration between the Goldman School of Public Policy and the D-Lab.

Focus for first year of the CPL

- Build data warehouse capacity
- Provide technical assistance
 - Fund APAs
 - Fund research assistants working on projects involving government agencies
 - Potential examples: recidivism working group, aid San Francisco in addressing the data recommendation from the JRP working group, develop evaluation strategy for LEAD, help develop a recidivism dashboard
- Build research partnerships with agencies
- Capacity Building
 - Creating data sharing agreements
 - Working on standardization, coding, cleaning administrative data, building capacity and writing code to link across systems.

Protecting confidential data

- All analysis on the UC Berkeley campus of confidential data requires review of and approval by the Committee for the Protection of Human Subjects (CPHS)
 - Proposals require clear statement of project goals, protocols in place for collecting data if relevant, measures taken to protect confidential information, and training requirements on handling confidential data for all individuals involved (CTI human subject training)
- Dependent on the degree of data sensitivity, differential security measures are required by CPHS, ranging from information being stored and analyzed on computers in locked facilities, to information being stored and analyzed on computers that are not connected to the internet.

Type of data use agreements

- Approval to analyze data on site only.
- Project-specific agreements permitting transfer of administrative records to university computers (and in some instances linking different administrative data sets using PII)
- Batch transfers and more general data sharing agreements with a protocol in place for approving research projects.



The City and County of San Francisco
The San Francisco Sentencing Commission

2016 Annual Report San Francisco Sentencing Commission

December 14, 2016



San Francisco Sentencing Commission 2016 Annual Report

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The activities of the 2016 calendar year of the San Francisco Sentencing Commission are summarized in this annual report as required by County Ordinance 10-12.

I. EXECUTIVE SUMMARY

The San Francisco Sentencing Commission, an initiative of the District Attorney's Office, was created to analyze sentencing patterns, innovative solutions and outcomes; and to provide recommendations to the Mayor and Board of Supervisors that lead to a reduction in incarceration, lower recidivism rates, safer communities, and ensure that victims are made whole. In 2016, the San Francisco Sentencing Commission held four hearings covering Local Sentencing Trends, State Sentencing Legislation, the Unique Needs of Children of Incarcerated Parents, Trauma-Informed Approaches, Risk and Needs Assessments, Cross-Agency Data Sharing Opportunities, and the Eleventh Judicial Circuit Criminal Mental Health Project. Based upon this expert testimony and research, the Sentencing Commission developed the following ten recommendations:

Recommendation 1. Reauthorize the San Francisco Sentencing Commission.

The Sentencing Commission recommends extending its mandate through December 31, 2019. In addition, the Sentencing Commission recommends adding a permanent seat for a representative from the Bay Area Rapid Transit (BART) Police Department, and extending its mandate to include the development of a countywide criminal justice masterplan in collaboration with the Reentry Council of the City and County of San Francisco (hereafter "Reentry Council").

Recommendation 2. Invest in Justice Information Tracking System (JUSTIS) to become a neutral steward of countywide criminal justice data.

The Sentencing Commission recognizes that JUSTIS is uniquely positioned to play a central role in enhancing the transparency and accountability of San Francisco's criminal justice system. To that end, the Sentencing Commission recommends additional investment in JUSTIS to enable the body to serve as a neutral steward of criminal justice data in the future, and review data collected by individual agencies in an effort to identify gaps that may inhibit system-wide analysis. In addition, the Sentencing Commission recommends expanding the membership of JUSTIS to include representatives from key service agencies, such as the Department of Homelessness and Supportive Housing.

Recommendation 3. Explore Partnership with Academic Institutions to Launch a San Francisco Justice Data Center.

San Francisco should pursue opportunities to collaborate with local academic institutions to create a body, similar to the University of Chicago Crime Lab, whereby academic experts are available to assist with data collection, database design, program evaluation, and policy analysis. These efforts should include and build on the data-sharing capacity and expertise of JUSTIS

Recommendation 4. Invest in policies and programs that address the specific needs of children of incarcerated parents.

Project WHAT! issued a series of ten policy recommendations to enable San Francisco's children with incarcerated parents to live free of judgement and blame. The Sentencing Commission passed a motion in June 2016 to support Project What! achieve the five policy recommendations that have yet to be adopted. The Sentencing Commission recommends that the City and County of San Francisco should engage in strategies that ensure implementation of the remaining policy recommendations.

Recommendation 5. Submit an application for the statewide LEAD pilot program.

The Bureau of State and Community Corrections (BSCC) has issued \$15 million to support three California counties to pilot Law Enforcement Assisted Diversion (LEAD). The Sentencing Commission reaffirms its commitment to the creation of a local LEAD program and will support San Francisco in its application for the BSCC grant program.

Recommendation 6. Review and recommend changes to CCSF's usage of risk and needs assessments, with an eye toward improving efficiency and equity.

The Sentencing Commission recommends that the criminal justice department leadership pursue a strategy to regularly review and assess risk assessments in use by San Francisco criminal justice agencies.

Recommendation 7. Advocate for the establishment of a California Justice Policy Center.

The San Francisco Sentencing Commission was created in the absence of a state level public safety body mandated to provide expert research and analysis to inform and reform justice policy and practice. While previous attempts to establish a state public safety body have been unsuccessful, the San Francisco Sentencing Commission, in its more than four years of implementation, has benefited from a localized review of sentencing practices, expert presentations on best practices from other states, and data analysis providing a baseline understanding of current justice system conditions. To that end, the San Francisco Sentencing Commission recommends that the state establish a California Justice Policy Center to pursue criminal justice analysis at the state level.

Recommendation 8. Create a Legislative Workgroup of the Sentencing Commission.

San Francisco has successfully enacted innovative policies and programs to reduce its reliance on incarceration. However, the County will be stymied in its ability to achieve its full mandate while state sentencing law and policy remains fixed. Recognizing this, the San Francisco Sentencing Commission recommends the creation of a subcommittee to engage and educate the Legislature about opportunities for statewide reform.

Recommendation 9. Formalize Sentencing Commission and Reentry Council collaboration to finalize the San Francisco Criminal Justice Masterplan.

To ensure that the San Francisco Criminal Justice Masterplan is inclusive and coalesces other planning efforts, the San Francisco Sentencing Commission recommends that the Sentencing Commission and Reentry Council work collaboratively to finalize a Criminal Justice Masterplan. Such collaboration will incorporate past efforts of both entities including but not limited to the work of the Recidivism Workgroup of the Sentencing Commission and Sub Committees of the Reentry Council.

Recommendation 10. Create a Workgroup on Behavioral and Mental Health.

The Sentencing Commission recommends the creation of a sub-committee to consider replicating components of the Miami-Dade County Criminal Mental Health Project (CMHP) in San Francisco. This sub-committee will assess what is already underway in San Francisco, including the comprehensive planning and prioritization completed by the Re-Envisioning the Jail Workgroup, and identify additional interventions and changes needed to create a system with fidelity to the CMHP model.

II. BACKGROUND

The San Francisco Sentencing Commission, an initiative of the District Attorney's Office, was created through local legislation to analyze sentencing patterns and outcomes, to advise the Mayor, Board of Supervisors, and other City departments on the best approaches to improve public safety, reduce recidivism, and to make recommendations for sentencing reforms that utilize best practices in criminal justice. Ultimately, the commission will make recommendations that establish a sentencing system that retains meaningful judicial discretion, avoids unwarranted disparity, recognizes the most efficient and effective use of correctional resources, and provides a meaningful array of sentencing options. The mandate of the Sentencing Commission includes the following:

- Evaluate effective and appropriate sentences for the most violent offenders;
- Explore opportunities for drug law reform;
- Examine inconsistencies in the penal code related to realignment sentencing; and
- Identify and define the most important factors that reduce recidivism.

The Sentencing Commission was created by County Ordinance 10-12 which amended the San Francisco Administrative Code by adding Article 25, Sections 5.250 through 5.250-3. The purpose of the Sentencing Commission is to encourage the development of criminal sentencing strategies that reduce recidivism, prioritize public safety and victim protection, emphasize fairness, employ evidence-based best practices and efficiently utilize San Francisco's criminal justice resources. The Sentencing Commission is an advisory body to the Mayor and the Board of Supervisors.

Commission Membership

The San Francisco Sentencing Commission membership was fully formed in July 2012 and subsequently renewed in 2015. A current list of commission members and qualifications is found in Appendix A. The membership of the Sentencing Commission was developed to ensure representation from City and County partners directly involved in the criminal justice system, and those who come in contact with it. Each seat represents a valuable perspective on criminal justice proceedings; from time of arrest to post release and the critical access points for support services provided to victims and survivors of crime. In addition to this practical and service experience, the commission includes experts in sentencing and statistical analysis. These are essential components to the commission membership and contribute to the development of data-informed, sustainable improvements to our sentencing practices. While this membership serves as the core of the Sentencing Commission's work, the Commission invites broader participation from practitioners, researchers, and community to inform the proceedings.

List of member seats:

District Attorney's Office (Chair), Public Defender's Office, Adult Probation Department, Juvenile Probation Department, Sheriff's Department, Police Department, Department of Public Health, Reentry Council, Superior Court, member of a nonprofit organization serving victims chosen by the Family Violence Council, member of non-profit organization working with ex-offenders chosen by the Reentry Council, sentencing expert chosen by the Board of Supervisors, and an academic researcher with expertise in data analysis appointed by the Mayor. Representatives from BART Police began attending meetings in December 2015, and serve as non-voting members.

III. RECOMMENDATIONS IN REVIEW

The following summary documents the progress toward the 2013 to 2016 recommendations made by the Sentencing Commission.

Enhance the staffing of the Sentencing Commission

Alissa Skog, a graduate student at the UC Berkeley Goldman School of Public Policy (GSPP), was hired as the first Sentencing Commission Policy Fellow in January 2016. Ms. Skog served with the Commission for the full calendar year. Her responsibilities included: assist in the planning and execution of quarterly Commission meetings; prepare a concept paper to make the case for a California Justice Policy Institute; assist with the design and development of a San Francisco recidivism study; assist with the preparation of Annual Reports to the Mayor and Board of Supervisors; query databases, extract data, and merge data in preparation for statistical analysis; conduct statistical analysis to generate reports for the Sentencing Commission; research performance measurement in the criminal justice field; and evaluate database functionality and develop a strategy to enhance data collection efficiently and effectively across systems.

Funding for this fellowship expires at the end of 2016, however the District Attorney's Office has applied for funding from the MacArthur Foundation to support the continuation of the fellowship through 2017. The Sentencing Commission is also exploring the possibility of onboarding an unpaid intern to assist with the logistics and execution of quarterly meetings in 2017, in the eventuality that funding for the fellowship is not received.

Develop research partnerships with outside entities.

The Sentencing Commission continued to leverage Bay Area expertise and support during the 2016 session. Dr. Steve Raphael, Commission Member and UC Berkeley Public Policy Professor, and Dr. Mia Bird, Research Fellow at the Public Policy Institute of California (PPIC) and UC Berkeley Public Policy Lecturer, both contributed their expertise to the Recidivism Workgroup.

Dr. Raphael provided the Workgroup with examples of possible recidivism cohort designs from other jurisdictions, giving an in-depth overview of the recent recidivism study conducted by the Federal Sentencing Commission. He also played an active role in discussions about the key components of the methodological design of a local recidivism study, including duration of the study and definitions of "failure."

Dr. Bird co-leads a collaborative project between PPIC, the Bureau of State and Community Corrections (BSCC), California Department of Justice (Cal DOJ), California Department of Corrections and Rehabilitation (CDCR), Public Policy Institute of California (PPIC), and 12 counties known as the Multi County Study (MCS). This study is analyzing the impact of recent reforms on recidivism and other outcomes of interest, such as health care enrollment. Dr. Bird has attended Recidivism Workgroup meetings to share updates on progress and provide expertise as the group troubleshoots its cohort design. Dr. Bird has also offered to transfer the clean MCS data from San Francisco back to the Workgroup to be used in the local recidivism analysis, anticipated in early 2017.

The Sentencing Commission continued to strengthen its partnership with the Council of State Governments (CSG). Representatives from the CSG previously presented their findings from an analysis of San Francisco arrest data at the December 2012 Commission meeting. This September, Michael Thompson, Executive Director of the CSG Justice Center, delivered an overview of risk assessments, inmate behavioral health needs, and the state of people in jails with mental health issues.

He concluded his presentation with a brief description of the statewide Stepping Up initiative, , and encouraged San Francisco to join.

The San Francisco Sentencing Commission held a total of eight expert presentations in 2016. In addition to CSG, expert presentation was delivered from the following bodies: Californians for Safety and Justice, San Francisco Children of Incarcerated Parents' Partnership, The Bridging Group, Project WHAT!, UC Berkeley's School of Social Welfare, Center for Court Innovation, UC Berkeley's Goldman School of Public Policy, and the Eleventh Circuit Criminal Mental Health Project.

Expand Sentencing Commission Body.

The Sentencing Commission welcomed representation from the San Francisco Bay Area Rapid Transit (BART) Police Department in December 2015 as an active, non-voting member. BART Police have a regional footprint ensuring the safety of approximately 500,000 passengers a day. BART is the fifth largest rapid transit system in the country and BART Police prioritize innovation and community policing as an organizational philosophy. This collaboration is especially valuable not only to a transit police agency which runs through many communities and jurisdictions, but also to the collective goals of the Sentencing Commission; ensuring that we are making the best decisions for public safety at the earliest point of criminal justice intervention with all of our policing partners.

Incorporate trauma informed approaches throughout the justice system

Dr. Gena Castro Rodriguez, Chief of Victim Services and Parallel Justice Programs at the Office of the San Francisco District Attorney, presented advancements in the usage of trauma-informed approaches throughout San Francisco's criminal justice system at the June 2016 meeting. She spoke to statewide legislative efforts and the growth of San Francisco's Victim Services programs.

Dr. Castro Rodriguez noted Governor Brown signed the Crime Victims bill (AB 1140) into law in late 2015. Broadly speaking, this Act expands the capacity of counties to serve victims of crime. The Victim Services Division at the San Francisco District Attorney's Office advocated for the passage of this bill and helped drafters ensure the final language was victim-centered. Specifically, the final bill excluded the initial requirement that victims of domestic violence participate early in the process in order to be eligible for state funding. The final bill also allows individuals on probation to be treated as a victim of a crime and thus eligible for services.

The San Francisco Victims Services Division is able to supplement this new state funding with a local source of victim compensation funds, allowing the County to compensate those who are ineligible for state funding. The local fund has been crucial as it allows the Division to support victims who are unwilling to cooperate or participate in the investigation and are therefore ineligible for state funding. These funds fill a critical gap as many victims choose not to participate due to the anticipated re-traumatization that the victim and/or their families would experience. The Division has also expanded the types of services that the local fund can cover, including payment for in-home caregivers, food for families, and temporary relocation.

San Francisco's District Attorney's Office became the first in California to hire a Sentencing Planner in 2012. This new position, launched through Governor Jerry Brown's California Realignment Plan, works with prosecutors to craft sentencing approaches that address defendants' risk and needs, reduce recidivism, and promote public safety. The program has expanded over the past year, adding a second Sentencing Planner to focus entirely on 18-25 year-olds. The Division is looking to expand to misdemeanor and juvenile cases in the coming years.

Create a working definition of recidivism

In an effort to standardize measurement of and operationalize responses to recidivism in the city, the Sentencing Commission approved a multi-component definition of recidivism that allows all criminal justice agencies to monitor key points of ‘subsequent criminal justice system contact.’ This shift away from a singular definition of recidivism to ‘subsequent criminal justice system contact’ is a means to create a cohesive understanding between City and County departments, while maintaining individual department mandates and reporting requirements. San Francisco will track and report outcomes on three measures: rearrest, rearraignment, and reconviction.¹

Table One: Subsequent Criminal Justice System Contact Measures

Subsequent Contact	Measurement	Policy Implications
Rearrest	First instance of arrest after an inmate is released from state prison or local custody.	System input that can inform enforcement, supervision, and clinical strategies.
Rearraignment	First arraignment after release.	Provides opportunity to track subsequent use of court and custody resources.
Reconviction	First conviction after release.	Most commonly accepted subsequent contact point used by California state agencies for measuring recidivism. This ultimate case outcome is the most resource intensive subsequent system contact.

Create a recidivism dashboard through the Justice Information Tracking System (JUSTIS)

Staff from the Office of the San Francisco District Attorney applied for and were accepted to be part of a data coaching program on behalf of the Sentencing Commission. The program, GovLab, is a data-driven policy initiative housed at New York University. Staff are using this opportunity to inform the design and operational set up of a San Francisco recidivism dashboard. This dashboard will offer an interface that would allow key decision-makers to review information in real time and make decisions about resource allocation for criminal justice interventions ranging from pre-plea through post-conviction supervision and programming. It would also be a tool to inform the public about how we are collectively reaching our goal to reduce recidivism in the criminal justice system.

Sentencing Commission staff also met with other local bodies participating in GovLab, including the Judicial Council, Center on Juvenile and Criminal Justice (CJCJ), and the California Department of Justice. After a regional meeting to discuss their projects, Sentencing Commission staff are hopeful that there will be an ongoing effort toward data sharing amongst these agencies.

The City and County of San Francisco has also signed on to participate in the White House Data-Driven Justice Initiative (DDJ). The DDJ is a bipartisan coalition of 67 city, county, and state governments that have committed to using data-driven strategies to reduce unnecessary incarceration in jails. Particularly, the DDJ is committed to strategies that divert low-level offenders with mental illness, and change approaches to pre-trial incarceration to reduce the number of low-risk offenders in custody. This initiative is a great resource to advance the recidivism dashboard and broader mission of the Sentencing Commission.

Create a specialty court for young adults 18-25 years old.

The San Francisco Sentencing Commission recognized the need to address the specific criminal justice needs of the 18 to 25 year old population. To this end, in 2014, the Sentencing Commission recommended the creation of a court that solely handles young adult defendant cases, with the goal of

¹ Rearrest includes custodial arrests and misdemeanor citations.

providing sentences and services that address the specific needs of this population. In the summer of 2015 the Young Adult Court (YAC) was established. As the first young adult court in the nation to handle serious and violent cases, the YAC strives to align opportunities for accountability and transformation with the unique needs and developmental stage of 18 to 25 year olds. On November 15, YAC held its first graduation ceremony, celebrating seven young men and women.

Invest in pre-booking and pre-charging diversion programs for drug offenses.

Throughout the year, the Law Enforcement Assisted Diversion (LEAD) Workgroup has held a series of local meetings attended by many members of the Sentencing Commission and/or by the organizations they represent, including one attended by representatives from the Seattle LEAD team. Meetings were organized around stakeholders, including law enforcement, social services, and community members, providing broad opportunities to learn about LEAD. In 2016, San Francisco finalized the agreement for the LEAD Policy Coordinating Group, which will develop the LEAD eligibility criteria and referral process.

The Workgroup temporarily changed the program name from LEAD to Assistance Before Law Enforcement (ABLE), as members felt this more accurately represented the design of the San Francisco program. There was much discussion about the value of using this unique name or reverting back to the nationally recognized program title at the June Sentencing Commission meeting. Ultimately, the Commission retained the LEAD name, determining that it was necessary to convey fidelity to the model, and prevent confusion that may arise in discussions about the program outside of San Francisco.

With funding from the Drug Policy Alliance (DPA), San Francisco is holding trainings for both BART Police line officers and the San Francisco Police Department. These meetings were temporarily put on hold as the lead trainer, the Seattle National Technical Assistance Bureau, is running on a limited capacity, and has a narrow window in which staffers can travel to California to provide technical assistance. In the interim, DPA is continuing to work with each of the individual stakeholders to better assess current conditions.

At the state level, the Governor's 2017 Budget includes \$15 million for a pre-arrest diversion pilot program. After meeting with San Francisco agencies in the spring, members of the Seattle LEAD team held a successful briefing for State legislators, encouraging the state to create funding for a statewide LEAD pilot. The 2017 funding is for three pilot localities across the state, and San Francisco is particularly well-positioned for the pilot, as the County has done much of the necessary groundwork for eligibility. Applications are due February 1, 2017 to support a two-year pilot and evaluation. DPA, as the technical assistance provider, will reconvene the LEAD Policy Coordinating Group to respond to the Request for Proposal (RFP) upon release next year.

Proposition 47, the Safe Neighborhoods and Schools Act

In 2013, the San Francisco Sentencing Commission recommended Penal Code reform legislation to change the penalty for drug possession for personal use from a felony to a misdemeanor. The goal of this reform was to help reduce spending on prisons and jails, and invest additional resources in drug treatment, mental health, and other community-based services. It would also facilitate reentry and reduce recidivism by removing consequences that result from a felony conviction, including barriers to employment, housing, financial aid, and public benefits. During the 2014 California general election, the California citizenry voted to require misdemeanor sentences instead of felony sentences for six types of drug and property offenses through Proposition 47, the Safe Neighborhoods and Schools Act. The savings from this reform will be invested in grants to support school truancy and dropout prevention,

victims' services, mental health and drug treatment, and other programs designed to reduce recidivism and improve public safety.

In 2016, the Department of Finance, as part of the Governor's budget, released preliminary estimates for the Safe Neighborhoods and Schools Funds. The Governor's calculation of Prop. 47 savings was approximately \$40 million, significantly lower than the \$100 - \$200 million consistently projected by the Legislative Analyst's Office (LAO). The California Budget & Policy Center, an independent analytical body, attributes this variance to the assumption in the Governor's calculation that Prop. 47 has primarily reduced the need for state prison beds, rather than for "contract beds." According to Department of Finance estimates, the annual marginal cost of sending a person to state prison (\$9,253) is approximately two-thirds less than the cost of contracting for a bed, thus would significantly impact the final calculated savings.² Disagreement over the "correct" formula arose because Prop. 47 does not require the Department of Finance to utilize a specific methodology to calculate savings.

The Bureau of State and Community Corrections (BSCC) issued a Request for Proposals in November to award \$34.36 million in grants from Prop. 47 savings. The grants program is intended for recidivism-reduction programs that include mental health services, substance use disorder treatment, diversion programs, or a combination. Interested applicants must notify the BSCC of their intent to apply by January 29, 2017 and the final proposal must be submitted by February 21, 2017. Awardees should be notified in early June, with a tentative start date of June 16, 2017.

The San Francisco Sentencing Commission and its individual member agencies will work collaboratively with other departments to support San Francisco's application, which will be led by the Department of Public Health.

² Graves, Scott. (2016). "Five Facts about the Governor's Calculation of State Savings from Proposition 47." California Budget and Policy Center. Retrieved from: <http://calbudgetcenter.org/blog/five-facts-governors-calculation-state-savings-proposition-47/>.

IV. 2016 MEETING TOPICS & PRESENTERS

The Sentencing Commission held four meetings in 2016. Full details are available on <http://www.sfdistrictattorney.org/>. Meeting dates and selected subject matter presenters are provided below.

March 30, 2016

Review of San Francisco Sentencing Trends

Presenter: Maria McKee, Principal Analyst, San Francisco District Attorney's Office

Review of Realignment Sentencing Trends

Presenter: Leah Rothstein, Director of Research, San Francisco Adult Probation Department

California Sentencing Legislation and Policy Update

Presenter: Selena Teji, Research Manager, Californian for Safety and Justice

June 15, 2016

Project WHAT! Policy Platform

Presenter: Alisha Murdock, Program Association, Community Works West

Children, Parents, and Incarceration: Results of the San Francisco Jail Survey

Presenter: Katie Kramer, CEO, The Bridging Group

Enhancing Trauma-Informed Practices and the Sentencing Planner

Presenter: Dr. Gena Castro Rodriguez, Chief of Victim Services and Parallel Justice Programs, San Francisco District Attorney's Office

Review of San Francisco Juvenile Probation Department Sentencing Trends

Presenter: Allan Nance, Chief Juvenile Probation, San Francisco Juvenile Probation Department

September 14, 2016

Update: Law Enforcement Assisted Diversion Workgroup

Presenter: Laura Thomas, Deputy State Director, Drug Policy Alliance

Risk and Needs Assessment Overview

Presenter: Michael Thompson, Director, Council of State Governments Justice Center

Risk, Race & Recidivism: Predictive Bias and Disparate Impact

Presenter: Dr. Jennifer Skeem, Professor of Social Welfare and Public Policy, University of California, Berkeley

COMPAS Validation in New York City

Presenters: Sarah Picard-Fritsche, Associate Director of Research, Center for Court Innovation, and Dr. Warren Reich, Professor of Religion and Ethics, Georgetown University

December 14, 2016

California Sentencing Ballot Initiative and Legislative Update

Presenter: Selena Teji, Research Manager, Californian for Safety and Justice

Miami-Dade County's Criminal Mental Health Project

Presenter: Honorable Steven Leifman, Judge, Miami-Dade County, Florida

Power of Data Sharing

Presenter: Dr. Steven Raphael, Professor of Public Policy, University of California, Berkeley

V. RECOMMENDATIONS

Recommendation 1. *Reauthorize the Sentencing Commission.*

As set forth in County Ordinance 10-12 which amended the San Francisco Administrative Code by adding Article 25, Sections 5.250 through 5.250-3, the San Francisco Sentencing Commission was set to sunset on June 1, 2015. In 2015, the Mayor and Board of Supervisors reauthorized the Sentencing Commission through December 31, 2017. In the absence of a state level Sentencing Commission, the San Francisco Sentencing Commission recommends to the Mayor and Board of Supervisors an extension of the Commission's purpose and authority until December 31, 2019.

In addition to reauthorization, the San Francisco Sentencing Commission recommends an expansion of its mandate to include the development of a criminal justice master plan for the City and County of San Francisco in collaboration with the Reentry Council of the City and County of San Francisco (hereafter "Reentry Council").

The San Francisco Commission also recommends that a member seat be added for a representative from the Bay Area Rapid Transit (BART) Police Department. As the membership of the Commission was developed to ensure representation from city and county partners directly involved in the criminal justice system and those who come in contact with it, it is only appropriate to include BART Police as a voting member. BART Police has attended all Sentencing Commission meetings since December 2015, and has been an important partner in Sentencing Commission activities, most notably the LEAD pilot.

In accordance with Section. 5.250-4. Sunset Clause, the Commission submits this report to the Mayor and Board of Supervisors recommending that the Commission should continue to operate through December 31, 2019.

Recommendation 2. *Invest in Justice Information Tracking System (JUSTIS) to become a neutral steward of countywide criminal justice data.*

JUSTIS has historically focused on integrating data across the case management systems of San Francisco's criminal justice agencies and decommissioning the Court Management System (CMS). In addition to this important function, the Sentencing Commission recognizes that JUSTIS is uniquely positioned to play a central role in enhancing the transparency and accountability of San Francisco's criminal justice system. Full implementation of the JUSTIS system will close information gaps and help improve the quality of services through ongoing evaluation and the facilitation of innovative policy changes and programs. Government agencies, the press, academic institutions and others have a legitimate need for certain public safety and criminal justice information. JUSTIS provides a coherent and consistent approach to mechanisms that will enable partners to efficiently provide data and analysis with the highest reliability.

It is generally acknowledged that many of the individuals who frequently come into contact with the criminal justice system also utilize other social services at high rates. Understanding the full spectrum of system use is integral to designing policies and programs to sustainably reduce recidivism. In recognition of this, the Sentencing Commission recommends expanding the membership of JUSTIS to include representatives from key service agencies, such as the Department of Homelessness and Supportive Housing.

Additionally, the Sentencing Commission recommends that JUSTIS review the data already collected by individual agencies and the process by which it is collected. Many agencies systematically track data required for internal reviews and external reporting. However, a system-wide review conducted by JUSTIS can help to identify gaps in data collection that will inhibit cross-system analysis.

To that end, the Sentencing Commission recommends additional investment in JUSTIS to enable the body to serve as a neutral steward of criminal justice data in the future. The Sentencing Commission recommends enhancing the role of JUSTIS to include the following two core functions:

Application Development: Facilitate the development of applications using data from multiple agencies to inform emergent response, investigations, and larger public safety strategies in real-time. An immediate project priority is the development of a recidivism dashboard, a web-based self-service recidivism analysis tool, including a customizable dashboard that would present data by time period, intervention, sub-population, and recidivism type (re-incarceration, re-arraignment, re-conviction, etc.).

In December, the San Francisco District Attorney's Office as staff to the Sentencing Commission, submitted an application to the MacArthur Safety and Justice Challenge to fund the initial launch of the recidivism dashboard. In addition to funding the staff and resources necessary to facilitate planning and data transfer, this grant proposes to engage the Bay Area tech community of computer engineers and developers by hosting a 'Design Sprint.' This event will bring together relevant stakeholders for a one-day session to create recidivism dashboard mockups.

Integrated Justice System Metrics and Technical Assistance: Regular and coordinated review of local crime and sentencing trends, including the analysis of crime, arrest, sentencing, jail population, jail and prison demographics and supervision trends is an essential tool for the deployment of public safety resources. Current research projects often operate in isolation, under the direction of individual departments, with limited dissemination of findings. JUSTIS creates an opportunity for departments to come together to make sense of data, and provide assistance in interpreting that data to make effective policy decisions at the system level.

Recommendation 3. Explore Partnership with Academic Institutions to Launch a San Francisco Justice Data Center

The City and County of San Francisco has demonstrated a strong commitment to data-driven criminal justice policy by joining the White House's Data Driven Justice Initiative (DDJ). One of the primary strategies of this initiative is to enhance cross-agency data sharing, with a goal of reducing overreliance on encounters with the criminal justice system and overreliance on emergency healthcare. Creating the systems, processes, and protocols to enable this collaboration will be a time and resource intensive endeavor. Moreover, once established, it will be critical to have the analytical capacity to use data and evidence-based programming to inform and develop policy that will have the biggest impact, both locally and nationally.

San Francisco is seated in between two of the world's leading research universities, UC Berkeley and Stanford University and the Sentencing Commission and its individual members have a history of collaborating both. The Sentencing Commission recommends that San Francisco explore opportunities to formally collaborate with these universities to create a body, similar to the University of Chicago Crime Lab, whereby academic experts are available to assist with data collection, database design, program evaluation, and policy analysis.

To that end, the Sentencing Commission recommends creating a working group to look into the feasibility of partnering with an academic institution to launch the San Francisco Justice Data Center and build on JUSTIS data capacity.

Recommendation 4. *Invest in policies and programs that address the specific needs of children of incarcerated parents*

A 2015 survey conducted by the San Francisco Children of Incarcerated Parents Partnership (SFCIPP) found that the 59 percent of individuals incarcerated in San Francisco jails were parents to approximately 1,110 children in the County. In the same year, Project WHAT! surveyed children of incarcerated parents, families of incarcerated individuals, and service providers to inform 10 policy recommendations to enable San Francisco's children with incarcerated parents to live free of judgement and blame. Five policy recommendations remain open:

- Free phone calls between children and incarcerated parents at San Francisco County Jail.
- When a parent is transferred from San Francisco County Jail to state prison, the city of San Francisco should provide funding to the family to cover transportation costs for a minimum of six visits per year.
- Re-entry support services should be offered to all children and their parents who are being released from San Francisco County Jail.
- When a parent has been incarcerated for more than one year, restorative justice services should be offered to all children whose parents are released from San Francisco County Jail, both pre- and post-release.
- Free therapy and/or counseling should be offered to all children and youth with incarcerated parents.

At the June 2016 Sentencing Commission meeting, members passed a motion to support Project WHAT! achieve these remaining policy recommendations. As such, the Sentencing Commission recommends that the City and County of San Francisco should engage in strategies that guarantee implementation of the remaining policy recommendations.

Recommendation 5. *Submit an application for the statewide LEAD pilot program*

The Governor's 2016-2017 state budget included \$15 million to establish the Law Enforcement Assisted Diversion (LEAD) pilot program. The funds will be allocated to up to three jurisdictions via a competitive grant program administered by the Bureau of State and Community Corrections (BSCC). San Francisco is a very strong contender for the pilot funding, due largely to the work of the Sentencing Commission over the past few years to bring the LEAD model to San Francisco.

LEAD has also received support from a greater number of stakeholders in San Francisco this year. The Workgroup to Re-Envision the Jail, chaired by the Sheriff's Department, Department of Public Health, and Taxpayers for Public Safety, underwent an 8-month public process to identify strategies to permanently close County Jails #3 and #4. Piloting LEAD was identified as one of the priority strategies for the Mayor and Board of Supervisors to implement, with 77 percent of members ranking it as a top priority.³ It is promising to see the program enjoying support from agencies and individuals external to the Sentencing Commission.

³ A full list of the Workgroup's recommended strategies and prioritization can be found here: <https://www.sfdph.org/dph/files/jrp/WG8-Prioritization-Results.pdf>.

The Sentencing Commission will support San Francisco in its application for the LEAD pilot grant program in 2017.

Additionally, the Sentencing Commission recommends that the San Francisco Police Departments and BART Police be included in the proposal design and development to the best of their ability. This is necessary to design a LEAD pilot that is both feasible and has the buy-in of line officers who will be in charge of day-to-day implementation.

Recommendation 6. Review and recommend changes to CCSF's usage of risk and needs assessments, with an eye toward improving efficiency and equity

In recent years, there has been a resurgence of the usage of risk and needs assessments throughout the criminal justice system. Risk assessments are used at many levels, thus have the ability – according to Dr. Jennifer Skeem – to scaffold multiple reform efforts that are underway to unwind mass incarceration. Yet, advocacy groups such as ProPublica, have raised concerns about that risk assessment may exacerbate unwanted and unjust disparities.

Key in untangling this debate is ensuring risk assessments are validated locally. San Francisco, in 2015, commissioned Jim Austin to conduct a local validation of COMPAS. The study determined that the COMPAS instrument, as used by the Adult Probation Department, is producing valid assessments of risk. The most predictive factors tend to be items that measure prior criminal record that is typically found in other risk assessment systems.

Yet, even if a risk assessment is validated, its use could create disparate impact by race and ethnicity. Even if an instrument perfectly measures risk, the results can be used in a manner that creates inequitable social consequences.⁴ As such, jurisdictions may be less worried about the actual difference in average risk scores between races and ethnicities; rather the use of and the decisions that results inform would be of greater concern.⁵ Given these concerns, the Sentencing Commission recommends that the criminal justice department leadership pursue a strategy to regularly review and assess both the fairness and impacts of the risk assessment instruments in use by San Francisco criminal justice agencies.

In order to develop a strategy, the Sentencing Commission will require further expert testimony and research assistance. The Risk-Resilience Research Lab at UC Berkeley – led by Dr. Skeem – is currently devising strategies jurisdictions can adopt to balance predictive utility of risk assessment scores with mean score differences between race and ethnicity. The San Francisco Sentencing Commission should invite Dr. Skeem and her staff to present their findings in 2017 and help the County strategize how best to tailor one (or more) to its local setting.

San Francisco should also have an accessible repository of all risk and needs assessments utilized throughout the County's criminal justice system. This database should indicate if the tool has been locally validated or not. An initial summary of tools in use was created in advance of the September 2016 Sentencing Commission meeting, but should be reviewed and modified by all member agencies.

⁴ Skeem, Jennifer L. and Christopher T. Lowencamp. (2016). Risk, Race, and Recidivism: Predictive Bias and Disparate Impact. *Criminology*. Vol. 00, 1-33.

⁵

Recommendation 7. Advocate for the establishment of a California Justice Policy Center

In the past few years, California has begun to turn the tide on its overreliance on incarceration and emerged as a national leader in the effort to rethink and reform justice, corrections and supervision policies. These efforts represent important steps, but much work remains if California is to sustainably reform its criminal justice system. The San Francisco Sentencing Commission joins a long line of voices to call for the establishment of a Criminal Justice Policy Center. A California Justice Policy Center is required to consolidate the empirical data and establish the authority necessary for California to continue pioneering sustainable criminal justice reform.

The San Francisco Sentencing Commission has created a concept paper which draws on best practices from the local San Francisco Sentencing Commission and select nationwide entities. Among the potential functions of a California Justice Policy Center, three emerge as essential.

1. Utilize empirical evidence and data to **review and make recommendations to improve existing sentencing structures and criminal justice practices.**
2. In collaboration with existing agencies, establish a **single criminal justice database** to collect, store, and analyze state and county-level data.
3. Provide a space to **incubate innovative criminal justice reforms** that have demonstrated success in California's counties or in other states.

The San Francisco Sentencing Commission urges the Governor and California Legislature to create a California Justice Policy Center. Such a body will not only better enable the state to assess performance and identify successful, cost-effective policies, but can also become a repository of evidence-based reforms that can encourage and inform reform efforts in other states.

Recommendation 8. Create a Legislative Workgroup of the Sentencing Commission

San Francisco has independently enacted policy reforms and launched innovative programs to reduce the number of its residents in prison, jail, and under supervision. However, there are limits to what San Francisco is able to achieve while state law remains fixed. Recognizing San Francisco's leadership in criminal justice reform, the Sentencing Commission recommends creating a subcommittee to educate and engage the California Legislature about opportunities for broader reform.

This recommendation builds from the successful role the Sentencing Commission previously has played in reforming statewide sentencing law and practice. In particular, the Commission recommended penal code reform legislation to change the penalty for drug possession for personal use from a felony to a misdemeanor in 2013. Subsequently, this reform – the Safe Neighborhoods and Schools Act (Prop. 47) – was passed by California's voters in 2014.

The subcommittee should identify opportunities to scale up existing programs, such as the Young Adult Court. However, it should not be limited only to the replication of successful local efforts. Rather, should look for opportunities for broader reform, with a special attention to changes that can help the system better serve special populations, such as those with mental health issues, substance abuse, and co-occurring disorders.

Recommendation 9. Formalize Sentencing Commission and Reentry Council collaboration to finalize the San Francisco Criminal Justice Master Plan.

Criminal justice system reform must be guided by clear objectives, driven by empirical evidence, and shaped by an acknowledgement of the cross-agency influences at play. Recognizing this philosophy, the

San Francisco Sentencing Commission recommends the creation of a countywide Criminal Justice Masterplan is to identify concrete and actionable goals that further public safety and enhance community vitality.

To ensure that the San Francisco Criminal Justice Masterplan is inclusive and coalesces other planning efforts, the San Francisco Sentencing Commission recommends that the Sentencing Commission and Reentry Council work collaboratively to finalize a Criminal Justice Masterplan. As a collaborative product, the Criminal Justice Masterplan will build upon past successes and reinvigorate a commitment from criminal justice partners to hold each other accountable in the pursuit of established goals.

The Criminal Justice Masterplan will identify policy reform, research and evaluation, direct service, and capital investments necessary to further public safety and enhance community vitality. These may include, but are not limited to, the following:

- Strengthen the Community Safety Net for Vulnerable & High Risk/High Need Individuals;
- Expand Diversion Options at Point of Law Enforcement Contact or Arrest;
- Expand and Enhance Alternatives to Pretrial Detention;
- Strengthen and Expand Evidence-Based Practices in Criminal Sentencing and Court Monitoring;
- Expand Availability of Alternatives to Incarceration;
- Strengthen and Expand Community Supervision Options.

In 2014, in an effort to overcome the challenge of jail overcrowding and increasing demands on criminal justice resources, Placer County commissioned a Criminal Justice System Master Plan – issuing a number of short-, medium-, and long-term recommendations to not only “react to change, but to influence and shape that change.”⁶ Other jurisdictions, including the State of Oregon, are developing similar frameworks which can offer possible models for San Francisco.

Recommendation 10. *Create a Workgroup on Behavioral and Mental Health*

San Francisco has committed itself to reducing the number of individuals with behavioral and mental health issues in its jail. Countywide bodies, such as the Workgroup to Re-Envision the Jail, have undertaken comprehensive planning and prioritization of solutions to address this problem. As part of these collective efforts, the December Sentencing Commission featured a presentation by Judge Steven Leifman about the Eleventh Judicial Circuit Criminal Mental Health Project (CMHP) to decriminalize mental illness. As an outcome of this presentation, the Sentencing Commission recommends the creation of a sub-committee to assess opportunities for San Francisco to adopt best practices from the CHMP model.

The CMHP has been built over 15 years and includes both pre- and post-booking jail diversion programs. The pre-booking program follows the Crisis Intervention Team (CIT) model, in which individuals with mental illness are diverted to crisis units to receive treatment in lieu of arrest. In the post-booking program, staff are working within the jails to identify individuals in acute psychiatric distress. After an eligibility screen, judges can approve these individuals for transfer from the jail to the crisis unit. Once at the crisis unit, individuals receive treatment and supportive services. Case managers are assigned to each individual to assist with the identification of supportive housing, outpatient treatment, and other services critical to their success once they return to the community. If the individual completes this one-year program, all charges are dropped.

San Francisco is already piloting components of the CMHP, such as pre-arrest diversion through LEAD. The Sentencing Commission sub-committee should map existing policies and programs in San Francisco against the model set forth by the CMHP. This will help the County identify which CMHP components San Francisco is already implementing and gaps that still remain. As a final deliverable, this sub-committee should outline the steps that San Francisco would need to take in order to build a system with fidelity to the CMHP model.

VI. MEMBERSHIP UPDATES

Membership Transitions

In the 2016 calendar year the San Francisco Sentencing Commission experienced transitions of three member seats. Commission member Ross Mirikami, stepped down as the Sheriff of the City and County of San Francisco in January 2016. As the newly elected Sheriff, the Sentencing Commission is happy to welcome Vicki Hennessey. Secondly, the Police Chief of the City and County of San Francisco Greg Suhr resigned in May 2016. Interim Police Chief Toney Chaplin has represented the department since June 2016. Lastly, Joanna Hernandez stepped down from the Sentencing Commission effective after the December 14, 2016 meeting. The Sentencing Commission is currently seeking a replacement to represent non-profit organizations working with ex-offenders to be appointed by the Reentry Council.

Position of Superior Court

The San Francisco Superior Court is an invited member of the San Francisco Sentencing Commission. After repeated invitations to join the proceedings of the Sentencing Commission the San Francisco Superior Court released the following statement:

The Court has stated that it will not participate in the Sentencing Commission because it will present several serious breaches of judicial ethics. In addition, there are concerns about the issue of separation of power.

During the August 2014 meeting of the Sentencing Commission, Senior United States District Judge Charles R. Breyer provided testimony on the Federal Sentencing Commission, where the courts have an active seat. Judge Breyer further recommended that the San Francisco Sentencing Commission solicit representation from the courts stating that judges need to be involved to make meaningful practice changes. Another promising development was the decision by the Superior Court to participate in the Re-envisioning the Jail Workgroup meetings and Reentry Council. The Sentencing Commission hopes this experience will encourage Superior Court participation in other cross-agency criminal justice bodies. In the meantime, the Sentencing Commission will continue to work to inform the Superior Court of the Commission's research and recommendations and explore the potential for revisiting the San Francisco Superior Court's role on the Commission. It is the hope of the San Francisco Sentencing Commission that the Administration Office of the Courts will appoint a representative to the 2017 Sentencing Commission.

VII. FUTURE ACTIVITIES

The San Francisco Sentencing Commission is currently scheduled to conduct four sessions in 2017. The tentative 2017 Session topics are identified below.

- Overview of San Francisco Sentencing Trends
- 2016 Sentencing Policy and Legislative Updates
- Department of Children, Youth and Their Families Service Allocation Plan (SAP)
- Improving Transition Outcomes for Juvenile Justice Involved Youth
- Re-imagining Justice: Innovations in Defense, Prosecution, and the Courts
- Justice Reinvestment Principles: Opportunities for San Francisco
- Strategies to Reduce Disparate Impact in Risk and Needs Assessments
- Trauma-Informed Approaches to Working with Children who Witness Violence

VIII. CONCLUSION

In 2016, the San Francisco Sentencing Commission successfully completed the fourth full year of hearings covering policies to address the specific needs of children of incarcerated parents, the use of risk and needs assessments throughout the criminal justice system, cross-agency data sharing and collaboration, and alternatives to incarceration to address serious mental illness.

The Sentencing Commission utilized the expert testimony and research presented at the 2016 meetings to develop the following seven recommendations:

1. Reauthorize the Sentencing Commission.
2. Invest in Justice Information Tracking System (JUSTIS) to become a neutral steward of countywide criminal justice data.
3. Explore Partnership with Academic Institutions to Launch a San Francisco Justice Data Center.
4. Invest in policies and programs that address the specific needs of children of incarcerated parents.
5. Submit an application for the statewide LEAD pilot program
6. Review and recommend changes to CCSF's usage of risk and needs assessments, with an eye toward
7. Advocate for the establishment of a California Justice Policy Institute.
8. Formalize Sentencing Commission and Reentry Council collaboration to finalize the San Francisco Criminal Justice Master Plan
9. Create a Legislative Workgroup of the Sentencing Commission
10. Create a Workgroup on Behavioral and Mental Health

While this policy body is locally mandated, members are confident that the findings and recommendations that will come from the remaining proceedings will support not only San Franciscans, but all Californians.

Appendix A: San Francisco Sentencing Commission Members

As of December 14, 2016

Agencies & Bodies	Member
District Attorneys' Office	George Gascón, District Attorney
Public Defender	Jeff Adachi, Public Defender
Adult Probation	Karen Fletcher, Adult Probation Chief
Juvenile Probation	Allen Nance, Juvenile Probation Chief
Sheriff	Vicki Hennessy, Sheriff
Police	Toney Chaplin, Interim Police Chief
Department of Public Health	Barbara Garcia, Director
Reentry Council	Karen Roye, Director Child Support Services
Superior Court*	Presiding Judge
<i>Member of a nonprofit org serving victims chosen by the</i> Family Violence Council	Jerel McCrary Attorney
<i>Member of non-profit org working with ex-offenders chosen by the</i> Reentry Council	Vacant, effective December 15, 2016
Sentencing Expert chosen by the Board of Supervisors	Theshia Naidoo Senior Staff Attorney Drug Policy Alliance
Academic Researcher with expertise in data analysis appointed by the Mayor	Steven Raphael PhD Professor Goldman School of Public Policy University of California Berkeley

*Invited