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# A Primer on the 2011 Corrections Realignment: Why California Placed Felons Under County Control

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# A Primer on the 2011 Corrections Realignment: Why California Placed Felons Under County Control

Steven Thomas Fazzi\*

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## I. INTRODUCTION

As 2011 dawned, California faced a monumental budget deficit.<sup>1</sup> On January 10, Governor Edmund G. Brown, Jr. implored the state legislature to address the shortfall by enacting a large-scale budgetary realignment.<sup>2</sup> Budgetary realignments operate by “shifting authority, responsibility, and money for many programs from state agencies to counties and sometimes cities or local districts.”<sup>3</sup> Interestingly, Governor Brown’s proposal embodied what may be termed a “corrections realignment” component.<sup>4</sup> It called on the legislature to transfer certain costly state corrections responsibilities (namely, felon management duties) to counties.<sup>5</sup> In effect, corrections realignment would place certain prisoners, of whom, up to that point, had been state prisoners under county control. The governor predicted that a realignment of the state’s felon management responsibilities would reduce California’s high corrections expenditures and help alleviate the state’s fiscal woes.<sup>6</sup>

While the governor and the legislature were working to close the budget gap, California was in the midst of waging a major legal battle. In 2009, a federal court had ordered California to reduce overcrowding in its prisons to cure unconstitutional prisoner healthcare defects,<sup>7</sup> and the State had appealed the order to the United States Supreme Court.<sup>8</sup> The Court heard oral arguments in late 2010 and was in the midst of deliberations when Governor Brown first unveiled his budgetary realignment plan.<sup>9</sup> Ultimately, five of the nine Supreme Court Justices affirmed the prison population reduction order.<sup>10</sup> On the same day the Court issued its opinion, Governor Brown suggested the corrections realignment embodied in his budgetary realignment proposal would help California satisfy the

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1. See EDMUND G. BROWN, JR., GOVERNOR, CAL. STATE, 2011–12 GOVERNOR’S BUDGET SUMMARY 4 (2011), available at [http://www.dof.ca.gov/budget/historical/2011-12/governors/summary/documents/2011-12\\_Budget\\_Summary-State\\_of\\_California.pdf](http://www.dof.ca.gov/budget/historical/2011-12/governors/summary/documents/2011-12_Budget_Summary-State_of_California.pdf) (on file with the *McGeorge Law Review*) (projecting California’s 2011–12 budget to have a \$25.4 billion deficit).

2. See discussion *infra* Part III.A.2 (noting Governor Brown’s recommendation of a budgetary realignment to the California State Legislature).

3. DEAN MISCZYNSKI, PUB. POL’Y INST. OF CAL., RETHINKING THE STATE-LOCAL RELATIONSHIP: CORRECTIONS 6 (2011).

4. See discussion *infra* Part III.A.3 (noting the 2011 budgetary realignment proposal contained a corrections realignment aspect).

5. See *infra* text accompanying notes 70–73 (describing the corrections realignment component of the budgetary realignment plan as a cost-savings measure).

6. See *infra* text accompanying notes 74–76 (discussing why and to what degree Governor Brown anticipated corrections realignment to generate savings for California).

7. See *infra* text accompanying notes 105–08 (discussing the federal court’s prison population reduction order).

8. See *infra* text accompanying note 109 (noting California’s appeal to the Supreme Court and the Court’s grant of certiorari).

9. See *infra* text accompanying notes 117–19 (noting the timeframe for the Supreme Court’s deliberations on the federal court order relative to Governor Brown’s unveiling of budgetary realignment).

10. See *infra* text accompanying note 110 (noting that the Supreme Court’s holding was 5–4).

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order (because it would have the effect of rerouting flows of inmates from state prisons to county jails).<sup>11</sup>

The main body of this article focuses primarily on the motivations behind and consequences of the 2011 corrections realignment. Part II gives readers a brief overview of the legislation. Part III examines the legislation's fiscal and legal impetuses in detail. Part IV considers corrections realignment's likely effects and possible adverse consequences. Part V offers closing remarks.

Appendices A through C are concerned primarily with supplying a legal background for the 2011 corrections realignment legislation's statutory changes and then summarizing those changes. Appendices A through C are organized topically, with Appendix A discussing California's felon incarceration laws prior and subsequent to corrections realignment, Appendix B discussing California's post-release supervision laws before and after corrections realignment, and Appendix C discussing California's early release laws prior and subsequent to corrections realignment. Appendix D provides summary tables of the statutory code sections affected by California's 2011 corrections realignment legislation.

### II. THE 2011 CORRECTIONS REALIGNMENT IN BRIEF<sup>12</sup>

At its core, corrections realignment is about defining which level of government is responsible for managing California's felons—the state or the counties. With that in mind, it is useful to know what distinguishes felons from other criminal offenders. The answer, of course, is that felons are persons who have been convicted of at least one felony. But that begs the question, what is a felony? California law distinguishes types of crimes by the comparative harshness of their penalties.<sup>13</sup> Felonies are those crimes which prescribe the stiffest penalties. By statute, a felony is any crime whose minimum (or only) prescribed sentence exceeds one year of incarceration (every crime prescribing a lesser term of imprisonment or a fine, or some combination of a lesser term and a fine, is a misdemeanor or an infraction).<sup>14</sup> In essence, then, corrections realignment defines who is responsible for overseeing criminals whose minimum sentences exceed one year of imprisonment.

Part II.A explains that, before corrections realignment, the state had the responsibility to perform incarceration, post-release supervision, and parole

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11. See *infra* text accompanying notes 123–25 (noting Governor Brown publicly contemplated corrections realignment as a prison overcrowding reduction measure on the same day the Supreme Court affirmed the federal court order).

12. Before delving into the causes and likely consequences of corrections realignment, readers would benefit from having a working knowledge of legislation's functions. This section aims to provide a general sense of the scope and operation of the 2011 corrections realignment. For a more thorough discussion of the legislation and its statutory enactments and amendments, see discussion *infra* Appendices A–C.

13. See *infra* note 169 (providing California's punishment-based statutory definitions for crimes).

14. See *infra* note 169 and accompanying text (providing statutory definitions for felonies, misdemeanors, and infractions).

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revocation functions for each felon serving an executed sentence. For reasons that will be discussed in Part III, *infra*, the legislature enacted corrections realignment in early 2011 at Governor Brown's urging. Under the legislation, the state government passed key felon-management responsibilities to county governments. Part II.B indicates the degree to which counties now partake in the incarceration and supervision of felons serving executed sentences.

*A. California's Felon Management Landscape Before Corrections Realignment*

Before corrections realignment, the state's responsibility to manage felons was fairly comprehensive. The state incarcerated every felon serving an executed sentence because state law required every felony sentence to be executed, if at all, in a state prison.<sup>15</sup> The state's felon management responsibility also included post-release supervision because the law required all felons "released from . . . prison [to] spen[d] time . . . in state-supervised parole."<sup>16</sup> Finally, the state's responsibility included a potential incarceration function for every felon on parole because parolees who "violated the rules of their parole[] or committed . . . new crime[s] . . . could be arrested . . . and sent back to prison . . . ."<sup>17</sup>

*B. California's Felon Management Landscape After Corrections Realignment*

In post-realignment California, the state and the counties share the responsibility of managing felons to a greater extent than before. Corrections realignment became law in early 2011 when the California Legislature enacted and Governor Brown signed Assembly Bill (AB) 109.<sup>18</sup> AB 109 and its follow-up

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15. See *infra* note 170 (indicating why, prior to corrections realignment, felony sentences could be executed only in state prisons). Note that state prisons did not incarcerate all convicted felons but only felons serving executed sentences. The reason is state law frequently affords sentencing judges the ability to suspend a felon's executed sentence and impose an alternative sentencing disposition such as probation. For a discussion of alternative sentencing dispositions and California's statutory definition of probation, see *infra* note 188 and accompanying text. State trial judges have regularly suspended felons' prison sentences and imposed an alternative sentencing disposition. See MAC TAYLOR, CAL. LEGIS. ANALYST'S OFF., ACHIEVING BETTER OUTCOMES FOR ADULT PROBATION 6 (2009), available at [http://www.lao.ca.gov/2009/crim/probation/probation\\_052909.pdf](http://www.lao.ca.gov/2009/crim/probation/probation_052909.pdf) (on file with the *McGeorge Law Review*) ("[A]most three-quarters of adult felon offenders convicted in California in 2007 . . . were actually sentenced to probation or a combination of probation and jail."); MISCZYNSKI, *supra* note 3, at 12 ("In the 2009–10 fiscal year, about 323,000 people were on probation in California, with 249,000 for felony convictions.")

16. MISCZYNSKI, *supra* note 3, at 14. In general, "Parolees had to report to a state parole agent when they returned to their communities and were subject to rules (such as no guns, no association with gang members), drug tests and other inspections, and searches without search warrants." *Id.* at 11.

17. *Id.* at 14.

18. 2011 Cal. Stat. ch. 15; see also Senate Floor Vote of AB 109, Unofficial Ballot (Mar. 17, 2011), [http://leginfo.ca.gov/pub/11-12/bill/asm/ab\\_0101-0150/ab\\_109\\_vote\\_20110317\\_0334PM\\_sen\\_floor.html](http://leginfo.ca.gov/pub/11-12/bill/asm/ab_0101-0150/ab_109_vote_20110317_0334PM_sen_floor.html) (on file with the *McGeorge Law Review*) (reporting the Senate approved AB 109 by a 24-to-16 vote on March 17, 2011); Assembly Floor Vote of AB 109, Unofficial Ballot (Mar. 17, 2011), [http://leginfo.ca.gov/pub/11-12/bill/asm/ab\\_0101-0150/ab\\_109\\_vote\\_20110317\\_0334PM\\_asm\\_floor.html](http://leginfo.ca.gov/pub/11-12/bill/asm/ab_0101-0150/ab_109_vote_20110317_0334PM_asm_floor.html)

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bills<sup>19</sup> (“corrections realignment legislation”)<sup>20</sup> essentially sorted felons into three groups based on the legislatively determined seriousness of their crimes (low-level, mid-level, or high-level) and required counties to exercise certain felon-management functions for each group. The legislation set the respective state and county shares of responsibility over the groups of felons on a sliding-scale basis. In essence, corrections realignment used the legislatively determined seriousness of any particular group’s crimes as a proxy for its amenability to county control (in other words, its manageability) and apportioned felon management functions to counties accordingly.<sup>21</sup> As a result, felons whose crimes are the most serious are treated as the least amenable to county control and left predominantly to state control, while felons whose crimes are less serious are considered more manageable and placed under significant (or complete) county control.

### 1. Counties Exercise Complete Control over “Low-Level” Felons

For the purposes of corrections realignment, a felon whose commitment offense is non-violent, non-serious, and non-sexual, and who also has no prior convictions for any serious, violent, or sexual crime, is a “low-level” felon.<sup>22</sup> The

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12/bill/asm/ab\_0101-0150/ab\_109\_vote\_20110317\_0532PM\_asm\_floor.html (on file with the *McGeorge Law Review*) (reporting the Assembly approved AB 109 by a 51-to-27 vote on March 17, 2011); Signing Message from Edmund G. Brown, Jr., Cal. Gov., to the Members of the Cal. State Assembly (Apr. 5, 2011) [hereinafter AB 109 Signing Message] (on file with the *McGeorge Law Review*) (signing AB 109 into law).

19. AB 109 was the main legislative instrument effectuating the 2011 corrections realignment. Compare SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 109 (Mar. 17, 2011) (summarizing AB 109’s key changes to existing law), with BROWN, *supra* note 1, at 22–24 (summarizing the governor’s corrections realignment proposal). Four additional bills—AB 117, AB 118, AB 116, and AB 17 (First Extraordinary Session)—enacted technical revisions and AB 109’s funding mechanisms. See 2011 Cal. Stat. ch. 39 (codifying AB 117); 2011 Cal. Stat. ch. 40 (codifying AB 118); 2011 Cal. Stat. ch. 136 (codifying AB 116); 2011–12 1st Ex. Sess. ch. 12 (codifying AB 17 (First Extraordinary Session)). See generally SENATE COMMITTEE ON BUDGET AND FISCAL REVIEW, COMMITTEE ANALYSIS OF AB 117, at 1 (Apr. 11, 2011) (explaining that AB 117 fixed errors contained in AB 109); SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 118, at 2 (June 28, 2011) (explaining that AB 118 implemented AB 109’s funding mechanisms); SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 116, at 1 (June 9, 2011) (explaining that AB 116 “contain[ed] provisions necessary to implement the 2011–12 budget”); SENATE COMMITTEE ON BUDGET AND FISCAL REVIEW, COMMITTEE ANALYSIS OF ABX1 17, at 1 (Sept. 2, 2011) (explaining that ABX1 17 made “substantive and technical changes relevant to AB 109”).

20. AB 109 was formally titled “the 2011 Realignment Legislation addressing public safety.” 2011 Cal. Stat. ch. 15, § 1, at 7. However, this article uses the label “corrections realignment legislation” (rather than “public safety realignment legislation” or some variation thereof) to refer to AB 109 and its follow-ups because this article is concerned only with the felon management changes occasioned by those bills, changes distinguishable from any other “public safety” ones by virtue of their correctional nature.

21. See *infra* text accompanying notes 23 and 27 (suggesting the relationship of county control to felon manageability implicit in corrections realignment).

22. See BROWN, *supra* note 1, at 23 (using the terms “short-term, lower-level offenders,” “low-level offenders,” and “short-term offenders” interchangeably to refer to “offenders without any current or prior serious or violent or sex convictions”). See generally *id.* at 131 (explaining that the low-level label applies to persons whose commitment offense was a “drug or property” felony rather than a “crime[] against [a] person[]”).

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corrections realignment legislation operates from the position that these felons “are . . . sufficiently manageable and low risk that they can be safely held in county jail and managed by county sheriffs”<sup>23</sup> because it assigned the counties total responsibility to manage them. Specifically, the realignment provisions require each low-level felon sentenced on or after October 1, 2011, to serve his or her executed sentence either entirely in county jail or split between county jail and county probation.<sup>24</sup> What this means is that, from October 1, 2011 onward, corrections realignment completely rerouted the flow of low-level inmates from state prisons to county jails.

## 2. Counties Supervise “Mid-Level” Felons upon Release from Prison

For the purposes of corrections realignment, a felon who is not low-level but whose commitment offense is neither serious nor violent is a “mid-level” felon.<sup>25</sup> The corrections realignment legislation did not reroute their flow to jails; the state retained the duty to incarcerate these individuals.<sup>26</sup> However, the legislation operates from the position that felons “at the mid-level” are “not high-level enough to warrant state parole supervision”<sup>27</sup> and requires counties, not the state government, to supervise all such felons released from prison on or after October 1, 2011.<sup>28</sup>

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23. MISCZYNSKI, *supra* note 3, at 13.

24. See discussion *infra* Appendix A (discussing felony sentencing to county jail). Corrections realignment marked “the first time in California’s history that . . . executed felony sentences [are] served in county jails . . .” GARRICK BYERS, REALIGNMENT 16 (Dec. 3, 2011 ed.) (on file with the *McGeorge Law Review*). Because felonies are the only crimes whose minimum sentences exceed one year, see *infra* note 169 and accompanying text (defining felonies), corrections realignment also marked first time “county jail sentences [may exceed one year] . . . for a single offense . . .” BYERS, *supra*, at 16. State attorneys and judges have referred to county jails as “county prisons” to reflect their felon incarceration function. E-mail from Samuel T. McAdam, Judge, Yolo County Superior Court, to author (Nov. 14, 2012, 07:40 PST) (on file with the *McGeorge Law Review*). *But see* MISCZYNSKI, *supra* note 3, at 14 “[C]ounties . . . handle these [felons] differently than the state [did] . . . Counties . . . use alternative sanctions . . . less costly than lock-up time.”

25. See BYERS, *supra* note 24, at 15 (distinguishing “mid-level” felons from low-level and high-level felons).

26. See *infra* text accompanying note 195 (noting corrections realignment precludes all felons but those lacking current or prior convictions for serious, violent, and sexual felonies from serving their executed felony sentences in county jails).

27. BYERS, *supra* note 24, at 15.

28. See *infra* text accompanying note 240 (noting corrections realignment places mid-level felons on post-release community supervision). County-administered supervision differs from the state-administered parole system because counties handle released felons “in a way quite different from the state’s approach. Instead of relying primarily on one sanction—return to prison—to punish parole violations,” counties deploy “a range of options,” and harsh sanctions “need approval from a court-appointed hearing officer.” MISCZYNSKI, *supra* note 3, at 17.



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### 3. Counties Incarcerate “High-Level” Felons Who Violate Their Parole Conditions

For the purposes of corrections realignment, a felon whose commitment offense is a serious or violent felony or a third strike offense, or who is a high-risk sex offender or possesses a mental disorder, is what may be termed a “high-level” felon.<sup>29</sup> Under the legislation, the state government retained significant control over high-level felons, incarcerating them in its prisons<sup>30</sup> and subjecting them to parole supervision after they are released from prison.<sup>31</sup> However, the corrections realignment legislation transferred a measure of responsibility for managing high-level felons to the counties by requiring county jails, rather than state prisons, to incarcerate most parole violators.<sup>32</sup> In effect, the legislation almost completely rerouted the flow of parole violators from prisons to jails.

### III. THE IMPETUSES BEHIND THE 2011 CORRECTIONS REALIGNMENT

As indicated in Part II, *supra*, corrections realignment required county jails to house low-level felons and parole violators and to supervise mid-level felons released from prison. These changes “may [have] be[en] the biggest . . . in California[’s] criminal law since Determinate Sentencing replaced Indeterminate Sentencing in 1978. [Corrections realignment] join[ed] ‘Proposition 8’ in 1982, ‘Proposition 115’ in 1991, ‘Three Strikes in 1994’, and other large-scale changes in dramatically altering California’s criminal law landscape.”<sup>33</sup> Changes this dramatic do not emerge in a vacuum. To understand why corrections realignment became part of California’s criminal law landscape, it is imperative we examine closely the context in which the legislation arose and the problems that informed its creation.

Part III examines corrections realignment in light of two impetuses. Corrections realignment responded directly to a fiscal crisis, and Part III.A indicates how. Corrections realignment also responded to a legal impetus. Part III.B considers corrections realignment in light of California’s legal battle over prison overcrowding the deleterious prisoner healthcare effects it entails.

29. See BYERS, *supra* note 24, at 15 (distinguishing “high-level” felons from low-level and mid-level felons).

30. See *infra* text accompanying note 195 (noting corrections realignment precludes all felons but those lacking current or prior convictions for serious, violent, and sexual felonies from serving their executed felony sentences in county jails).

31. See *infra* text accompanying note 240 (indicating corrections realignment placed only mid-level felons on post-release community supervision).

32. See *infra* text accompanying notes 258, 269–70 (indicating that most parole violations are punishable by only up to six months in a county jail).

33. GARRICK BYERS, REALIGNMENT: AB 109 7 (June 27, 2011 ed.) (internal quotation marks omitted) (on file with the *McGeorge Law Review*).

*McGeorge Law Review / Vol. 44**A. The Fiscal Impetus Behind Corrections Realignment*

Corrections realignment was a budget measure. It was embodied in a budgetary realignment and enacted in response to a fiscal crisis. Part III.A focuses primarily on the origins of California's 2011 fiscal crisis and the justifications and operation of Governor Brown's budgetary realignment proposal, including its corrections realignment component. More specifically, Part III.A.1 examines the dual causes of the 2011 budget crisis, Part III.A.2 discusses the governor's proposed solution in some depth, and Part III.A.3 indicates why the governor's solution embodied a corrections component.

*1. A Financial Crisis**a. Dual Causes: The Great Recession Plus a Structural Deficit*

California faced a \$25.4 billion budget deficit when 2011 began.<sup>34</sup> In his January 10th budget summary,<sup>35</sup> Governor Brown attributed California's financial woes to a number of factors.<sup>36</sup> Of those factors, the most significant one was the revenue loss occasioned by the Great Recession.<sup>37</sup> The Great Recession was "a financial crisis instigated by risky financial activity that . . . [caused] the housing bubble" to burst.<sup>38</sup> From the official beginning of the Great Recession in December 2007 to its official end in June 2009,<sup>39</sup> "all of [California's] major revenues sources"<sup>40</sup>—its "personal income tax, sales tax, and corporation taxes"<sup>41</sup>—fell significantly,<sup>42</sup> causing California's budget revenues to decline by

34. See BROWN, *supra* note 1 (reporting the projected scope of the 2011 budget gap).

35. See generally *id.* app. at 67 (defining "Governor's Budget Summary" as "[a] companion publication to the Governor's Budget that outlines the Governor's policies, goals, and objectives for the budget year. It provides a perspective on significant fiscal and/or structural proposals.").

36. See *id.* at 4–5 (defining the budget deficit).

37. *Id.* at 2.

38. *Id.* at 29. See generally R. Christopher Whalen, *The Subprime Crisis—Cause, Effect, and Consequences*, 17 J. AFFORDABLE HOUS. & CMTY. DEV. L. 219 (2008) (discussing the Great Recession's causes); Yuliya Demyanyk & Otto Van Hemert, *Understanding the Subprime Mortgage Crisis*, 24 REV. FIN. STUDIES 1848 (2011) (discussing the Great Recession's causes). The recession cost the nation about "eight million jobs," BROWN, *supra* note 1, at 31, and some "\$11 trillion in assets—nearly a year's worth of . . . economic output." *Id.* at 30.

39. Business Cycle Dating Committee, *National Bureau of Economic Research*, NAT'L BUREAU ECON. RESEARCH (Sept. 20, 2010), <http://www.nber.org/cycles/sept2010.html> (on file with the *McGeorge Law Review*).

40. BLUE SKY CONSULTING GRP., CALIFORNIA'S BUDGET CRISIS 6 (2009), available at [http://www.blueshieldcafoundation.org/sites/default/files/publications/downloadable/10\\_2008\\_californias\\_budget\\_crisis\\_0.pdf](http://www.blueshieldcafoundation.org/sites/default/files/publications/downloadable/10_2008_californias_budget_crisis_0.pdf) (on file with the *McGeorge Law Review*).

41. BROWN, *supra* note 1, app. at 67.

42. BLUE SKY CONSULTING GRP., *supra* note 40, at 6. For example, because California experienced its "worst job losses on record" during the Great Recession, "losing nearly a million nonfarm jobs," its "personal income fell over \$38 billion" in 2009. BROWN, *supra* note 1, at 33.

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about a quarter “from the height of revenues in 2007–08 to the bottom in 2009–10.”<sup>43</sup> “Although the economic downturn . . . [was] the chief contributor to [the] budget gap,” Governor Brown observed, “California [also] entered the recession with an existing structural budget deficit, meaning . . . revenues did not cover costs.”<sup>44</sup>

#### *b. A Grim Outlook*

In 2010, California’s economy recovered modestly from the revenue losses wrought by the Great Recession.<sup>45</sup> Governor Brown cautioned, however, the state’s “[b]aseline revenues [would] not return to the [pre-Great Recession] level until 2013–14 and, even then, projected revenues [would] be insufficient to pay for program services . . . the state [was] committed to provide.”<sup>46</sup> Moreover, although California had enacted some “\$103.6 billion in budgetary actions . . . between 2008 and 2010,”<sup>47</sup> most of them “were temporary or [they] failed because of court challenges or faulty assumptions”; in short, they had not closed California’s structural budget deficit.<sup>48</sup> According to the governor, “[w]ithout

43. BROWN, *supra* note 1, at 1.

44. *Id.* at 2. See generally *What Is a Structural Budget Deficit?*, LEAGUE OF WOMEN VOTERS OF CAL., [http://ca.lwv.org/lwvc/action/budget/SLF\\_budget\\_deficit.pdf](http://ca.lwv.org/lwvc/action/budget/SLF_budget_deficit.pdf) (last visited June 15, 2012) (on file with the *McGeorge Law Review*) (defining a “structural budget deficit” as the situation that exists when, under “the current revenue structure (e.g., taxes, fees, and other sources), the state has insufficient income to maintain services at the current level”). The structural budget deficit began around the turn of the twenty-first century:

In 1998–99, the state’s budget was balanced and projected to remain in balance. . . . [O]ne year later, revenues increased by 23 percent, due to a stock market and dot-com boom that drove unprecedented increases in stock option and capital gains income. . . . The [revenue] surge [prompted the state government to undertake] massive—and unsustainable—new spending commitments. When revenues declined, the state relied mostly on one-time measures . . . to temporarily reduce spending without cutting back underlying program commitments. Thus, the structural deficit was born.

ARNOLD SCHWARZENEGGER, GOVERNOR, CAL. STATE, 2009–10 GOVERNOR’S BUDGET SUMMARY 1 (2009), available at <http://www.dof.ca.gov/budget/historical/2009-10/governors/summary/documents/FullBudgetSummary.pdf> (on file with the *McGeorge Law Review*). From about 2004 to 2007, California’s budget had an “imbalance of roughly \$6 to \$8 billion between ongoing spending and revenues.” BLUE SKY CONSULTING GRP., *supra* note 40, at 4. When revenues increased again, “from \$76.8 billion in 2003–04 to \$102.5 billion in 2007–08,” *id.*, the state government used much of that growth “to repay loans and backfill for the loss of temporary cost-saving steps” rather than to remedy the structural deficit. SCHWARZENEGGER, *supra*, at 2.

45. See BROWN, *supra* note 1, at 32–34 (reporting California’s vehicle sales, home building, housing prices, taxable sales, and exports rebounded somewhat in 2010 from their Great Recession levels).

46. *Id.* at 1. The governor explained, “economic recoveries following recessions caused by financial crises are slower and more drawn out than those stemming from other causes.” *Id.* at 29. See generally *id.* at 32 (“[T]he unemployment rate often remains high after employment begins to recover[is] because . . . hiring usually lags behind output during the early stages of a recovery. . . . [F]irms tend to increase output first by boosting productivity and by raising the number of hours worked by existing employees. Hiring . . . tends to occur later.”).

47. *Id.*

48. *Id.* Seventy-five percent of the \$24.3 billion in budget solutions enacted in the 2008–09 fiscal year, 84 percent of the \$60 billion in budget solutions enacted in the 2009–10 fiscal year, and 85 percent of the \$19.3 billion in budget solutions enacted in the 2010–11 fiscal year, were temporary or failed. *Id.* at 2.

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corrective action, . . . the structural deficit [would] persist and grow to between \$17.2 billion and \$21.5 billion per year through 2014–15.”<sup>49</sup>

2. *The Governor’s Solution: A Vast Budgetary Realignment*

a. *Proposing Budgetary Realignment*

Governor Brown recommended the state legislature balance the budget principally through traditional budget-solving measures, such as spending cuts and borrowing.<sup>50</sup> However, he also intimated to the legislature that traditional solutions without more would be insufficient to “balance the budget [in the 2011–12 budget year] and into the future, and to provide for a reserve.”<sup>51</sup> He said the Great Recession’s effects on California’s revenues had left “state and local governments . . . [with in]sufficient resources to fund all program demands,” and, “[a]bsent long-term change, government [would] eventually [have] to shift funds from other important programs, including public safety, to pay for rising pension and health care costs.”<sup>52</sup> Accordingly, he urged the state legislature to enact a budgetary realignment (in the governor’s words, “a vast . . . realignment of government services”) that would “revers[e California’s] 30-year trend . . . [of transferring] decision-making and budget authority . . . from local government[s] to the State Capitol.”<sup>53</sup>

b. *Justifying Budgetary Realignment*

When Governor Brown spoke of “a 30-year trend,”<sup>54</sup> he was referring to the fact that the state legislature had assumed programmatic authority from local governments beginning in the 1970s,<sup>55</sup> and, in the three-plus decades that

49. *Id.* at 2. *See generally id.* at 3 (projecting the state’s “Operating Deficit without Corrective Actions” to be \$19.2 billion in 2012–13, \$17.4 billion in 2013–14, and \$21.5 billion in 2014–15).

50. *See id.* at 5–6 (proposing \$12.5 billion in spending cuts and \$8.2 billion in one-time solutions such as “borrowing from special funds” and “property tax shifts”).

51. *Id.* at 5.

52. *Id.* at 15.

53. *Id.*

54. *Id.*

55. According to the governor, “Two major events began the shift of government responsibility in California from local governments to the state level. . . . First, the California Supreme Court in 1971 ruled that K-12 education is a fundamental constitutional right [and] . . . found that wealth-related disparities in per-pupil spending generated by the state’s education finance system violated the equal protection clause of the state Constitution.” *Id.* at 16. *See generally* U.S. CONST. amend. XIV (“No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.”); CAL. CONST. art. I, § 11 (repealed 1974) (“All laws of a general nature shall have a uniform operation.”); *id.* § 21 (repealed 1974) (“No special privileges or immunities shall ever be granted which may not be altered, revoked, or repealed by the Legislature; nor shall any citizen, or class of citizens, be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens.”); *Serrano v. Priest (Serrano I)*, 5 Cal. 3d 584, 487 P.2d 1241 (1971) (holding California’s public school finance system had violated federal and state equal protection clauses); *Dep’t of Mental Hygiene v.*

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followed, had routinely shifted “revenue . . . and program responsibilities between the state and counties.”<sup>56</sup> According to the governor, the “numerous shifts back and forth between the state and local government”<sup>57</sup> created program duplication at the different levels of government, ultimately “blurring [governmental] responsibility and [increasing] program costs.”<sup>58</sup> The governor asserted that, by “untangl[ing] this knot and reduc[ing] duplication by providing services at one level of government[] to the extent possible,”<sup>59</sup> a budgetary

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Kirchner, 62 Cal. 2d 586, 588, 400 P.2d 321, 322 (1965) (construing CAL. CONST. art. I, §§ 11, 21 to be “substantially the equivalent” of the Fourteenth Amendment’s Equal Protection Clause). “This decision had significant fiscal ramifications, as state government assumed responsibility for equalizing school funding.” BROWN, *supra* note 1, at 16. *See generally* Serrano v. Priest (*Serrano II*), 18 Cal. 3d 728, 741–42, 557 P.2d 929, 935 (1976) (ordering California to equalize per pupil expenditures); 1972 Cal. Stat. ch. 1406 (enacting provisions to equalize California’s per pupil expenditures). Then, “[a]n even more dramatic transfer of power to the state government occurred in 1978 when voters adopted Proposition 13.” BROWN, *supra* note 1, at 16. *See generally* Cal. Proposition 13 (1978) (enacting the “People’s Initiative to Limit Property Taxation”). Before Proposition 13,

local entities set the property tax rate for their jurisdiction, based on policy and funding decisions made primarily at the local level. Locally elected assessors determined the assessed value of property. . . . Proposition 13 limited the property tax rate to 1 percent of assessed value, except for pre-existing debt. The assessed value of property was set at the 1975–76 base year, changing only when property is sold or new construction is completed. The property is then reassessed based on “fair market value”, which is generally [its] purchase price . . . . A property’s base year value may be increased by inflation, not to exceed 2 percent per year.

BROWN, *supra* note 1, at 16–17. *See generally* CAL. CONST. art. XIII A, §§ 1–4 (codifying Proposition 13’s changes). About one month before Proposition 13 passed, the Legislative Analyst’s Office predicted the initiative would cost local governments “\$7 billion in property tax revenues,” some fifty-seven percent of their property tax revenues—and twenty-two percent of their aggregate revenues—in the 1978–79 fiscal year. *Sonoma Cnty. Org. of Pub. Emps. v. Cnty. of Sonoma*, 23 Cal. 3d 296, 309–10, 591 P.2d 1, 8 (1979). Absent corrective action, local governments would likely have had to cut programs and lay off about 270,000 employees to compensate for the lost property tax revenues. *Id.* at 310, 591 P.2d at 8. As Governor Brown observed, the state government

used its budget surplus to . . . “bail out” local governments for the 1978–79 fiscal year. The bail-out consisted of allocations to local jurisdictions to make up for a significant portion of their property tax loss. As part of the bail-out to counties, the state either assumed responsibility for programs or took on new funding obligations. For instance, the state assumed the county share of Medi-Cal and SSI/SSP and increased its share of funding for foster care.

BROWN, *supra* note 1, at 17. *See generally* 1978 Cal. Stat. ch. 292 (enacting the government bail-out). Then, in 1979, the state government enacted “a long-term financing mechanism . . . that essentially mirrored the one-year bail-out. [It reallocated p]roperty tax . . . from K–14 schools to cities, counties, and special districts to make up a significant portion of the loss of property tax, and the state [government] assumed a greater share of funding for schools and some health and human services programs.” BROWN, *supra* note 1, at 17. *See generally* 1979 Cal. Stat. ch. 282 (enacting the long-term financing mechanism).

56. BROWN, *supra* note 1, at 18. *See generally id.* at 17–18 (listing “[t]he most salient” programmatic and revenue transfers to occur between 1979 and 2011). For examples of the “numerous shifts back and forth between the state and local government,” *id.* at 17, see 1982 Cal. Stat. chs. 328, 1594 (shifting Medi-Cal to the counties); 1988 Cal. Stat. ch. 945 (shifting trial court funding to the state government).

57. BROWN, *supra* note 1, at 17.

58. *Id.* at 18.

59. *Id.*

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realignment would shrink the state government's administrative costs<sup>60</sup> and staffing needs.<sup>61</sup>

*c. Implementing Budgetary Realignment*

In its conception, Governor Brown contemplated budgetary realignment as comprising two steps: first, determining which level of government (state or local) could “best and most cost-effectively . . . deliver[]” a program; and, second, “provid[ing] a permanent funding source” to that level of government to pay for the costs of delivering the program.<sup>62</sup> Governor Brown advocated implementing budgetary realignment in two phases.<sup>63</sup> Phase one, set to begin in the 2011–12 fiscal year, would transfer “\$5.9 billion . . . of [public safety] programs from the state to the counties . . . .”<sup>64</sup> Phase two, set to begin after 2011, would incorporate statutory changes related to the “[i]mplementation of national health care reform . . . .”<sup>65</sup> Once fully phased in, the realignment would “restructure how and where more than \$10 billion in a wide range of services are delivered.”<sup>66</sup> The governor conceded, “A [budgetary] realignment of this magnitude raises significant issues.”<sup>67</sup> However, he also admonished, “absent this kind of change[,] many essential programs, including education and public safety, [would] suffer extensive reductions.”<sup>68</sup>

*3. The Corrections Component of the Governor's Solution*

Governor Brown's budgetary realignment embodied a corrections component. When the governor tabbed various public safety services for phase one of budgetary realignment, he focused in particular on shifting key state government felon management duties to counties.<sup>69</sup> As of early 2011, incarcerating and supervising all felons with executed sentences was costing the

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60. *Id.* at 7.

61. *Id.* at 16.

62. *Id.*

63. *See generally id.* at 19–28 (outlining the two phases of the 2011 budgetary realignment plan).

64. *Id.* at 6; *see also id.* at 19 (noting phase one programs “fall broadly into the category of public safety”).

65. *Id.* at 28. *See generally id.* (providing that, under phase two, “the state will become responsible for costs associated with health care programs, including California Children's Services and In-Home Supportive Services, while the counties [will] assume responsibility for CalWORKs, food stamp administration, . . . child support” and “child care programs”).

66. *Id.* at 6, 18.

67. *Id.* at 16.

68. *Id.*

69. *See id.* at 22–24 (presenting the 2011 corrections realignment).

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state a sizeable fortune.<sup>70</sup> Cognizant of that, and clearly aware counties can manage felons at a lower cost than the state government can,<sup>71</sup> Governor Brown urged the state legislature to undertake a corrections realignment and place all but “the most serious and violent felony offenders” under some measure of county control.<sup>72</sup> He advocated, *inter alia*, requiring counties to incarcerate low-level felons and parole violators and to supervise released mid-level felons.<sup>73</sup> The legislature took the governor’s advice and gave legal effect to his proposal by enacting the legislation described in Part II.B, *supra*.

The governor contemplated that the state government would perpetually reimburse counties for the costs of corrections realignment.<sup>74</sup> In other words, he intended the state to pay counties to house low-level felons and parole violators and to supervise mid-level felons upon their release from prison. At first blush, paying one level of government to perform what had until that point been another government level’s functions may seem like an odd way to generate savings, especially when those payments are to last into perpetuity. But, as indicated

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70. Governor Brown projected California’s 2011–12 budget year corrections expenditures to total approximately \$9 billion, roughly ten percent of the state’s budget. *Id.* at 14. *See generally* MARK LENO, SENATE COMMITTEE ON BUDGET AND FISCAL REVIEW, FINAL ACTION REPORT: A SUMMARY OF THE 2011 BUDGET ACT CHAPTER 33, STATUTES OF 2011, at 1 (2011), *available at* <http://sbud.senate.ca.gov/sites/sbud.senate.ca.gov/files/FAR/FinalActionReport2011.pdf> (on file with the *McGeorge Law Review*) (projecting all state budgetary expenditures for the 2011–12 budget year to total \$85.9 billion). The high cost was hardly surprising given that, as of 2011, “California operate[d] 33 adult prisons, 42 incarceration camps, and 13 Community Correctional Facilities. . . . The state plan[ne]d to . . . authorize 62,000 employees to run these facilities in 2011–12.” MISCZYNSKI, *supra* note 3, at 8. *See generally id.* (“Camps are lower security facilities, usually in rural areas, for lower level offenders. Community Correctional Facilities are run by cities or counties, house parole violators and low security inmates, and typically provide more educational and rehabilitative programming than prisons.”). The high projected corrections cost was consistent with prior years’ totals. *See* ARNOLD SCHWARZENEGGER, GOVERNOR, CAL. STATE, 2008–09 GOVERNOR’S BUDGET SUMMARY 20 (2008), *available at* <http://www.dof.ca.gov/budget/historical/2008-09/governors/summary/documents/BSUM.pdf> (on file with the *McGeorge Law Review*) (reporting California’s 2007–08 corrections expenditures to be \$10.1 billion); SCHWARZENEGGER, *supra* note 44, at 18 (reporting California’s 2008–09 corrections expenditures to be \$9.685 billion); ARNOLD SCHWARZENEGGER, GOVERNOR, CAL. STATE, 2010–11 GOVERNOR’S BUDGET SUMMARY 13 (2010), *available at* <http://www.dof.ca.gov/budget/historical/2010-11/governors/summary/documents/FullBudgetSummary.pdf> (on file with the *McGeorge Law Review*) (reporting California’s 2009–10 corrections expenditures to be \$8.16 billion).

71. As of early 2011, incarcerating a person in a county jail for one year cost roughly one-half the amount of money required to incarcerate a person in a state prison for one year. *See* Letter from Diane M. Cummins, Special Advisor to the Governor, State and Local Realignment, Cal. Dep’t of Fin., to Bob Blumenfield, Chair, Conference Comm., and Mark Leno, Vice Chair, Conference Comm. (Feb. 25, 2011) (on file with the *McGeorge Law Review*) (indicating that incarcerating a person in a jail cell cost approximately \$25,000 per year); MAC TAYLOR, CAL. LEGIS. ANALYST’S OFF., CAL FACTS 55 (2011), *available at* [http://www.lao.ca.gov/reports/2011/calfacts/calfacts\\_010511.pdf](http://www.lao.ca.gov/reports/2011/calfacts/calfacts_010511.pdf) (on file with the *McGeorge Law Review*) (“In 2009–10, the average cost to incarcerate an inmate in state prison was about \$46,700.”). The comparatively high cost of prison incarceration owed primarily “to security and inmate health care” costs. TAYLOR, *supra*, at 55.

72. BROWN, *supra* note 1, at 19–20.

73. *See id.* at 22–24 (outlining the governor’s felon management realignment proposals).

74. *Id.* at 26–27 (indicating corrections realignment would “rel[y] on maintaining current tax rates for five years” and “[w]hen these taxes expire after five years, the state [government] will provide counties an amount equal to what these [tax rates] will generate”).

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above, counties can manage felons at a lower cost than the state government can, and, under corrections realignment, the state would be paying incarceration and supervision costs at county rates rather than at their comparatively higher state rates. Moreover, Governor Brown knew that the number of felons to be realigned to county control figured to be quite large.<sup>75</sup> For those reasons, he estimated that a fully funded corrections realignment would help the state government to realize savings growing to \$1.4 billion in the 2014–15 fiscal year.<sup>76</sup>

*B. The Legal Impetus Behind Corrections Realignment*

Corrections realignment was a budget measure. It was embodied in a budgetary realignment and enacted in response to a fiscal crisis. However, according to the Legislative Analyst's Office (LAO),<sup>77</sup> "The 2011 realignment was [also] undertaken . . . to [enable California to] comply with a federal court order to reduce overcrowding in the state's 33 prisons to no more than 137.5 percent of the[ir] design capacity by June 2013."<sup>78</sup> Because it essentially redirects flow of low-level felons and parole violators from state prisons to county jails, corrections realignment's potential to reduce the state's prison overcrowding must have been clear, if not at the moment of its conception, then fairly early in its development.

Part III.B focuses primarily on the development of California's legal impetus to reduce overcrowding in its prisons. Part III.B.1 notes how overcrowding in California's prisons generated deficiencies in prisoners' healthcare. Part III.B.2 discusses how those healthcare deficiencies became the subject of two class-action lawsuits and explores the executive, legislative, and judicial remedies flowing from those suits, including the prison overcrowding reduction order and the United States Supreme Court's review thereof. Part III.B.3 indicates how and when Governor Brown implicated the corrections realignment legislation as a solution to the state's prison overcrowding problem.

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75. *See id.* at 131 ("Lower-level offenders currently represent almost half of the prison population on any given day."); *id.* ("The state . . . devotes a large share of its prison resources to short-term incarcerations of parole violators.")

76. *Id.*

77. *See generally id.* app. at 68 (defining the Legislative Analyst's Office as "[a] non-partisan organization that provides advice to the Legislature on fiscal and policy matters").

78. MAC TAYLOR, THE 2012–13 BUDGET: REFOCUSING CDCR AFTER THE 2011 REALIGNMENT, CAL. LEGIS. ANALYST'S OFF. 3 (2012), available at [http://www.lao.ca.gov/analysis/2012/crim\\_justice/cdcr-022312.pdf](http://www.lao.ca.gov/analysis/2012/crim_justice/cdcr-022312.pdf) (on file with the *McGeorge Law Review*).



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### 1. Severe Prison Overcrowding and the Resultant Healthcare Deficiencies

California's history of prison overcrowding is long. The state's prisoner population has exceeded its prison system's design capacity<sup>79</sup> since roughly the time San Quentin, California's first prison, started operations.<sup>80</sup> While the state has adopted various measures throughout its history aimed, at least in part, at reducing the extent of California's prisoner population,<sup>81</sup> those measures did not prevent California's prisons from becoming so severely overcrowded that they developed "a [deficient] state of medical care."<sup>82</sup> The California Department of Corrections and Rehabilitation (CDCR), the agency that runs California's prison system,<sup>83</sup> provides medical<sup>84</sup> and mental<sup>85</sup> healthcare facilities and services to state

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79. See *id.* at 8 ("Design capacity generally refers to the number of beds that [the state] would operate if it housed only one inmate per cell in its 33 prisons, and did not use temporary beds, such as housing inmates in gyms.").

80. According to Ms. Kara Dansky of the Stanford Criminal Justice Center,

[C]onstruction began on San Quentin prison [in 1852] . . . . Until San Quentin was built, all of California's prisoners were held either on a ship called The Waban, docked in the San Francisco Bay, or in the San Francisco city jail. . . . San Quentin's population grew quickly in the early years, and by 1858, there were close to 600 prisoners being held in an institution that had only sixty-two cells.

Kara Dansky, *Understanding California Sentencing*, 43 U.S.F. L. REV. 45, 53 (2008).

81. For example, in 1903, the state legislature enacted California's first probation law, "permitting courts to place defendants on probation rather than sentence them to prison." Dansky, *supra* note 80, at 56; see also 1903 Cal. Stat. ch. 34 (enacting California's probation system). For California's statutory definition of probation, see *infra* note 188. Shortly after the state adopted its first probation law, "California's governors began to argue in favor of expanding [California's] parole system as a mechanism to relieve overcrowding," and the state's Board of Prison Directors complied. Dansky, *supra* note 80, at 58–59. For a judicial definition of parole, see *infra* note 205. According to Ms. Dansky,

Between 1890 and 1900 the prison population rose by 73 inmates; between 1900 and 1906 the population rose by another 503 inmates. . . . [T]he Board of Prison Directors . . . rapidly increase[d] parole grants.

Between 1907 and 1909, the rate of release on parole tripled and by 1914 there were almost as many inmates being paroled as there were inmates discharged at the expiration of their terms. During this period, the application process was simplified and the decision making process was more streamlined. Between 1893 and 1916, California's executive branch used parole openly, deliberately, and extensively as a mechanism for reducing prison overcrowding by releasing offenders whose determinate sentences (legislatively fixed and judicially imposed) had yet to expire.

Dansky, *supra* note 80, at 59. Then, in 1965, the state legislature incentivized increased probation rates by enact[ing] the California Probation Subsidy Act . . . . This Act provided counties a maximum of \$4,000 for each adult or juvenile offender not committed to state prison (above historical commitment levels) . . . . [T]he program was ultimately responsible for the diversion of more than 45,000 [adult and juvenile] offenders from state institutions to local probation and rehabilitation-oriented programs.

*Id.* at 63 (internal quotation marks omitted).

82. Sherry Colb, *Massive Prison Release and Least Restrictive Alternatives*, DORF ON L. (Dec. 22, 2010), <http://www.dorfonlaw.org/2010/12/massive-prison-release-and-least.html> (on file with the *McGeorge Law Review*).

83. See generally BROWN, *supra* note 1, at 127 ("The California Department of Corrections and Rehabilitation (CDCR) is responsible for the incarceration of convicted felons.").

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prisoners. However, because of severe prison overcrowding, the CDCR's "security staff [has] impose[d] frequent and persistent lockdowns,"<sup>86</sup> limiting ailing prisoners' access to those facilities and services.<sup>87</sup> Severe prison overcrowding has also contributed to staffing shortages in prison medical units<sup>88</sup> and facilitated "the spread of infectious diseases" among prisoners.<sup>89</sup>

2. *How Two Class-Action Lawsuits Founded on Healthcare Deficiencies in California's Prisons Sparked Executive, Legislative, and Judicial Remedies*

a. *The Cases: Coleman v. Brown and Plata v. Brown*

In 1990, a class of seriously mentally ill California prisoners sued the State in federal district court, claiming prison overcrowding had prevented them from receiving constitutionally sufficient mental healthcare services while incarcerated.<sup>90</sup> In the resulting *Coleman v. Brown*, the court found the plaintiff class had "languished for months, or even years, without access to necessary care."<sup>91</sup> The court subsequently "appointed a Special Master to oversee development and implementation of a remedial plan of action."<sup>92</sup>

84. Each California prison has low-acuity and high-acuity hospital beds. TAYLOR, *supra* note 78, at 20. *See generally id.* ("Low-acuity hospital beds provide inpatient care to inmates who have complex medical problems that require daily nursing care."); *id.* ("High-acuity hospital beds are the highest level of inpatient care available within CDCR prisons. These beds are for inmates who require nursing care 24 hours a day and extensive assistance with daily activities such as bathing and eating."). Each state prison also has "a medical clinic where physicians deliver basic primary care to inmates on an outpatient basis." *Id.*

85. *See id.* at 23–24 (describing California's inmate mental health facilities).

86. *Id.* at 20. Were it not for prison overcrowding, prisoners would have been

initially housed in reception centers (usually in cells) upon their admission to [state prison]. After which, the [prison would] assign[] inmates to different types of housing based on several factors including offense, length of prison sentence, and behavior during current and prior incarcerations. Inmates considered low security (classified as Levels I and II) [would] generally [be] housed in dorms, while high-security inmates (classified as Levels III and IV) [would] generally [be] housed in cells. Female inmates—regardless of classification—[would] often [be] placed in the same housing units.

*Id.* at 10. However, because of overcrowding, state prisons utilized "nontraditional housing arrangements," holding prisoners "in gymnasiums and dayrooms" that are less secure than traditional dorms and cells (and which thus contributed to conditions necessitating lockdowns). *Id.* at 20.

87. *See id.* at 20 (noting lockdowns limit prisoners' ability to make "medical appointments and receive their daily medications").

88. *See id.* at 21 ("[Q]ualified [medical] applicants are often unwilling to work in the stressful environment of an overcrowded prison.").

89. *Id.*

90. *Coleman v. Wilson*, 912 F. Supp. 1282 (E.D. Cal. 1995).

91. *Id.* at 1316.

92. *Brown v. Plata*, 131 S. Ct. 1910, 1926 (2011). *See generally* BLACK'S LAW DICTIONARY 450 (3d pocket ed. 2006) (defining "special master" as "A master appointed to assist the court with a particular matter or case"); *id.* (defining "master" as "[a] parajudicial officer (such as a referee, an auditor, an examiner, or an assessor) specially appointed to help a court with its proceedings" and explaining that "[a] master may take

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Then, in 2001, a “class of state prisoners with serious medical conditions” sued California as well, claiming prison overcrowding had prevented them from receiving constitutionally sufficient medical healthcare services.<sup>93</sup> In the resulting *Plata v. Brown*, “the State conceded that deficiencies in prison medical care [had] violated prisoners’ Eighth Amendment rights . . . [and] stipulated to a remedial injunction.”<sup>94</sup> However, California did not “comply with the injunction, and in 2005 the [Plata C]ourt appointed a Receiver to oversee remedial efforts.”<sup>95</sup>

Not only did matters not improve following *Coleman’s* and *Plata’s* commencements, California’s prison overcrowding actually worsened, surging from 202% of the prison system’s design capacity in June 2001 to 216% in June 2006.<sup>96</sup> Convinced “a remedy for unconstitutional medical and mental health care could not be achieved without reducing overcrowding,” the *Coleman* and *Plata* plaintiffs independently filed motions for the court to reduce the prison population under the federal Prison Litigation Reform Act.<sup>97</sup> Subsequently, “[t]he Chief Judge of the Court of Appeals for the Ninth Circuit convened a three-judge court composed of the *Coleman* and *Plata* District Judges and a . . . Ninth Circuit Judge” to consider whether to order the state to reduce its prison population.<sup>98</sup>

#### *b. Executive and Legislative Remedial Efforts*

Between October 2006 (one month before the *Coleman* and *Plata* plaintiffs filed their independent motions) and August 2009 (the month the three-judge

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testimony, hear and rule on discovery disputes, enter temporary orders, and handle other pretrial matters, . . . usu. with a written report to the court”).

93. *Plata*, 131 S. Ct. at 1926.

94. *Id.*

95. *Id.* See generally BLACK’S LAW DICTIONARY 595 (3d pocket ed. 2006) (defining “receiver” as “[a] disinterested person appointed by a court . . . for the protection or collection of property that is the subject of diverse claims (for example, because it belongs to a bankrupt or is otherwise being litigated)”).

96. The state’s official prisoner population figure rose from 161,497 to 172,561 in that five-year span. CAL. DEP’T OF CORRECTIONS & REHABILITATION, SPRING 2010 ADULT POPULATION PROJECTIONS 2010–2015, at 39 (2010), available at [http://www.cdcr.ca.gov/reports\\_research/Offender\\_Information\\_Services\\_Branch/Projections/S10Pub.pdf](http://www.cdcr.ca.gov/reports_research/Offender_Information_Services_Branch/Projections/S10Pub.pdf) (on file with the *McGeorge Law Review*). See generally *State Responds to Three-Judge Court’s Order Requiring a Reduction in Prison Crowding*, CDCR TODAY (June 7, 2011), <http://cdcrtoday.blogspot.com/2011/06/state-responds-to-three-judge-courts.html> (on file with the *McGeorge Law Review*) (calculating the state prison system’s design capacity at 79,858).

97. *Plata*, 131 S. Ct. at 1927–28. The Prison Litigation Reform Act provides, “In any civil action in Federal court with respect to prison conditions, a prisoner release order shall be entered only by a three-judge court in accordance with section 2284 of title 28.” 18 U.S.C. § 3626(a)(3)(B) (2006). See generally 28 U.S.C. § 2284(b)(1) (“Upon the filing of a request for three judges, the judge to whom the request is presented shall . . . notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge. The judges so designated, and the judge to whom the request was presented, shall serve as members of the court to hear and determine the action or proceeding.”). “The three-judge court shall enter a prisoner release order only if the court finds by clear and convincing evidence that crowding is the primary cause of the violation of a Federal right,” 18 U.S.C. § 2284(a)(3)(E)(i), and “no other relief will remedy the violation of the Federal right.” *Id.* § 3626(a)(3)(E)(ii).

98. *Plata*, 131 S. Ct. at 1922.

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panel issued its findings), the state government enacted several new prisoner population reduction measures. For example, in October 2006, Governor Arnold Schwarzenegger declared a state of emergency<sup>99</sup> and authorized the California Department of Corrections and Rehabilitation to transfer state prisoners to out-of-state institutions.<sup>100</sup> One year later, in 2007, the state legislature enacted Section 15819.40 of the California Government Code,<sup>101</sup> which “authorized a total of \$7.7 billion . . . for a broad package of state prison and local jail construction and rehabilitation initiatives . . . .”<sup>102</sup> And, in 2009, the state legislature enacted a bill that “shorten[ed] prison stays[ and] made it harder to return an offender to prison for a parole violation.”<sup>103</sup>

*c. A Judicial Remedy: A Prisoner Population Reduction Order*

The prisoner population reduction measures adopted between late 2006 and late 2009 had perceptible effects: after the state’s prison population peaked at approximately 217% of design capacity in June 2007, it subsequently dropped to

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99. CA.GOV, PRISON OVERCROWDING STATE OF EMERGENCY PROCLAMATION (Oct. 4, 2006), available at <http://gov.ca.gov/news.php?id=4278> [hereinafter PRISON OVERCROWDING PROCLAMATION] (on file with the *McGeorge Law Review*); see also *id.* (“[A]ll 33 [state] prisons are now at or above maximum operational capacity, and 29 of the prisons are so overcrowded that . . . [the California Department of Corrections and Rehabilitation] house[s] more than 15,000 inmates in conditions that pose substantial safety risks.”). Under the Government Code, a governor may call a state of emergency by

[p]roclaim[ing the] existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by . . . conditions . . . other than conditions resulting from a labor controversy or conditions causing a “state of war emergency,” which, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat . . . .

CAL. GOV’T CODE § 8558(b) (West 2012). Note that, by its terms, Government Code section 8558(b) contemplates declarations of a state of emergency to respond to “conditions [such] as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, . . . or volcanic prediction, or an earthquake.” *Id.* However, a “Governor can proclaim a state of emergency based upon a condition occurring in a state prison.” Cal. Corr. Peace Officers’ Ass’n v. Schwarzenegger, 163 Cal. App. 4th 802, 817, 77 Cal. Rptr. 3d 844, 854 (3d Dist. 2008). See generally *id.* at 818, 77 Cal. Rptr. 3d at 855 (“[T]he facts presented by . . . Governor [Schwarzenegger] . . . were sufficient to establish that the prison inmate overcrowding occurring in October 2006 was a condition of the requisite magnitude that, if not addressed, would likely require the combined forces of a mutual aid region or regions to combat, i.e., would likely require the coordination and utilization of the multiple resources of state and local government.”).

100. PRISON OVERCROWDING PROCLAMATION, *supra* note 99. The state had previously contracted “with four California counties to house 2,352 . . . [prisoners] in local adult jails, but this [had] create[d an] overcrowding problem.” *Id.* Namely, “[o]n a typical day, the county jails lacked space for more than 4,900 inmates across the state. . . . 20 of California’s 58 counties ha[d] court-imposed population caps resulting from litigation brought by or on behalf of inmates in crowded jails and another 12 . . . ha[d] self-imposed caps.” *Id.*

101. GOV’T § 15819.40 (enacted by 2007 Stat. ch. 7).

102. TAYLOR, *supra* note 78, at 11.

103. MISCZYNSKI, *supra* note 3, at 25; see also 2009 Cal. Stat. ch. 28 (enacting conduct credit reforms and non-revocable parole). For more information on non-revocable parole, see *infra* note 233. For a discussion of conduct credits, see *infra* text accompanying notes 272–78.

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about 214% by June 2008 and 210% by June 2009.<sup>104</sup> However, those effects were apparently insufficient. On August 4, 2009, the three-judge panel convened by plaintiffs in *Coleman* and *Plata* found California's prisoner medical and mental care violated the Federal Constitution's Cruel and Unusual Punishment Clause and that overcrowding was the principal cause.<sup>105</sup>

After issuing its findings, the three-judge panel "ordered California to reduce its prison population to 137.5% of the prisons' design capacity [(which, based on a then-design capacity of 79,858, equaled approximately 109,800 prisoners)] within two years."<sup>106</sup> The three-judge panel also established six-month population reduction "benchmarks" for the state to satisfy while approaching the two-year deadline.<sup>107</sup> The prison population reduction order left "the choice of means to reduce overcrowding to the discretion of state officials. But absent compliance through new construction, [additional] out-of-state transfers, or other means—or modification of the order upon a further showing by the State—the State [would] be required to release some number of prisoners before their full sentences [had] been served."<sup>108</sup> The State appealed the order to the United States Supreme Court, and the Court stayed the order and granted certiorari.<sup>109</sup>

#### d. *Brown v. Plata: The United States Supreme Court Affirms the Order*

In *Brown v. Plata*, the United States Supreme Court affirmed the federal three-judge panel's prison population reduction order by a 5–4 vote.<sup>110</sup> Justice Anthony M. Kennedy, writing for the *Plata* majority, confirmed that the state prison system's medical and mental healthcare services did not satisfy the Eighth Amendment,<sup>111</sup> overcrowding was the principal cause of those constitutional

104. CAL. DEP'T OF CORRECTIONS & REHABILITATION, *supra* note 96, at 39. *See generally id.* (reporting California's prison population to be 173,312 in June 2007, 170,973 in June 2008, and 167,832 in June 2009).

105. *Brown v. Plata*, 131 S. Ct. 1910, 1923–25 (2011). *See generally* U.S. CONST. amend. VIII ("Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.").

106. *Plata*, 131 S. Ct. at 1928.

107. *See* Order to Reduce Prison Population, *Coleman v. Schwarzenegger*, No. Civ. S-90-0520 LKK JFM P, *Plata v. Schwarzenegger*, No. C01-1351 TEH at 4 (E.D. Cal., N.D. Cal. Jan. 12, 2010) (specifying the six-month population-reduction benchmarks the state must meet).

108. *Plata*, 131 S. Ct. at 1923.

109. *Id.* at 1928.

110. Adam Liptak, *Justices, 5–4, Tell California to Cut Prisoner Population*, N.Y. TIMES (May 23, 2011), <http://www.nytimes.com/2011/05/24/us/24scotus.html?pagewanted=all&r=0> (on file with the *McGeorge Law Review*).

111. *See Plata*, 131 S. Ct. at 1947 ("The medical and mental health care provided by California's prisons falls below the standard of decency that inheres in the Eighth Amendment."). *See generally id.* at 1924 ("Prisoners in California with serious mental illness do not receive minimal, adequate care. Because of a shortage of treatment beds, suicidal inmates may be held for prolonged periods in telephone-booth sized cages without toilets."); *id.* at 1925 ("Prisoners suffering from physical illness also receive severely deficient care. California's prisons . . . have only half the clinical space needed to treat the current population. A correctional officer testified that, in one prison, up to 50 sick inmates may be held together in a 12-by 20-foot cage for up to

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deficiencies,<sup>112</sup> and “[w]ithout a reduction in overcrowding, there [would] be no efficacious remedy for the unconstitutional care of the sick and mentally ill in California’s prisons.”<sup>113</sup> He noted, “mistaken or premature release of even one prisoner can cause injury and harm” and “releas[ing] . . . prisoners in large numbers . . . is a matter of undoubted, grave concern.”<sup>114</sup> He also emphasized that the state government could satisfy the population reduction benchmarks through other “measures, including [conduct] credits and diversion of low-risk offenders and technical parole violators to community-based programs . . . .”<sup>115</sup> However, he conceded “[t]he population reduction . . . required is . . . of unprecedented sweep and extent.”<sup>116</sup>

### 3. *Post-Plata, Governor Brown Contemplated Corrections Realignment as a Prisoner Population Reduction Measure*

The United States Supreme Court heard oral arguments in *Plata* on November 30, 2010, but did not decide the case until May 23rd of the following year.<sup>117</sup> This means that, from January 10, 2011, the day Governor Brown first proposed corrections realignment to the state legislature,<sup>118</sup> until some forty-nine days after he signed corrections realignment into law, the possibility existed that the Court would uphold the 2009 order of the federal three-judge panel directing California to reduce overcrowding in its prisons. But, while it must have been clear fairly early on in the conception of corrections realignment that rerouting the flow of low-level felons and parole violators from state prisons to county jails would help to satisfy the prison population reduction order, Governor Brown did not tout that potential when he urged the state legislature to adopt his plan.<sup>119</sup>

On April 4th, when Governor Brown signed the corrections realignment legislation into law, he again did not assert it would reduce California’s prison population.<sup>120</sup> However, he made the following declaration: “For too long, the state’s prison system has been a revolving door for lower-level offenders [as well

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five hours awaiting treatment.” (citation omitted)).

112. *Id.* at 1923. *See generally id.* at 1924 (“Overcrowding has overtaken the limited resources of prison staff; imposed demands well beyond the capacity of medical and mental health facilities; and created unsanitary and unsafe conditions that make progress in the provision of care difficult or impossible to achieve.”).

113. *Id.* at 1939.

114. *Id.* at 1923.

115. *Id.*

116. *Id.* *See generally* MISCZYNSKI, *supra* note 3, at 10 (“[T]he population in California’s . . . prisons . . . declined to 144,237 prisoners by the end of June 2011 . . . . The state need[ed] a further reduction of 34,433 prisoners by June . . . 2013, to satisfy the federal court order.”).

117. *Plata*, 131 S. Ct. at 1910.

118. *See generally* BROWN, *supra* note 1 (proposing the budgetary realignment, and, by extension, the corrections realignment embodied in it, on January 10, 2011).

119. *See id.* at 22–24 (summarizing the governor’s corrections realignment proposal, but not mentioning the legislation’s potential to reduce prison overcrowding by rerouting prisoners to jails).

120. AB 109 Signing Message, *supra* note 18.

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as] parole violators who are released within months . . . . Cycling these offenders through state prisons . . . aggravates crowded conditions . . . .”<sup>121</sup> By saying that incarcerating low-level felons and parole violators “aggravates crowded conditions,”<sup>122</sup> the governor seems to have invited the inference that corrections realignment would reduce the state’s prison overcrowding, at least to the extent it redirected those offenders to county jails.

Then, on the day the United States Supreme Court issued its *Plata* opinion,<sup>123</sup> Governor Brown issued a press release containing the following statement: “The Supreme Court has upheld a lower court’s decision that California must reduce its prison population. In its ruling, the Supreme Court recognized that the enactment of [corrections realignment legislation] is key to meeting this obligation.”<sup>124</sup> Governor Brown’s apparent purpose in issuing the press release was to generate legislative support for a constitutional amendment guaranteeing funding for corrections realignment notwithstanding.<sup>125</sup> However, his assertion that the United States Supreme Court recognized the enactment of corrections realignment legislation as key to reducing California’s prison overcrowding suggests Governor Brown also contemplated corrections realignment to function as a prison population reduction measure.

#### IV. THE LIKELY EFFECTS AND POSSIBLE ADVERSE CONSEQUENCES OF THE 2011 CORRECTIONS REALIGNMENT

Part III established that the corrections realignment legislation was a budget measure. It also established that Governor Brown contemplated corrections realignment to reduce the state’s prison overcrowding. Part IV.A discusses the likely effects of corrections realignment. Part IV.B considers its possible adverse consequences.

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121. *Id.*

122. *Id.*

123. *Brown v. Plata*, 131 S. Ct. 1910 (2011).

124. *See* Press Release, Governor Edmund G. Brown, Jr., Governor Brown Issues Statement on U.S. Supreme Court Ruling (May 23, 2011) (on file with the *McGeorge Law Review*).

125. Governor Brown’s complete statement was as follows: “The Supreme Court has upheld a lower court’s decision that California must reduce its prison population. In its ruling, the Supreme Court recognized that the enactment of [corrections realignment] is key to meeting this obligation, *We must now secure full and constitutionally guaranteed funding to put into effect all the realignment provisions contained in [corrections realignment]*. As we work to carry out the Court’s ruling, I will take all steps necessary to protect public safety.” *Id.* (emphasis added).

A. *The Likely Effects of Corrections Realignment*

1. *Corrections Realignment Will Likely Generate Significant Savings for the State*

Governor Brown projected realigning the state's authority over the parole revocations of high-level felons, over the incarceration of lower-level felons, and over the post-release supervision of mid-level felons to reduce state government expenditures by an amount growing to \$1.4 billion in the 2014–15 fiscal year.<sup>126</sup> The Senate Budget and Fiscal Review Committee made similar projections.<sup>127</sup> The Legislative Analyst's Office (LAO) also projected corrections realignment to reduce the state government's expenditures; however, its figures suggested the savings will exceed Governor Brown's projections and grow to approximately \$1.7 billion in the 2014–15 fiscal year.<sup>128</sup> Thus, corrections realignment will likely help California to realize significant future savings.

2. *Corrections Realignment Will Likely Reduce the Prisoner Population*

The corrections realignment legislation will likely help California to meet its legal imperative to reduce the state's prisoner population. The CDCR estimated, under corrections realignment, the average daily prison population for the 2011–12 fiscal year would “be nearly 11,000 inmates, or 7 percent[] lower . . . than it would have been in the absence of realignment.”<sup>129</sup> Additionally, upon full implementation in “2016–17, . . . the prison population [would] be lower by nearly 40,000 inmates, or 24 percent, than it otherwise would have been absent the 2011 realignment.”<sup>130</sup> The LAO agreed with the CDCR that realigning felons to local jurisdictions will reduce the prison population<sup>131</sup> and consequently

126. See *supra* text accompanying note 76 (reporting Governor Brown's prediction for the savings to be generated by enacting corrections realignment legislation).

127. In its final report on the budget and related legislation, the Senate Budget and Fiscal Review Committee predicted corrections realignment would reduce the state government's corrections expenditures by an amount growing to roughly \$1.3 billion in 2014–15. LENO, *supra* note 70, at 5-1.

128. The LAO predicted corrections realignment would reduce the state's expenditures by an amount growing to “about \$1.7 billion in 2014–15,” TAYLOR, *supra* note 78, at 7–8, suggesting the legislation's savings will exceed even the governor's initial estimates.

129. *Id.* at 6.

130. *Id.* See generally *id.* (predicting, based on early 2012 figures, California's “prison system . . . [will] have about 124,000 inmates” in the 2016–17 fiscal year). Just as an aside, corrections realignment may reduce the state's female prisoner population by half, because about half of all female prisoners are low-level offenders by the terms of the corrections realignment legislation. Heather Tirado Gilligan, *After Realignment, Fewer Women Expected in Prison*, HEALTHYCAL.ORG (Sept. 11, 2011), <http://www.healthycal.org/tag/ab-109> (on file with the *McGeorge Law Review*).

131. See MAC TAYLOR, A STATUS REPORT: REDUCING PRISON OVERCROWDING IN CALIFORNIA, CAL. LEGIS. ANALYST'S OFF. 6 (2011), available at [http://www.lao.ca.gov/reports/2011/crim/overcrowding\\_080511.pdf](http://www.lao.ca.gov/reports/2011/crim/overcrowding_080511.pdf) [hereinafter TAYLOR, STATUS REPORT] (on file with the *McGeorge Law Review*) (projecting corrections realignment to alleviate prison overcrowding).



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“alleviate many of the operational challenges to the inmate medical care program . . . .”<sup>132</sup> Corrections realignment will thus solve many of the problems underlying *Plata*; it will be “easier [under the legislation] for the [CDCR] to deliver adequate care to inmates who are currently receiving outpatient care at existing prisons . . . .”<sup>133</sup> In addition, by the time corrections realignment is fully phased in, the “CDCR will be at or above the capacity needed to deliver treatment to most . . . mentally ill male inmates . . . .”<sup>134</sup>

Incidentally, corrections realignment will likely shrink the state’s parolee number even more dramatically than it will the prisoner population.<sup>135</sup> The LAO projected “the average daily parole population [in the 2011–12 fiscal year would] be nearly 4,300 parolees, or 5 percent lower, . . . than it would have been in the absence of realignment.”<sup>136</sup> The LAO also predicted, drawing on CDCR data, that, “[b]y 2016–17, . . . the parole population [would] be nearly 51,000 parolees, or 66 percent lower, than it otherwise would have been absent the 2011 realignment.”<sup>137</sup> This reduction will likely lead to increased “resources in parole programs relative to in–prison programs after realignment.”<sup>138</sup>

### *B. The Possible Adverse Effects of Corrections Realignment and Additional Concerns Raised by Its Enactment*

#### *1. Reducing the Size of the Prison Population May Yield Adverse Effects*

The LAO cautioned that by reducing prisoner numbers “in low security, female, and reception center facilities”<sup>139</sup> but not in high-security housing

132. TAYLOR, *supra* note 78, at 21.

133. *Id.* See generally *id.* (“[L]ockdowns should decline as a result of realignment, which will make it easier for inmates to get to their health care appointments and receive medication. In addition, reduced overcrowding should make it easier for [the CDCR] to hire needed medical care staff.”). The LAO also predicted corrections “realignment will reduce the number of new inmates arriving at reception centers from about 9,000 per month to about 2,400 per month, freeing up resources that would otherwise be used on inmate evaluations. Reduced overcrowding will also decrease the spread of infectious diseases . . . .” *Id.*

134. *Id.* at 24.

135. *Id.* at 6.

136. *Id.* at 6–7.

137. *Id.* at 7. See generally *id.* (projecting that, in 2017, the state’s parole population will stand at approximately 26,000).

138. *Id.* at 29. Moreover, “the post–realignment inmate and parolee population will have a relatively higher proportion of inmates who have a lower risk to reoffend, as well as a relatively lower proportion of inmates who have a high risk to reoffend.” *Id.*

This is likely because the inmates and parolees remaining after realignment will be relatively older because they are serving longer sentences because of their current or prior violent and serious crimes. . . . [T]he risk of reoffending decreases significantly with age. Alternatively, the inmates and parolees being realigned tend to be repeat offenders who regularly cycle in and out of prison and thus have a higher risk to reoffend on average.

*Id.*

139. *Id.* at 11.

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facilities,<sup>140</sup> corrections realignment would likely create a “mismatch between [cell] capacity and actual [cell] needs . . . .”<sup>141</sup> As a result, by the 2016–17 fiscal year, “the state [would] have excess low–security and reception center [cells] and insufficient high–security” cells to accommodate state prisoners.<sup>142</sup> In other words, California’s “low–security and reception center facilities . . . [will have] large amounts of unused space,” but its high-security prisons will continue to be severely overcrowded.<sup>143</sup> The LAO also cautioned that corrections realignment will remove many of the felons eligible for the state’s forty-two adult fire camps from state custody.<sup>144</sup> Finally, the LAO has challenged the notion that corrections realignment without more is sufficient to enable California to satisfy all of *Plata*’s six-month population reduction benchmarks.<sup>145</sup>

## 2. *Corrections Realignment May Compel Early Releases and Pose Other Safety Risks*

As of January 2011, “over one-third of counties [were] under court-ordered jail population limits” due to overcrowding,<sup>146</sup> and in no condition to assume control over low-level felons realigned into their jurisdictions. If those counties’

140. *See id.* (“While the number of high–security inmates will also decrease under realignment, they will make up a smaller share of the total reduction . . . .”).

141. *Id.*

142. *Id.* at 11–12. *See generally id.* at 12 (“[T]here will be excess capacity of 6,400 beds in reception centers, 6,800 beds in low-security prisons, and about 2,100 excess female prison beds. Conversely, . . . there will be a shortage of 12,900 high-security beds.”).

143. *Id.* at 11.

144. California’s fire camp prisoner population will likely fall “to about 2,500 inmates by 2016–17, representing a 38 percent decline from 2010–11.” *Id.* at 17. Numeric losses may be offset somewhat because the corrections realignment legislation “authorized counties to contract for space in fire camps for offenders currently housed in jails.” *Id.* at 17.

145. *See id.* at 9 (“[T]he state [will likely] miss[] the final population limit of no more than 110,000 inmates housed in state prisons by June 2013. Specifically, . . . [it will] exceed[] this limit by about 6,000 inmates. However, . . . the state will [likely] meet the court-imposed limit by the end of 2014.”). *But see id.* at 9–10.

[T]here is uncertainty as to whether the state will, in fact, miss those deadlines as they approach. . . . [The CDCR’s] longer-term projections could be either high or low depending on a variety of future factors, such as how successful counties are in managing their existing and realigned offender populations and whether there are any significant changes in judicial and prosecutorial practices that affect the number of offenders sentenced to state prison.

*Id.*

146. LEGIS. ANALYST’S OFF., GOVERNOR’S REALIGNMENT PLAN—CRIMINAL JUSTICE 8 (2011), available at [http://www.lao.ca.gov/handouts/crimjust/2011/CJ\\_Realignment\\_Plan\\_01\\_25\\_11.pdf](http://www.lao.ca.gov/handouts/crimjust/2011/CJ_Realignment_Plan_01_25_11.pdf) (on file with the *McGeorge Law Review*). The state’s

jails have followed a path similar to state prisons and many are crowded today. California has 480 adult jails, although many of these are at city police stations or at short-term holding facilities near courts for prisoners on trial. Longer-term jails held a daily average of 73,846 prisoners in the first half of 2010 . . . . “Board-rated capacity,” the county jail equivalent to design capacity for state prisons, was 75,728 beds as of 2007.

MISCZYNSKI, *supra* note 3, at 10.

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jails are to accommodate realigned felons, they may have to release some misdemeanants early.<sup>147</sup> Otherwise, they risk becoming home to just the sort of Eighth Amendment violations that were at the heart of the *Plata* controversy.<sup>148</sup> Early release could pose safety risks to the public.<sup>149</sup>

Besides its potential to compel early releases, corrections realignment may pose safety issues for jailers and misdemeanants serving their executed jail sentences. While county incarceration of low-level felons seems to have been based on the notion that such felons “are . . . sufficiently manageable and low risk that they can be safely held in county jail and managed by county sheriffs,”<sup>150</sup> it may be “that county jail space is . . . not built or staffed to the same security standards required” to incarcerate felons.<sup>151</sup>

#### *3. Corrections Realignment May Prompt Disparate Prosecutorial Practices*

Corrections realignment may foster disparate prosecutorial practices. The legislation “increases the latitude of local governments to follow their own policy preferences” with respect to incarceration.<sup>152</sup> This latitude is unlikely to be expressed in inter-county jail disparities because jailers receive standardized training across the state and courts regularly hear inmates’ “cruel and unusual

147. Press Release, Connie Conway, Assembly Member, Cal. State Assembly, Governor Brown Signs Legislation to Shift Dangerous Felons to Overcrowded Local Jails or Released Early (Apr. 4, 2011) (on file with the *McGeorge Law Review*). Releasing jail inmates early is hardly a novel concept in California. See PRISON OVERCROWDING PROCLAMATION, *supra* note 99 (“[In 2005], 233,388 individuals statewide avoided incarceration or were released early into local communities because of the lack of jail space.”); MISCZYNSKI, *supra* note 3, at 10 (“In 2010, about 13,000 inmates were released early each month because of [court-ordered] population caps.”). Counties do have the option to contract with the state government to incarcerate jail inmates, but that would both frustrate the goal of alleviating prison overcrowding, Joshua Page, *Guarding Against Reform: CA’s Corrections Officers Need to Let Some of Their Charges Go*, NEW AMERICA FOUND. (May 5, 2011), <http://california.newamerica.net/node/51617> (on file with the *McGeorge Law Review*), and require counties to pay incarceration costs at the comparatively high state rate. AM. CIVIL LIBERTIES UNION OF CAL., COMMUNITY SAFETY, COMMUNITY SOLUTIONS: IMPLEMENTING AB 109: ENHANCING PUBLIC SAFETY, SAVING MONEY AND WISELY ALLOCATING LIMITED JAIL SPACE 5 (2011), available at [http://www.aclunc.org/issues/criminal\\_justice/asset\\_upload\\_file464\\_10365.pdf](http://www.aclunc.org/issues/criminal_justice/asset_upload_file464_10365.pdf) (on file with the *McGeorge Law Review*). For a comparison of the state’s per-inmate incarceration costs and the counties’ per-inmate incarceration costs, see *supra* note 71.

148. See Justine Sharrock, *CA Not Ready to Relieve Overcrowding*, CORRECTIONS.COM (June 2, 2011), <http://www.corrections.com/news/article/28696> (on file with the *McGeorge Law Review*) (reporting Los Angeles County jails, for example, already faced Eighth Amendment difficulties).

149. See MISCZYNSKI, *supra* note 3, at 29 (“Corrections realignment could foster an increase in crime. . . . Released offenders have a fairly high likelihood of committing additional crimes after release, and putting them back on the streets sooner might speed up the process.”). *But see id.* (“However, if realigned corrections puts offenders under the management of local officials who have a greater stake than state prison employees in their rehabilitation, and if counties coordinate social service and educational programming effectively, the net result might be reduced crime and a reduced flow of offenders to prisons and jails overall.”).

150. *Id.* at 13.

151. *Id.*

152. *Id.* at 25.

punishment” claims.<sup>153</sup> But it may be expressed in prosecutorial practices to the extent prosecutors take the increased strain wrought by corrections realignment on their local jails’ capacities into account when deciding which felony charges to file against a defendant.<sup>154</sup> Any sort of artificial “up-charging,” resulting in more state prison sentences, would unfairly prejudice defendants and frustrate the state government’s efforts to comply with the *Plata* prison population reduction order.<sup>155</sup>

#### 4. *Corrections Realignment May Raise Equal Protection Concerns*

The corrections realignment legislation may prompt some felons and misdemeanants to file state and federal equal protection claims<sup>156</sup> because the legislation’s changes—particularly those related to county jail sentences for low-level felons<sup>157</sup> and equalized conduct credit ratios for state prisoners and county jail inmates<sup>158</sup>—are not retroactive.<sup>159</sup> The corrections realignment legislation may even prompt county correctional officers to raise equal protection claims due to unequal state-local law enforcement immunities.<sup>160</sup> Finally, it is worth remarking that the legislation leaves felons’ voting rights unclear.<sup>161</sup>

## V. CONCLUSION

California’s 2011 corrections realignment legislation placed felons under varying degrees of local control.<sup>162</sup> It provided that county jails, rather than state

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153. *Id.* at 25–26.

154. *See id.* at 26 (“[T]wo similar felons in two different counties may have very different experiences: One may have the misfortune to be [in a county with a jail population cap and thus be] convicted of a more serious crime and . . . [sentenced to] state prison [while] his counterpart in another county” without a jail population cap is convicted of a less serious crime and sentenced to a jail term.).

155. TAYLOR, STATUS REPORT, *supra* note 131, at 6.

156. *See generally* U.S. CONST. amend. XIV, § 1 (“No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.”); CAL. CONST. art. I, § 7(a) (“A person may not be . . . denied equal protection of the laws . . .”).

157. *See* discussion *infra* Appendix A (discussing felon sentencing to county jail).

158. *See infra* text accompanying notes 294–95 (discussing the conduct credit earning ratio for jail inmates under corrections realignment).

159. However, the California Supreme Court has already ruled equal protection concerns do not mandate that courts retroactively apply statutes that increase conduct credits. *California v. Brown III*, 278 P.3d 1182, 1191–93 (Cal. 2012).

160. *See* MISCZYNSKI, *supra* note 3, at 24 (“State correctional officers and parole officers have legal immunity when performing their official duties. For example, they cannot be sued individually if a prisoner is injured or if an inadequately supervised parolee commits a new crime. But local officials do not have the same level of protection. This could mean controversy about which level of government should properly bear the financial responsibility of corrections realignment litigation.”).

161. *See generally* BYERS, *supra* note 24, at 73–77 (discussing felons’ voting rights post-realignment).

162. *See* discussion *supra* Part II (discussing the changes wrought by the corrections realignment legislation); *see also* discussion *infra* Appendices A–B (discussing the corrections realignment legislation in

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prisons, incarcerate low-level felons.<sup>163</sup> It provided that counties, rather than the state, supervise mid-level felons upon their release from prison.<sup>164</sup> Finally, it provided that county jails incarcerate high-level felons who violate their parole conditions.<sup>165</sup> The legislation was embodied in a budgetary realignment<sup>166</sup> and seems likely to function in both a budget-balancing and a prison-population-reducing capacity.<sup>167</sup> However, it may also lead to unintended consequences.<sup>168</sup> Whatever its ultimate effects, the 2011 corrections realignment marked a dramatic turning point in how California handles felons. Its reverberations will undoubtedly be felt in the state for years to come.

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detail).

163. See discussion *supra* Part II.B.1 (defining low-level felons and indicating corrections realignment required counties to incarcerate low-level felons); see also discussion *infra* Appendix A (discussing felon incarceration post-realignment).

164. See discussion *supra* Part II.B.2 (defining mid-level felons and indicating corrections realignment required counties to supervise mid-level felons); see also discussion *infra* Appendix B (discussing felon post-release supervision laws following realignment).

165. See discussion *supra* Part II.B.3 (defining high-level felons and indicating corrections realignment required counties to incarcerate parole violators); see also discussion *infra* Appendix B (discussing parole revocation sentencing post-realignment).

166. See discussion *supra* Part III.A.3 (indicating corrections realignment was embodied in California's 2011 corrections realignment).

167. See discussion *supra* Part IV.A (indicating the likely effects of corrections realignment).

168. See discussion *supra* Part IV.B (noting the possible adverse consequences of corrections realignment).

APPENDIX A: CALIFORNIA'S FELON INCARCERATION LAWS BEFORE AND AFTER  
THE 2011 CORRECTIONS REALIGNMENT

*This Appendix considers California's felon incarceration laws before and after the passage of California's 2011 corrections realignment legislation. The changes discussed in this Appendix functioned to reroute the flow of low-level felons from state prisons to county jails.*

A. *California's Felon Incarceration Laws Before Corrections Realignment*

Before corrections realignment, state law generally provided that executed felony sentences be served only in state prisons. This Section begins by briefly noting how California defines felonies. It continues by noting why different types of sentences pervade California's statutes. It then outlines the state's felony sentencing procedure.

1. *Felonies Defined*

Understanding felon incarceration laws in California begins with understanding what a felony is. Existing law defines crimes by the harshness of their penalties. A "felony" is by definition any crime that is punishable by a period of incarceration exceeding one year in length.<sup>169</sup> Before corrections

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169. Compare CAL. PENAL CODE § 18 (West 1999) (defining felonies as offenses punishable by imprisonment for a minimum of sixteen months in state prison), with *id.* § 19 (defining misdemeanors as offenses punishable by terms of up to six months in county jail), and *id.* § 19.6 (defining infractions as offenses not punishable by incarceration). It should be remarked California law includes crimes—called "wobblers"—that are presumptively felonies but which may also be punished as misdemeanors. *Ewing v. California*, 538 U.S. 11, 16–17 (2003) ("[A] 'wobbler' is presumptively a felony and 'remains a felony except when the discretion is actually exercised' to make the crime a misdemeanor. . . . [P]rosecutors may exercise their discretion to charge a 'wobbler' as either a felony or a misdemeanor. Likewise, . . . trial courts have discretion to reduce a 'wobbler' charged as a felony to a misdemeanor either before preliminary examination or at sentencing . . . ." (citations omitted) (quoting *California v. Williams*, 27 Cal. 2d 220, 229, 163 P.2d 692, 696 (1945)); see also *id.* at 17 (indicating that, when deciding whether to reduce a wobbler from a felony to a misdemeanor, a trial "court may consider 'those factors that direct similar sentencing decisions,' such as 'the nature and circumstances of the offense, the defendant's appreciation of and attitude toward the offense, . . . [and] the general objectives of sentencing'" (quoting *People v. Super. Ct. ex rel. Alvarez*, 14 Cal. 4th 968, 978, 928 P.2d 1171, 1177–78 (1997))). For examples of wobblers, see PENAL § 473 (West 2010) (prescribing "imprisonment in [a] state prison, or by imprisonment in [a] county jail for not more than one year" for forgery); *id.* § 273.5 (West 2008 & Supp. 2012) (prescribing "imprisonment in [a] state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to six thousand dollars (\$6,000) or by both that fine and imprisonment" for inflicting corporal injury on a spouse or mate). Sometimes felonies that are not wobblers are described as "straight" felonies. See *Legal Definition of a Felony in California Law*, SHOUSE L. GRP., <http://www.shouselaw.com/felony.html> (last visited Oct. 8, 2012) (on file with the *McGeorge Law Review*) ("A 'straight' felony is one that can only be charged and sentenced as a felony.").

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realignment, state law provided that executed felony sentences could be served only in state prisons.<sup>170</sup>

### 2. *A Felony Sentencing System Divided Against Itself: Making Sense of the Mix of Indeterminate and Determinate Sentences in California Law*

Understanding the felon incarceration law in California does not end at knowing what a felony is. It is also important to know that two very different categories of felony sentences pervade existing California law. A few felony sentencing statutes<sup>171</sup> prescribe open-ended sentences such as “15 years to life,”<sup>172</sup> affording virtually limitless sentencing flexibility. Most statutes, though, prescribe closed-ended sentences such as “two, three, or four years,” confining sentencing discretion to a universe of three choices.<sup>173</sup> California’s felony sentencing system comprises both open-ended (“indeterminate”) and closed-ended (“determinate”) prison terms because the state has had both indeterminate and determinate sentencing regimes in its history.

For roughly a sixty-year stretch that began in 1917, California embraced indeterminate sentencing.<sup>174</sup> Then, in 1976, California almost completely abandoned its indeterminate sentencing system for determinate sentencing.<sup>175</sup>

170. See PENAL § 18 (West 1999) (defining felonies as offenses punishable by imprisonment exceeding one year); *id.* § 19.2 (providing that a county jail could incarcerate a person for only up to one year, thus foreclosing the possibility that felons could serve their executed felony sentences in county jails).

171. This article uses the term “felony sentencing statute” because its references are to sentencing statutes, and sentencing statutes are sometimes distinct from the statutes substantively defining the underlying offense. Compare *id.* § 187 (West 2008) (defining murder), with *id.* § 190 (prescribing sentences for murder).

172. See, e.g., *id.* § 190.05(a) (prescribing “a term of 15 years to life” for second-degree murder where the convicted murderer has already “served a prior prison term for murder in the first or second degree”).

173. See, e.g., *id.* § 520 (West 2010) (prescribing a term of two, three, or four years for committing felony extortion).

174. See 1917 Cal. Stat. ch. 527 (enacting California’s indeterminate sentencing regime); 1976 Cal. Stat. ch. 1139 (replacing California’s indeterminate sentencing regime with a determinate sentencing one). See generally PENAL § 1168 (West 2004) (codifying California’s indeterminate sentencing law); *id.* § 1170 (West 2004 & Supp. 2011) (codifying California’s determinate sentencing law). The indeterminate sentencing regime optimized judicial sentencing discretion and incentivized prisoners’ rehabilitative efforts:

The court imposed a statutory sentence expressed as a range between a minimum and maximum period of confinement—often life imprisonment—the offender must serve. An inmate’s actual period of incarceration within this range was under the exclusive control of the parole authority, which focused primarily, not on the appropriate punishment for the original offense, but on the offender’s progress toward rehabilitation. During most of this period, . . . prisoners had no idea when their confinement would end, until the moment the parole authority decided they were ready for release.

*In re Dannenberg*, 34 Cal. 4th 1061, 1077, 104 P.3d 783, 790 (2005).

175. The indeterminate sentencing system had come under political attack in the early 1970s. See Joaquin Palomino, *How California’s Prison Population Exploded*, E. BAY EXPRESS (Apr. 11, 2012), <http://www.eastbayexpress.com/gyrobase/how-the-prison-population-exploded/Content?oid=3172693&showFullText=true> (on file with the *McGeorge Law Review*) (“Liberals thought [the indeterminate sentencing law] wasn’t transparent enough; one person might serve six months for dealing drugs and another could serve a lifetime for the same crime. Accusations of racial discrimination and favoritism flooded the courts.

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Today, a few remnants from the derelict indeterminate system remain. The sentencing statutes for a handful of serious felonies continue to prescribe indeterminate sentences.<sup>176</sup> First-degree murder, to take what is perhaps the most obvious example, remains punishable by “a term of 25 years to life.”<sup>177</sup> However, reflective of the change in sentencing regimes, the vast majority of the state’s felonies include sentencing “triads,”<sup>178</sup> which comprise precise “lower, middle, and upper term sentence[s].”<sup>179</sup> Thus, for example, the sentencing statute for first-degree burglary prescribes an incarceration term of two, four, or six years.<sup>180</sup> Triad ranges reflect the legislatively determined seriousness of the crimes to which they are attached.<sup>181</sup> Thus, felony extortion, a felony determined by the legislature to be relatively minor, is punishable by two, three, or four years of incarceration.<sup>182</sup> Conversely, felony carjacking, a more serious felony, carries a sentence of three, five, or nine years.<sup>183</sup>

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Conservatives . . . believ[ed indeterminate sentencing] produced lenient sentences. There also were accusations that the state released inmates for political and social reasons.”). The state legislature responded by enacting California’s determinate sentencing law. *See* 1976 Cal. Stat. ch. 1139 (enacting California’s determinate sentencing law). The determinate sentencing law removed judicial sentencing discretion and dis-incentivized prisoners’ rehabilitative efforts by

largely abandon[ing the indeterminate sentencing] system. The [determinate sentencing law] implemented the Legislature’s finding that “the purpose of imprisonment for crime is punishment,” a goal “best served by terms proportionate to the seriousness of the offense,” with provision for sentence “uniform[ity]” for similar offenses. . . . [Under the determinate sentencing law, an] offender must serve [his or her] entire term, less applicable sentence credits, within prison walls, [and] then must be released for a further period of supervised parole.

*Dannenber*, 34 Cal. 4th at 1078, 104 P.3d at 790–91 (citations omitted).

176. After California switched to determinate sentencing, “certain serious offenders, including ‘noncapital’ murderers (i.e., those murderers not punishable by death or life without parole), remain[ed] subject to indeterminate sentences. . . .” *Dannenber*, 34 Cal. 4th at 1078, 104 P.3d at 791. *See generally* CAL. LEGIS. ANALYST’S OFF., OVERVIEW OF *CUNNINGHAM V. CALIFORNIA* AND RELATED LEGISLATION 1 (2010), available at [http://www.lao.ca.gov/handouts/crimjust/2010/Cunningham\\_11\\_9\\_10.pdf](http://www.lao.ca.gov/handouts/crimjust/2010/Cunningham_11_9_10.pdf) (on file with the *McGeorge Law Review*) (reporting that, as of November 2010, “[a]bout 20 percent of state prison inmates [were] serving indeterminate life sentences”).

177. PENAL § 190(a).

178. *Cunningham v. California*, 549 U.S. 270, 277 (2007). *See generally* CAL. LEGIS. ANALYST’S OFF., *supra* note 176, at 1 (reporting that, as of November 2010, “[r]oughly 77 percent of state prison inmates [were] serving determinate sentences”).

179. *Cunningham*, 549 U.S. at 277.

180. PENAL § 461(a) (West 2010).

181. *See* Dansky, *supra* note 80, at 67 (explaining that California’s determinate sentencing law categorizes “offenses . . . into [five total] degrees of seriousness . . . [and] assign[s each level] three definite terms (the ‘triads’)”); PENAL § 1170(a)(1) (indicating a felony’s prescribed sentencing triad reflects the state legislature’s assessment of that felony’s seriousness).

182. PENAL § 520.

183. *Id.* § 215(b) (West 2008).



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*3. Penal Code Section 1170: California's Felony Sentencing Procedure Under the Determinate Sentencing Law*

To understand California's felon incarceration laws, it is important to know how felony sentence lengths are determined. Since California uses a determinate sentencing system, judges adhere to the sentencing guidelines contained in Penal Code Section 1170—California's determinate sentencing law (DSL)<sup>184</sup>—to determine the appropriate sentence to impose on convicted felons.<sup>185</sup> Generally, a sentencing judge must first check whether the applicable felony sentencing statute prescribes a determinate sentence, an indeterminate sentence, or no sentence at all. If the relevant felony sentencing statute prescribes an indeterminate sentence length, the judge selects and imposes the appropriate indeterminate sentence.<sup>186</sup> If the applicable felony sentencing statute prescribes no sentence at all, the judge selects and imposes the appropriate term from a range that includes sixteen months, two years, or three years.<sup>187</sup>

If the applicable felony sentencing statute prescribes a determinate sentence, the sentencing judge must determine whether the state legislature has provided the felon with an alternative sentencing disposition to a prison sentence, such as jail or probation.<sup>188</sup> If the state legislature has provided for an alternative disposition to a prison sentence, the sentencing judge imposes it.<sup>189</sup> If, however, the state legislature has not provided for an alternative disposition to a prison sentence, the sentencing judge determines at his or her discretion which of the three determinate sentence lengths prescribed by the statute is the most appropriate to impose.<sup>190</sup>

184. *Id.* § 1170.

185. *Id.* § 1170(a).

186. *See id.* § 1170(a)(3) (“Nothing in [the determinate sentencing law] shall affect any provision of law that . . . expressly provides for” an indeterminate sentence.); *see also id.* § 1168(b) (providing that, for any person sentenced under a statute unaffected by the determinate sentencing law, “the court imposing the sentence shall” provide an indeterminate sentence).

187. *See id.* § 18 (“Except in cases where a different punishment is prescribed by any law of this state, every offense declared to be a felony, or to be punishable by imprisonment in a state prison, is punishable by imprisonment in any of the state prisons for 16 months, or two or three years . . .”).

188. *See id.* § 1170(a)(3) (“In any case in which the punishment prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison of any specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence . . .”); *accord id.* (“Nothing in [the determinate sentencing law] shall affect any provision of law . . . that authorizes or restricts the granting of probation or suspending the execution or imposition of sentence . . .”). *See generally id.* § 1203(a) (West 2004 & Supp. 2011) (defining “probation” as “the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a [county] probation officer”).

189. *Id.* § 1170(a)(3).

190. *See id.* § 1170(b) (“When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the choice of the appropriate term shall rest within the sound discretion of the court.”). This was not always the case; in its original sentencing instructions, California's DSL directed a sentencing

*B. California's Felon Incarceration Laws After Corrections Realignment*

Under the 2011 corrections realignment, state law provides that executed sentences for certain felonies are eligible to be served in county jails. This Section notes how the legislation recast hundreds of non-serious, non-violent, and non-sexual felonies as “county jail felonies.” It then discusses how judges determine county jail felony sentence lengths. It moves on to a discussion of the county jail felony disqualifiers. This Section concludes by examining how judges impose county jail felony sentences.

*1. Penal Code Section 1170, Subdivision (h): Recasting Hundreds of Felonies as County Jail Felonies*

California's 2011 corrections realignment legislation added subdivision (h), paragraphs (1) through (5), to Penal Code Section 1170—California's determinate sentencing law—and then added cross-references to that new subdivision to about five-hundred<sup>191</sup> statutes prescribing sentences for crimes deemed non-serious, non-violent, and non-sexual by the legislature. If a felony cross-references Penal Code Section 1170(h), it is eligible, subject to some disqualifiers discussed below, to be served in county jail. We may properly deem these felonies “county jail felonies.”<sup>192</sup>

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judge to select the middle term of the applicable sentencing triad, unless (1) he or she found mitigating circumstances, in which case the sentencing judge would select the lower term, or (2) he or she found aggravating circumstances, in which case the sentencing judge would select the upper term. *Cunningham v. California*, 549 U.S. 270, 277 (2007). However, the United States Supreme Court ruled those instructions to be unconstitutional because it interpreted them to mean that the maximum allowable prison sentence in any given sentencing triad, as determined by the state legislature, was the middle term, and any sentence imposed above the maximum allowable must, in order to comport with the Sixth Amendment's right to a trial by jury, be based on a jury's findings rather than a judge's independent determination. *Id.* at 293. *See generally* U.S. CONST. amend. VI (“In all criminal prosecutions, the accused shall enjoy the right to a . . . trial[] by a[] . . . jury . . .”). About “[t]wo months after the [Court's] decision . . . , the Legislature enacted [Senate Bill 40], which . . . modified California's determinate sentencing law to ensure that when there are three possible terms of imprisonment, the choice of the appropriate term would ‘rest within the sound discretion of the court,’” CAL. LEGIS. ANALYST'S OFF., *supra* note 176, at 4, thus excising any implication that the middle term is the maximum allowable sentence. *See* 2007 Cal. Stat. ch. 3 (codifying SB 40). *See generally* Dansky, *supra* note 80, at 70 n.145 (“The California Supreme Court [subsequently] amended the Criminal Rules . . . to provide sentencing courts with guidance in imposing sentence.”); CAL. R. CT. 4.420 (providing the California Supreme Court's amended sentencing rules).

191. *Realignment AB 109 in California*, SHOUSE L. GRP., <http://www.shouselaw.com/realignment.html> (last visited Oct. 8, 2012) (on file with the *McGeorge Law Review*).

192. BYERS, *supra* note 24, at 10. For examples of non-serious, non-violent, and non-sexual felonies transformed into county jail felonies, see CAL. BUS. & PROF. CODE § 2052 (amended by 2011 Stat. ch. 15) (prescribing sentence for unlicensed medical practice); *id.* § 6126 (amended by 2011 Stat. ch. 15) (prescribing sentence for unlicensed legal practice); CAL. EDUC. CODE § 7054 (amended by 2011 Stat. ch. 15) (prescribing sentence for using school property for political activities); CAL. ELEC. CODE § 18521 (amended by 2011 Stat. ch. 15) (prescribing sentence for bribing electors); *id.* § 18680 (amended by 2011 Stat. ch. 15) (prescribing sentence for misusing campaign funds); CAL. FIN. CODE § 3510 (amended by 2011 Stat. ch. 15) (prescribing sentence for price fixing); CAL. HEALTH & SAFETY CODE § 11358 (amended by 2011 Stat. ch. 15) (prescribing

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*2. Penal Code Section 1170, Subdivision (h), Paragraphs (1) and (2):  
Determining County Jail Felony Sentence Lengths*

Penal Code section 1170, subdivision (h), paragraphs (1) and (2), provide that, in general, a person sentenced on or after October 1, 2011, for committing a county jail felony, is eligible to serve his or her court-imposed incarceration term in a county jail rather than in a state prison. Pursuant to Penal Code section 1170(h)(1), if a county jail felony's sentencing statute does not prescribe a term of incarceration, the default triad range of sixteen months, two years, or three years applies.<sup>193</sup> Pursuant to Penal Code section 1170(h)(2), if a county jail felony's sentencing statute prescribes a triad sentencing range, the underlying felony is punishable by a county jail sentence for up to the length of the upper term.<sup>194</sup>

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sentence for illegally cultivating marijuana); CAL. INS. CODE § 11760 (amended by 2011 Stat. ch. 15) (prescribing sentence for insurance fraud); CAL. MIL. & VET. CODE § 145 (amended by 2011 Stat. ch. 15) (prescribing sentence for insurrection); CAL. PENAL CODE § 76 (amended by 2011 Stat. ch. 15) (prescribing sentence for threatening elected officials); *id.* § 182 (amended by 2011 Stat. ch. 15) (prescribing sentence for conspiracy); *id.* § 193 (amended by 2011 Stat. ch. 15) (prescribing sentence for voluntary manslaughter); *id.* § 237 (amended by 2011 Stat. ch. 15) (prescribing sentence for false imprisonment); *id.* § 245(a)(1) (amended by 2011 Stat. ch. 15) (prescribing sentence for assault by means of force "likely to produce great bodily injury"); *id.* § 271 (amended by 2011 Stat. ch. 15) (prescribing sentence for deserting a child with intent to abandon); *id.* § 273d (amended by 2011 Stat. ch. 15) (prescribing sentence for felony child abuse); *id.* § 368 (amended by 2011 Stat. ch. 15) (prescribing sentence for crimes against elders and dependent adults); *id.* § 399.5 (amended by 2011 Stat. ch. 15) (prescribing sentence for having custody of an attack dog); *id.* § 422.7 (amended by 2011 Stat. ch. 15) (prescribing sentence for hate crimes); *id.* § 461 (amended by 2011 Stat. ch. 15) (prescribing sentence for burglary); *id.* § 530.5 (amended by 2011 Stat. ch. 15) (prescribing sentence for identity theft); *id.* § 532f (amended by 2011 Stat. ch. 15) (prescribing sentence for mortgage fraud); *id.* § 597 (amended by 2011 Stat. ch. 15) (prescribing sentence for animal cruelty); *id.* § 626.9 (amended by 2011 Stat. ch. 15) (prescribing sentence for violating the Gun Free School Zone Act); *id.* § 631 (amended by 2011 Stat. ch. 15) (prescribing sentence for wiretapping); *id.* § 664 (amended by 2011 Stat. ch. 15) (prescribing sentence for criminal attempts); *id.* § 12025 (amended by 2011 Stat. ch. 15) (prescribing sentence for carrying a concealed firearm); CAL. PUB. RES. CODE § 5097.99 (amended by 2011 Stat. ch. 15) (prescribing sentence for unlawfully possessing "any Native American artifacts or human remains"); CAL. REV. & TAX. CODE § 19708 (amended by 2011 Stat. ch. 15) (prescribing sentence for tax evasion). The corrections realignment legislation amended the Vehicle Code to "provide[] that all felonies in the Vehicle Code that do not specify a term in state prison are" typically county jail felonies. BYERS, *supra* note 24, at 26; *see also* CAL. VEH. CODE § 42000 (amended by 2011 Stat. ch. 15) (providing that Vehicle Code felonies are county jail felonies). In addition, the corrections realignment legislation made various conforming changes to the Penal Code, such as by amending California's statutory definition of a felony to provide that the term refers, not only to offenses "punishable . . . by imprisonment in [a] state prison," but also to "imprisonment in a county jail," PENAL § 17(a) (amended by 2011 Stat. ch. 15), and by providing that county jail sentences may exceed one year in length. *Id.* § 19.2 (amended by 2011 Stat. ch. 15).

193. PENAL § 1170(h)(1) (amended by 2011 Stat. ch. 15, amended by 2011 Stat. ch. 39, amended by 2011 Stat. ch. 136, amended by 2011–12 1st Ex. Sess. ch. 12, amended by 2011 Stat. ch. 361).

194. *Id.* § 1170(h)(2) (amended by 2011 Stat. ch. 15, amended by 2011 Stat. ch. 39, amended by 2011 Stat. ch. 136, amended by 2011–12 1st Ex. Sess. ch. 12, amended by 2011 Stat. ch. 361).

### 3. *Penal Code Section 1170, Subdivision (h), Paragraph (3): The County Jail Disqualifiers*

Despite the operation of Penal Code section 1170(h)(1) and (h)(2), not every individual sentenced for committing a county jail felony can serve his or her executed sentence in a county jail. Penal Code section 1170(h)(3) announces several county jail disqualifiers. Specifically, it indicates that any felon with a current or prior serious or violent felony conviction, a current or prior felony or misdemeanor conviction requiring registration as a sex offender, or a sentence enhancement based on fraud or embezzlement, is disqualified from serving his or her executed sentence in a county jail.<sup>195</sup> Penal Code section 1170.1(a) establishes

195. *Id.* § 1170(h)(3) (amended by 2011 Stat. ch. 15, amended by 2011 Stat. ch. 39, amended by 2011 Stat. ch. 136, amended by 2011–12 1st Ex. Sess. ch. 12, amended by 2011 Stat. ch. 361). *See generally id.* § 1192.7(c) (West 2004 & Supp. 2011) (defining serious felonies); *id.* § 667.5(c)(1)–(23) (defining violent felonies); *id.* § 290 (West 2008) (specifying required sex registrants); *id.* § 186.11 (West 1999 & Supp. 2011) (describing sentence enhancements for fraud and embezzlement). Incidentally, the corrections realignment legislation transformed “a small number of [sex] registerable offenses, and a small number of offenses that are always, or almost always, serious or violent felonies” into county jail felonies; however, “those [felonies] remain, by operation of . . . [Penal Code section 1170](h)(3), State Prison Felonies.” BYERS, *supra* note 24, at 16–17; *see generally id.* at 120 (noting that the corrections realignment legislation transformed Penal Code sections 288.2, 647.6, and 653f(c), “three mandatory [sex]-registerable offenses,” into county jail felonies); *id.* (noting that the corrections realignment legislation transformed Penal Code section 12303 and Vehicle Code sections 23104, 23105, and 23109.10, “felonies that are normally, or often, serious felonies,” into county jail felonies). Further, “a number of crimes . . . categorized as . . . non-violent, non-serious, and non-sex offenses . . . still require that offenders serve their sentences in State prisons. These crimes are also known as the Exclusions.” *Public Safety Realignment*, CAL. DEP’T OF CORRECTIONS & REHABILITATION, <http://www.cdcr.ca.gov/realignment/AB-109-crime-exclusion-list.html> (last visited June 13, 2012) (on file with the *McGeorge Law Review*). “Their exclusion status is due to their enactment as majority-vote bills wherein voters decided that tougher and longer sentences were required for certain kinds of offenses.” *Id.* *See generally Criminal Justice Realignment Will Affect Felony Sentencing, County Jail Credit, Postrelease Supervision and Parole*, CONTINUING EDUC. OF THE BAR, <http://ceb.com/lawalerts/Criminal-Justice-Realignment.asp> (last visited June 22, 2012) (on file with the *McGeorge Law Review*) (explaining that many of the excluded offenses “involve a weapon or injury”). The exclusions, as noted on the *AB 109 Final Crime Exclusion List*, CAL. DEP’T OF CORRECTIONS & REHABILITATION (July 15, 2011), <http://www.cdcr.ca.gov/realignment/AB-109-final-crime-exclusion-list.html> (on file with the *McGeorge Law Review*) webpage, are as follows: ELEC. § 18501 (prescribing sentence for being a public official who aids and abets voter fraud); CAL. GOV’T CODE §§ 1090, 1097 (prescribing sentence for conflict of interest by public officer or employee); *id.* § 1195 (prescribing sentence for taking subordinate pay), *id.* § 1855 (prescribing sentence for destroying documents); HEALTH & SAFETY §§ 11353, 11354 (prescribing sentence for employing a minor to sell controlled substance); *id.* § 11361(a), (b) (prescribing sentence for employing a minor to sell marijuana); *id.* § 11370.1 (prescribing sentence for possessing a controlled substance while armed with a firearm); *id.* § 11380(a) (prescribing sentence for using a minor to transport/possess/possess for sale); *id.* § 120291 (prescribing sentence for knowingly exposing someone to HIV); PENAL § 67 (prescribing sentence for bribing an executive officer); *id.* § 68 (prescribing sentence for being an executive or ministerial officer and accepting a bribe); *id.* § 85 (prescribing sentence for bribing a legislator); *id.* § 86 (prescribing sentence for being a legislator and accepting a bribe); *id.* §§ 92–93 (prescribing sentence for judicial bribery); *id.* § 113 (prescribing sentence for manufacturing or distributing false citizenship documents); *id.* § 114 (prescribing sentence for using false citizenship documents); *id.* § 141 (prescribing sentence for being a peace officer and intentionally planting evidence); *id.* § 165 (prescribing sentence for being a local official and accepting a bribe); *id.* § 186.11 (prescribing sentence for felony convictions with a Penal Code section 186.11 enhancement); *id.* § 186.22 (prescribing sentence for criminal gang activity); *id.* § 186.26 (prescribing sentence for street gang activity); *id.* § 186.33 (prescribing

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an additional county jail disqualifier: if a person incurs convictions for at least two felonies, and one of the offenses prescribes a prison sentence, the convicted felon will serve an aggregate sentence<sup>196</sup> in a prison, even if one of the other offenses is a county jail felony.<sup>197</sup>

#### 4. Penal Code Section 1170, Subdivision (h), Paragraph (5): The Sentencing Procedure for County Jail Felonies

The 2011 corrections realignment legislation requires judges to determine whether any individual who incurs a county jail felony conviction has one of the

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sentence for gang registration violation); *id.* § 191.5(c) (prescribing sentence for committing vehicular manslaughter while intoxicated); *id.* § 222 (prescribing sentence for administering stupefying drugs to assist in the commission of a felony); *id.* § 243.7 (prescribing sentence for battering a juror); *id.* § 243.9 (prescribing sentence for gassing a peace officer or local detention facility employee); *id.* § 245(d) (prescribing sentence for assaulting a peace officer); *id.* § 266a (prescribing sentence for abducting or procuring by fraudulent inducement for prostitution); *id.* § 266e (prescribing sentence for purchasing of a person for purposes of prostitution or placing a person for immoral purposes); *id.* § 266f (prescribing sentence for selling a person for immoral purposes); *id.* § 266h (prescribing sentence for pimping and pimping a minor); *id.* § 266i (prescribing sentence for pandering and pandering with a minor); *id.* § 266j (prescribing sentence for procuring a child under age sixteen for lewd or lascivious acts); *id.* § 272(b) (prescribing sentence for persuading, luring, or transporting a minor under thirteen); *id.* § 273a (prescribing sentence for felony child abuse likely to produce great bodily injury or death); *id.* § 273ab (prescribing sentence for assault resulting in death of a child under age 8); *id.* § 273.5 (prescribing sentence for felony domestic violence); *id.* § 298.2 (prescribing sentence for knowingly facilitating the collection of wrongfully attributed DNA specimens); *id.* § 299.5 (prescribing sentence for the wrongful use of DNA specimens); *id.* § 347 (prescribing sentence for poisoning or adulterating food, drink, medicine, pharmaceutical product, spring, well, reservoir, or public water supply); *id.* § 368b (prescribing sentence for felony physical abuse of an elder or dependent adult); *id.* § 417(c) (prescribing sentence for brandishing a firearm in the presence of a peace officer); *id.* § 417.8 (prescribing sentence for brandishing a firearm or deadly weapon to avoid arrest); *id.* § 424 (prescribing sentence for misappropriating public funds); *id.* § 452 (prescribing sentence for unlawfully causing a fire that causes an inhabited structure or inhabited property to burn); *id.* §§ 504, 514 (prescribing sentence for embezzling public funds); *id.* § 598c (prescribing sentence for possessing or importing horsemeat); *id.* § 598d (prescribing sentence for selling horsemeat); *id.* § 646.9 (prescribing sentence for felony stalking); *id.* § 653f(b) (prescribing sentence for solicitation for murder); *id.* §§ 12021, 12021.1 (prescribing sentence for possessing a firearm while prohibited from doing so); *id.* § 12303.2 (prescribing sentence for possessing an explosive or destructive device); *id.* § 4532 (prescribing sentence for escape); VEH. § 2800.2 (prescribing sentence for evading a peace officer by driving in a willful or wanton disregard for safety of persons or property); *id.* § 2800.3 (prescribing sentence for evading a peace officer and causing death or serious bodily injury); *id.* § 20001 (prescribing sentence for hit and run driving causing death or injury); *id.* § 23153 (prescribing sentence for felony driving under the influence causing injury).

196. See generally PENAL § 1170.1(a) (West 2004 & Supp. 2011) (providing that an aggregate sentence is equal to “the sum of the principal term, the subordinate term, and any additional term imposed for applicable enhancements for prior convictions, prior prison terms, and” sentence enhancements); *id.* (providing that, in any aggregate prison sentence, the “principal term” is the longest imposed term, including enhancements, whereas the “subordinate term” is “one-third of the middle term of imprisonment prescribed for each other felony conviction . . . , and shall include one-third of the term imposed for any specific enhancements applicable to those subordinate offenses”); *id.* § 1170.1(d) (“If an enhancement is punishable by one of three terms, the court shall, in its discretion, impose the term that best serves the interest of justice, and state the reasons for its sentence choice on the record at the time of sentencing.”).

197. *Id.* § 1170.1(a) (amended by 2011–12 1st Ex. Sess. ch. 12, amended by 2011 Stat. ch. 361).

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county jail disqualifiers.<sup>198</sup> If the felon has a disqualifier, the judge's task is to impose sentence in accordance with existing state law.<sup>199</sup> If the felon does not have a jail disqualifier, the sentencing judge's task is more involved.

First, the judge must select and impose the appropriate term contained in the felony sentencing statute.<sup>200</sup> From there, he or she has two general sentencing options.<sup>201</sup> The judge can order the felon to serve the entirety of the imposed term of incarceration in a county jail and forego any period of post-release supervision.<sup>202</sup> Alternatively, the judge can impose a "split sentence"—that is, impose a sentence divided into an executed and a suspended segment such that the felon serves a beginning part of his or her sentence in a county jail and then a concluding part under mandatory post-release community supervision.<sup>203</sup> It appears judges opting to impose split sentences must also specify the respective executed and suspended sentence lengths.<sup>204</sup>

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198. *Id.* § 1170(h)(3) (amended by 2011 Stat. ch. 15, amended by 2011 Stat. ch. 39, amended by 2011 Stat. ch. 136, amended by 2011–12 1st Ex. Sess. ch. 12, amended by 2011 Stat. ch. 361).

199. Of course, even if the felon has a disqualifier, the sentencing judge has discretion to impose a sentence other than a state prison term. *Id.* § 1170(h)(4) (amended by 2011 Stat. ch. 15, amended by 2011 Stat. ch. 39, amended by 2011 Stat. ch. 136, amended by 2011–12 1st Ex. Sess. ch. 12, amended by 2011 Stat. ch. 361).

200. The corrections realignment legislation retained "[t]he triad sentencing system of the Determinate Sentencing Law," along with most of the triads already prescribed in the affected felonies. BYERS, *supra* note 24, at 16. It thus appears to comport with existing sentencing rules. *Id.* at 69.

201. PENAL § 1170(h)(5) (amended by 2011 Stat. ch. 15, amended by 2011 Stat. ch. 39, amended by 2011 Stat. ch. 136, amended by 2011–12 1st Ex. Sess. ch. 12, amended by 2011 Stat. ch. 361).

202. *Id.* § 1170(h)(5)(A) (amended by 2011 Stat. ch. 15, amended by 2011 Stat. ch. 39, amended by 2011 Stat. ch. 136, amended by 2011–12 1st Ex. Sess. ch. 12, amended by 2011 Stat. ch. 361).

203. *Id.* § 1170(h)(5)(B) (amended by 2011 Stat. ch. 15, amended by 2011 Stat. ch. 39, amended by 2011 Stat. ch. 136, amended by 2011–12 1st Ex. Sess. ch. 12, amended by 2011 Stat. ch. 361). During the mandatory supervision period, the supervisee cannot earn conduct credits. *Id.* For a discussion of conduct credits, see *infra* text accompanying notes 272–78.

204. BYERS, *supra* note 24, at 37.

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### APPENDIX B: CALIFORNIA'S POST-RELEASE SUPERVISION LAWS BEFORE AND AFTER THE 2011 CORRECTIONS REALIGNMENT

*This Appendix considers California's post-release supervision laws prior and subsequent to the passage of California's 2011 corrections realignment legislation. The changes discussed in this Appendix functioned to reroute the post-incarceration flow of mid-level felons from state-administered parole to county probation. They also increased the difficulty of returning parolees to prison for committing parole violations.*

#### A. California's Post-Release Supervision Laws Before Corrections Realignment

Before corrections realignment, state law mandated a period of post-release supervision for all felons. Furthermore, the state conducted parole revocation hearings, and parole violators typically served their revocation sentences in state prison. This Section discusses the parole system, including the calculus for determining parole lengths. This Section also discusses parole revocation laws prior to the 2011 corrections realignment.

##### 1. Mandatory State-Administered Parole for All Felons

Before corrections realignment, state law required all felons, after completing their prison sentences, to go on a period of state-administered, post-release supervision called "parole."<sup>205</sup> Under existing law, the CDCR retains legal custody over every felon on parole.<sup>206</sup> A felon generally serves his or her parole term in the county of his or her "last legal residence . . . prior to . . . incarceration."<sup>207</sup> However, the CDCR can release the felon onto parole in a

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205. PENAL § 3000(a)(1) (West 2011). See generally *Prison Law Office v. Koenig*, 186 Cal. App. 3d 560, 566, 233 Cal. Rptr. 590, 594 (1st Dist. 1986) ("Parole is the conditional release of a prisoner who has already served part of his or her state prison sentence. Once released from confinement, a prisoner on parole is not free from legal restraint, but is constructively a prisoner in the legal custody of state prison authorities until officially discharged from parole."). But cf. PENAL § 1170(a)(3) (West Supp. 2011) (providing that, if a prisoner's conduct credits equal his or her "total sentence, including both confinement time and the period of parole," the prisoner will not go on parole). For a discussion of conduct credits, see *infra* text accompanying notes 272–78.

206. PENAL § 3056 (West 2011). This means that CDCR parole officers supervise parolees. PRISON LAW OFFICE, THE PAROLEE RIGHTS HANDBOOK 4 (2010), available at [http://www.prisonlaw.com/pdfs/ParoleManual\\_Mar10wforms3.pdf](http://www.prisonlaw.com/pdfs/ParoleManual_Mar10wforms3.pdf) (on file with the *McGeorge Law Review*). See generally *Explanation of California Parole Law*, SHOUSE L. GRP., <http://www.shouselaw.com/parolehub.html> (last visited Oct. 11, 2012) (on file with the *McGeorge Law Review*) (indicating parole officers "report directly to the [California Department of Corrections and Rehabilitation's] Board of Parole Hearings," "prepare plans and recommendations for [parolees] prior to release," "help their parolees arrange for services such as employment, housing, medical care and counseling services, and social activities"); *id.* (indicating parole officers also conduct six types of parole supervision—intensive re-entry, regular re-entry, specialized caseloads, case management supervision, electronic supervision, and subsistence and personal care).

207. PENAL § 3003(a).

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different county if doing so serves the public interest.<sup>208</sup> Once the CDCR determines into which county it will release a felon, it must provide specified information to the county's law enforcement agencies.<sup>209</sup> Once the CDCR releases a felon on parole, it may require the parolee to wear an electronic monitoring device<sup>210</sup> or to be under continuous electronic monitoring.<sup>211</sup>

## 2. Parole Lengths

Under existing state law, the CDCR's Board of Parole Hearings (BPH) (California's parole authority)<sup>212</sup> determines "[t]he length of [a person's] parole

208. *Id.* § 3003(b). The paroling authority must consider several factors before making its decision, "giving the greatest weight to the protection of the victim and the safety of the community." *Id.* Those factors are: "[t]he need to protect [any person's] life or safety," *id.* § 3003(b)(1); "[p]ublic concern that would reduce the chance that the inmate's parole would be successfully completed," *id.* § 3003(b)(2); "[t]he verified existence of a work offer, or an educational or vocational training program," *id.* § 3003(b)(3); "[t]he existence of family in another county with whom the inmate has maintained strong ties and whose support would increase the chance that the inmate's parole would be successfully completed," *id.* § 3003(b)(4); and "[t]he lack of necessary outpatient treatment programs for parolees receiving [mental health care] treatment." *Id.* § 3003(b)(5). Parolees convicted of a violent felony defined in Penal Code section 667.5, subdivision (C), paragraphs (1)–(7) and (16), or of a felony involving "great bodily injury on any person other than an accomplice," cannot "be returned to a location within 35 miles of the . . . residence of a victim of, or a witness to, [the] violent felony" whenever "the victim or witness . . . request[s] additional distance in the placement of [parolee], and . . . the Board of Parole Hearings or the Department of Corrections and Rehabilitation finds that there is a need to protect the life, safety, or well-being of a victim or witness." *Id.* § 3003(f). Similarly, parolees convicted of "an offense involving stalking shall not be returned to a location within 35 miles of the victim's actual residence or place of employment if the victim or witness has requested additional distance in the placement of the [parolee] . . . , and . . . the Board of Parole Hearings or the Department of Corrections and Rehabilitation finds that there is a need to protect the life, safety, or well-being of the victim." *Id.* § 3003(h). Parolees convicted of lewd or lascivious acts or continuous sexual abuse of a child cannot reside while on parole "within one-half mile of any public or private school." *Id.* § 3003(g). Finally, a California felon can be paroled out-of-state. *Id.* § 3003(j).

209. *Id.* § 3003(e)(1). Required information includes: the parolee's name, *id.* § 3003(e)(1)(A); birthdate, *id.* § 3003(e)(1)(B); physical appearance, *id.* § 3003(e)(1)(C); starting and ending parole dates, *id.* § 3003(e)(1)(D); "[r]egistration status, if . . . [the parolee must] register . . . [for having committed] a controlled substance, sex, or arson offense," *id.* § 3003(e)(1)(E); "California Criminal Information Number, FBI number, social security number, and driver's license number," *id.* § 3003(e)(1)(F); county of parole, *id.* § 3003(e)(1)(G); street address, *id.* § 3003(e)(1)(J); supervising officer, *id.* § 3003(e)(1)(K); physical "scars, marks, and tattoos," *id.* § 3003(e)(1)(H); commitment offense or offenses, *id.* § 3003(e)(1)(I); photograph and fingerprints, *id.* § 3003(e)(1)(L); and "[a] geographic coordinate for the parolee's residence location for use with a Geographical Information System (GIS) or comparable computer program." *Id.* § 3003(e)(1)(M). *See generally id.* § 3003(e)(2) ("The information required . . . shall come from the statewide parolee database."); *id.* § 3003(e)(3) ("All of the information . . . shall be provided utilizing a computer-to-computer transfer in a format usable by a desktop computer system. The transfer of this information shall be continually available to local law enforcement agencies upon request.").

210. *Id.* § 3004.

211. *Id.* § 3010; *see also id.* §§ 3010–10.9 (discussing continuous electronic monitoring and distinguishing a "continuous electronic monitoring device" from an "electronic monitoring device").

212. *See generally About CDCR: Divisions and Boards: The Board of Parole Hearings (BPH)*, CAL. DEP'T OF CORRECTIONS & REHABILITATION, <http://www.cdcr.ca.gov/BOPH/> (last visited Sept. 15, 2012) (on file with the *McGeorge Law Review*) ("The Board of Parole Hearings (BPH) conducts parole consideration hearings, parole rescission hearings, parole revocation hearings and parole progress hearings for adult inmates and parolees under the jurisdiction of the Department of Corrections and Rehabilitation.").



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period . . . [based] on the type and date of the criminal conviction for which the person is on parole.”<sup>213</sup>

#### a. Parole Lengths for Felons Sentenced to Indeterminate Terms

Under existing law, the parole length for a life inmate<sup>214</sup> whose commitment offense<sup>215</sup> was first- or second-degree murder is the remainder of his or her lifetime.<sup>216</sup> Likewise, the parole length for a life inmate whose commitment offense was a specified sexual felony is the rest of his or her life.<sup>217</sup> Before corrections realignment, the parole length for a person who is required to register as a sex offender for specific sexual felonies was twenty years.<sup>218</sup> Under current law, the parole length for a life inmate is ten years with a maximum of fifteen years if the commitment offense was kidnapping in order to commit rape or

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213. PRISON LAW OFFICE, *supra* note 205, at 24. *See generally* PENAL § 3000(b)(6) (indicating the California Department of Corrections and Rehabilitation computes an individual’s parole period is “from the date of initial parole”). If a person absconds from parole, the time he or she absconded does not count toward the completion of his or her parole period. *See id.* (“Time during which parole is suspended because the prisoner has absconded or has been returned to custody as a parole violator shall not be credited toward any period of parole unless the prisoner is found not guilty of the parole violation.”).

214. As used in this article, the term “life inmate” simply refers to a felon sentenced to an indeterminate life term (for example, “twenty-five-years-to-life”). For more information on indeterminate sentences and sentencing, see *supra* note 174.

215. As used in this article, the term “commitment offense” simply refers to the offense for which a convicted offender began his or her current period of institutional confinement. *See* BLACK’S LAW DICTIONARY 116 (3d pocket ed. 2006) (defining “commitment” as, *inter alia*, [t]he act of confining a person in a prison . . . or other institution”).

216. PENAL § 3000.1(a)(1). *But see id.* § 3000.1(b) (indicating life inmates whose commitment offense was first-degree murder are eligible for discharge from parole after satisfactorily completing seven years of parole); *id.* (indicating life inmates whose commitment offense was second-degree murder are eligible for discharge from parole after completing five years of violation-free parole). Prior to corrections realignment, the Board of Parole Hearings had the authority to retain life inmates whose commitment offense was first- or second-degree murder on parole for good cause, and, if retained on parole, those life inmates had the right to a parole hearing—to be conducted by the Board of Parole Hearings—every year following retention. *Id.*

217. PENAL § 3000.1(a)(2). *See generally id.* § 667.61(j)(1)–(2), (l), (m) (West Supp. 2011) (defining the specified sexual felonies); *id.* § 269 (West 2008) (defining kidnapping a minor less than fourteen years old with the intent to commit aggravated sexual assault); *id.* § 288.7 (West 2008) (defining sexual intercourse or sodomy with a child ten years old or younger); *id.* § 667.51(c) (West 2010) (defining lewd or lascivious acts or continuous sexual abuse of a child after having already accrued two specified sexual priors); *id.* § 667.71 (West 2011) (defining “habitual sexual offender”).

218. *Id.* § 3000(b)(4)(A). *See generally id.* § 261 (West 2008) (defining rape of child under fourteen); *id.* § 262 (defining spousal rape); *id.* § 264.1 (West Supp. 2011) (defining “rape or penetration by foreign object”); *id.* § 288(a) (defining lewd or lascivious acts with a person or child “with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or . . . child”); *id.* § 288(b)(1) (defining lewd or lascivious acts “by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person”); *id.* § 288.5 (West 2008) (defining continuous sexual abuse of a child); *id.* § 289 (West Supp. 2011) (defining forcible acts of sexual penetration). Before corrections realignment, the Board of Parole Hearings could retain these sex registrants on parole for good cause. *Id.* If retained on parole, a sex registrant was entitled to a parole review hearing, conducted by the Board of Parole Hearings, each year following retention. *Id.* § 3000(b)(4)(B).

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penetration by foreign object, lewd or lascivious acts, forcible sexual penetration, lewd or lascivious acts with a child under fourteen, a recidivist sex offense, or a habitual sex offense.<sup>219</sup> However, before corrections realignment, these particular life inmates were eligible for discharge after satisfactorily completing a parole period of six consecutive years.<sup>220</sup>

Under current law, the parole length for a life inmate whose commitment offense was “any offense other than first or second degree murder” is five years with a maximum of seven years.<sup>221</sup> Finally, under current law, the parole length for felons sentenced to any indeterminate term other than life is three years with a maximum period of four years.<sup>222</sup>

*b. Parole Lengths for Felons Sentenced to Determinate Terms*

Under existing law, the parole length for most persons sentenced under California’s determinate sentencing law is three years with a maximum of four years.<sup>223</sup> However, the parole length for persons convicted of certain violent sex crimes—specifically, rape,<sup>224</sup> spousal rape,<sup>225</sup> sodomy,<sup>226</sup> oral copulation,<sup>227</sup> lewd or

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219. *Id.* § 3000(b)(3), (b)(6)(C) (West 2011). *See generally id.* § 209(b) (West 2008) (defining kidnapping); *id.* § 264.1 (West Supp. 2011) (defining rape or penetration by foreign object); *id.* § 288 (defining lewd or lascivious acts); *id.* § 289 (defining forcible sexual penetration); *id.* § 667.51 (West 2010) (defining lewd or lascivious acts with a child under fourteen); *id.* § 667.61 (West 2011) (defining recidivist sex offenses); *id.* § 667.71 (defining habitual sex offenses).

220. *Id.* § 3001(c).

221. *Id.* § 3000(b)(1), (b)(6)(B).

222. *Id.* § 3000(b)(1), (b)(6)(A).

223. *Id.* § 3000(b)(2), (b)(6)(A).

224. *Id.* § 667.5(c)(3) (West Supp. 2011). *See generally id.* § 261(a), (a)(2), (a)(6) (West 2008) (defining rape for purposes of classification as a violent sex offense).

225. *Id.* § 667.5(c)(3) (West Supp. 2011). *See generally id.* § 262(a), (a)(1), (a)(4) (West 2008) (defining spousal rape for purposes of classification as a violent sex offense).

226. *Id.* § 667.5(c)(4) (West Supp. 2011). *See generally id.* § 286(a), (c)(1), (c)(2)(A)–(C), (c)(3), (d)(1)–(3) (West Supp. 2012) (defining sodomy for purposes of classification as a violent sex offense).

227. *Id.* § 667.5(c)(5) (West Supp. 2011). *See generally id.* § 288a(a), (c)(1), (c)(2)(A)–(C), (c)(3), (d)(1)–(3) (West Supp. 2012) (defining oral copulation for purposes of classification as a violent sex offense).

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lascivious acts,<sup>228</sup> sexual penetration,<sup>229</sup> or rape, spousal rape, or sexual penetration, in concert<sup>230</sup>—is ten years, with a maximum of fifteen years.<sup>231</sup>

#### 3. Post-Release Supervision Revocation Laws

The law prior to corrections realignment empowered the BPH to initiate and conduct parole proceedings<sup>232</sup> as well as to revoke the parole terms of parolees whose commitment offense was violent, serious, or sexual in nature.<sup>233</sup> Under prior law, whenever the BPH determined a parolee had violated the terms of his or her post-release supervision, it had the authority to remand the violator to state prison<sup>234</sup> for a revocation sentence lasting up to one year.<sup>235</sup> Furthermore, prior

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228. *Id.* § 667.5(c)(6) (West Supp. 2011). *See generally id.* § 288(a), (b)(1)–(2) (defining lewd or lascivious acts “upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child” for purposes of classification as a violent sex offense); *id.* § 667.5(c)(6) (defining other lewd or lascivious acts for purposes of classification as a violent sex offense).

229. *Id.* § 667.5(c)(11). *See generally id.* § 289(a)(1)(A)–(C), (a)(2) (defining forcible sexual penetration for purposes of classification as a violent sex offense); *id.* § 289(a)(2) (defining violent sexual penetration accomplished by threatened kidnapping or false imprisonment); *id.* § 289(j) (defining “[a]ny person who participates in an act of sexual penetration with another person who is under 14 years of age and who is more than 10 years younger than he or she” for purposes of classification as a violent sex offense).

230. *Id.* § 667.5(c)(18). *See generally id.* § 264.1 (defining rape, spousal rape, or sexual penetration, in concert, for purposes of classification as a violent sex offense).

231. *Id.* § 3000(b)(2), (b)(6)(C) (West 2011).

232. *Id.* § 3060. *See generally id.* § 3015 (requiring the Board of Parole Hearings to use an evidence-based computer model—called a parole violation decision-making instrument—to determine how to punish parole violators); *id.* § 3015(b)(1) (indicating the model “provides ranges of appropriate sanctions for parole violators given relevant case factors, including, but not limited to, offense history, risk of re-offense based on a validated risk assessment tool, need for treatment services, the number and type of current and prior parole violations, and other relevant statutory requirements”).

233. *Id.* § 3060. The BPH cannot revoke the parole term of any parolee whose commitment offense was non-serious, non-violent, and non-sexual, unless the parolee commits a new prosecutable offense. *Id.* § 3000.03(a)–(c). The parolee has to satisfy other eligibility criteria to qualify for this non-revocable category of parole: the parolee has not been “found guilty of a serious disciplinary offense,” *id.* § 3000.03(d), has not belonged to a prison gang, *id.* § 3000.03(e), did not refuse to sign his or her parole agreement, *id.*, and has been determined by the CDCR, “using a validated risk assessment tool,” to not “pose a high risk to reoffend,” *id.* § 3000.03(g).

234. *Id.* § 3060. Prior to corrections realignment, the BPH had the ability to send parole violators with specified drug and health needs to parole reentry courts. *Id.* § 3015(d). *See generally id.* § 3015(e)(1) (indicating parole reentry court programs “direct the treatment and supervision of parolees who would benefit from community drug treatment or mental health treatment” and utilize “close supervision and monitoring, dedicated calendars, nonadversarial proceedings, frequent drug and alcohol testing, and close collaboration between the respective entities involved to improve the parolee’s likelihood of success on parole”); *id.* (“Only courts with existing drug and mental health courts or courts that otherwise demonstrate leadership and a commitment to conduct the reentry court . . . may” participate as reentry courts); *id.* § 3015(e)(2)–(3) (requiring the Judicial Council to evaluate each reentry court for its “effectiveness in reducing recidivism” and presents its findings to the state legislature and the governor). For a definition of the Judicial Council, see *infra* note 259.

235. PENAL § 3057(a). Before corrections realignment, whenever the BPH revoked a person’s parole, it had to hold a parole reconsideration hearing within twelve months of the original order to revoke and every year thereafter until either (1) it returned the prisoner to parole or (2) the prisoner lost his or her parole eligibility. *Id.*

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state law gave the BPH the authority to extend an imprisoned violator's revocation term any time the parole violator committed new acts of misconduct.<sup>236</sup>

*B. California's Post-Release Supervision Laws After Corrections Realignment*

The corrections realignment legislation created a county-administered, post-release supervision program and made it applicable to mid-level felons released from prison on or after October 1, 2011. The legislation also amended the parole lengths for certain sex offenders. Furthermore, it provided that California's trial courts conduct parole and supervision revocation proceedings through court-appointed revocation hearing officers, and that virtually all supervision and parole violators serve their revocation terms in county jails. This Section discusses those changes in some detail.

*1. The 2011 Post-Release Community Supervision Act: County-Administered Supervision for Mid-Level Felons*

The 2011 corrections realignment legislation enacted the Post-Release Community Supervision Act of 2011.<sup>237</sup> Under the Act, all felons released on parole prior to October 1, 2011 and on parole as of that date remained under state supervision.<sup>238</sup> Furthermore, "high-level" felons (namely, high-risk sex offenders, offenders with mental disorders, and felons who served prison terms for committing serious or violent felonies or third strike offenses) continued to go on parole.<sup>239</sup> However, felons released from prison on or after October 1, 2011, and who are disqualified from serving their executed felony sentences in county jail

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§ 3000(b)(4)(C). Under prior law, unless a disqualifier applied, parole violators returned to custody could earn conduct credits at the same day-for-day rate state prisoners do. *Id.* § 3057(d)(1). *But see id.* § 3057(d)(2)(A)–(F) (noting which violators could not earn conduct credits). For a discussion of conduct credits, see *infra* text accompanying notes 272–78.

236. *Id.* § 3057(c). Specifically, under prior law, the BPH could extend the revocation term by up to 180 days for each offense prosecutable as a felony, by up to ninety days for each offense prosecutable as a misdemeanor, and by up to thirty days for an action defined by the [CDCR] as a serious disciplinary offense. *Id.* See generally *id.* § 2932(a)(1) (defining "serious disciplinary offense").

237. *Id.* § 3450 (enacted by 2011 Stat. ch. 15, amended by 2011–12 1st Ex. Sess. ch. 12).

238. *Id.* § 3000.09(a), (b) (enacted by 2011 Stat. ch. 15, amended by 2011 Stat. ch. 39, amended by 2011 Stat. ch. 136, amended by 2011–12 1st Ex. Sess. ch. 12). However, persons paroled prior to October 1 for the commission of a non-serious, non-violent, and non-sexual offense, and who are not classified by the California Department of Corrections and Rehabilitation as high-risk sex offenders or offenders with mental disorders, are eligible for discharge after satisfactorily completing six months of parole. *Id.* § 3000.09(b)(3) (enacted by 2011 Stat. ch. 15, amended by 2011 Stat. ch. 39, amended by 2011 Stat. ch. 136, amended by 2011–12 1st Ex. Sess. ch. 12).

239. *Id.* § 3000.08(a)(1)–(3) (enacted by 2011 Stat. ch. 15, amended by 2011 Stat. ch. 39, amended by 2011–12 1st Ex. Sess. ch. 12).

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but are not high-level felons, go on county-administered, post-release supervision instead of state-administered parole.<sup>240</sup>

#### a. Program Implementation

Corrections realignment established that each county's community corrections partnership<sup>241</sup> had an executive committee responsible for developing a plan to implement the county's post-release community supervision and presenting that plan to the county's board of supervisors.<sup>242</sup> Once a county's board of supervisors adopted a post-release community supervision implementation plan, it designated a local agency to execute the county's post-release community supervision strategy.<sup>243</sup> Reportedly, every county "designated [its] probation department" as the agency responsible for administering post-release community supervision.<sup>244</sup> Once designated, the responsible agency had to develop an individualized review process for each of the county's incoming post-release community supervision participants ("supervisees").<sup>245</sup>

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240. *Id.* § 3451 (enacted by 2011 Stat. ch. 15, amended by 2011 Stat. ch. 39); *id.* § 3003(a) (amended by 2011 Stat. ch. 15, amended by 2011 Stat. ch. 39, amended by 2011–12 1st Ex. Sess. ch. 12).

241. Existing law establishes a community corrections partnership within each county. CAL. GOV'T CODE § 1230(b)(1) (West 2004 & Supp. 2011). A county's chief probation officer chairs its community corrections partnership. *Id.* § 1230(b)(2). The remaining members of a county's partnership are: a superior court judge or a designee thereof, *id.* § 1230(b)(2)(A); "[a] county supervisor or the chief administrative officer for the county or a designee of the board of supervisors," *id.* § 1230(b)(2)(B); "[t]he district attorney," *id.* § 1230(b)(2)(C); "[t]he public defender," *id.* § 1230(b)(2)(D); "[t]he sheriff," *id.* § 1230(b)(2)(E); the police chief, *id.* § 1230(b)(2)(F); the respective heads of the county departments of social services, mental health, employment, *id.* § 1230(b)(2)(G)–(I); the respective heads of the county's alcohol and substance abuse programs and office of education, *id.* § 1230(b)(2)(J)–(K); "[a] representative from a community-based organization with experience in successfully providing rehabilitative services to persons who have been convicted of a criminal offense," *id.* § 1230(b)(2)(L); and "[a]n individual who represents the interests of victims," *id.* § 1230(b)(2)(M).

242. *Id.* § 1230.1(a), (b) (enacted by 2011 Stat. ch. 15, amended by 2011 Stat. ch. 39). Each board of supervisors could veto the plan presented to it, but only by a four-fifths vote of its membership. *Id.* § 1230.1(c) (enacted by 2011 Stat. ch. 15, amended by 2011 Stat. ch. 39). If a board rejected the community corrections partnership's plan, "the plan [returned] to the partnership for further consideration." *Id.*

243. PENAL § 3451(a) (enacted by 2011 Stat. ch. 15, amended by 2011 Stat. ch. 39).

244. BYERS, *supra* note 24, at 22.

245. PENAL § 3454(a) (enacted by 2011 Stat. ch. 15, amended by 2011 Stat. ch. 39, amended by 2011–12 1st Ex. Sess. ch. 12). Each designated agency may determine additional conditions for each supervisee. *Id.* § 3454(b) (enacted by 2011 Stat. ch. 15, amended by 2011 Stat. ch. 39, amended by 2011–12 1st Ex. Sess. ch. 12). Corrections realignment legislation provides that additional post-release community supervision "conditions shall be reasonably related to the underlying offense for which the offender spent time in prison, or to the offender's risk of recidivism, and the offender's criminal history." *Id.* § 3454(a) (enacted by 2011 Stat. ch. 15, amended by 2011 Stat. ch. 39, amended by 2011–12 1st Ex. Sess. ch. 12).

*McGeorge Law Review / Vol. 44**b. The Mandatory Pre-Release Agreement*

Under corrections realignment, felons eligible to go on post-release community supervision instead of parole must “enter into a postrelease community supervision agreement [with the CDCR] prior to, and as a condition of, their release from prison.”<sup>246</sup> Each post-release community supervision agreement must contain certain specifications<sup>247</sup> and conditions.<sup>248</sup> Once one of these mid-level felons enters into a post-release community supervision agreement, the CDCR may release the felon into the jurisdiction of the administering county.<sup>249</sup>

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246. PENAL § 3452(a) (enacted by 2011 Stat. ch. 15).

247. A post-release community supervision agreement must specify the supervisee’s “release date and . . . maximum period . . . [of] supervision,” *id.* § 3452(b)(1), the supervising agency’s contact information, *id.* § 3452(b)(2), and “[a]n advisement that if [the supervisee] breaks the law or violates the conditions of release, he or she can be incarcerated in a county jail regardless of whether or not [the district attorney files] new charges,” *id.* § 3452(b)(3).

248. A post-release community supervision agreement must contain the following conditions: the supervisee must “sign and agree to the [release] conditions,” *id.* § 3453(a) (enacted by 2011 Stat. ch. 15, amended by 2011 Stat. ch. 39, amended by 2011–12 1st Ex. Sess. ch. 12 ); “obey all laws,” *id.* § 3453(b); “report to the supervising county agency within two working days of release from” state prison, *id.* § 3453(c); follow the supervising agency’s instructions, *id.* § 3453(d); “report to the supervising county agency as” the agency requires, *id.* § 3453(e); “be subject to search at any time of the day or night, with or without a warrant, by an agent of the supervising county agency or by a peace officer,” *id.* § 3453(f); “waive extradition if found outside the state,” *id.* § 3453(g); “inform the supervising county agency of [his or her] place of residence, employment, education, or training,” *id.* § 3453(h); “inform the supervising county agency of any pending or anticipated changes in residence, employment, education, or training,” *id.* § 3453(i)(1); “inform the supervising county agency of [any] new employment within three business days,” *id.* § 3453(i)(2); “immediately inform the supervising county agency if . . . arrested or” cited, *id.* § 3453(j); “obtain the permission of the supervising county agency to travel more than 50 miles from the person’s place of residence,” *id.* § 3453(k); “obtain a travel pass from the supervising county agency before he or she may leave the county or state for more than two days,” *id.* § 3453(l); “not be in the presence of a firearm or ammunition, or any item that appears to be a firearm or ammunition,” *id.* § 3453(m); “not possess, use, or have access to any weapon listed” in specified Penal Code sections, *id.* § 3453(n); “not possess a knife with a blade longer than two inches” unless the knife is “a kitchen knife . . . used and kept only in the kitchen of the person’s residence,” *id.* § 3453(o)(1)–(2); “may use a knife with a blade longer than two inches, if . . . required for [the supervisee’s] employment, the [supervising agency has approved the] use . . . in a document . . . , and the person possesses the document of approval at all times and makes it available for inspection,” *id.* § 3453(p); “agrees to waive any right to a court hearing prior to the imposition of a period of ‘flash incarceration’ in a county jail of not more than seven consecutive days, and not more than 14 aggregate days, for any violation of his or her postrelease supervision conditions,” *id.* § 3453(q); and agrees to participate in rehabilitation programming as recommended by the supervising county agency,” *id.* § 3453(r).

249. *Id.* § 3456 (enacted by 2011 Stat. ch. 15, amended by 2011 Stat. ch. 39, amended by 2011–12 1st Ex. Sess. ch. 12); *id.* § 3457 (enacted by 2011 Stat. ch. 15). Thirty days before releasing a felon onto post-release community supervision, the CDCR must provide the administering county with specified “information that would otherwise be required for parolees.” *Id.* § 3451(c)(2) (enacted by 2011 Stat. ch. 15, amended by 2011 Stat. ch. 39). For a discussion of what that information includes, see *supra* note 209.

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### c. Supervision Lengths

Whenever a county's probation department gains supervision authority over a released mid-level felon, it *may* discharge the felon from supervision after he or she successfully completes six months of supervised release in the community.<sup>250</sup> However, the probation department *must* discharge any supervisee who successfully completes just *one year* of supervised release in the community.<sup>251</sup> In the event of unsuccessful portions of the supervised release, a probation department cannot retain a supervisee for more than three years beyond the initial date of the felon's entry into the program.<sup>252</sup>

### 2. Amended Parole Lengths for Specified Sex Offenders<sup>253</sup>

Corrections realignment provides that life inmates can be discharged from state custody only after satisfactorily completing six years and six months of parole if their commitment offense was kidnapping in order to commit rape or penetration by foreign object, lewd or lascivious acts, forcible sexual penetration, lewd or lascivious acts with a child under fourteen, a recidivist sex offense, or a habitual sex offense.<sup>254</sup> Furthermore, pursuant to the corrections realignment legislation, an individual can be discharged from state custody only after satisfactorily completing twenty years and six months of parole, if required to register as a sex offender for committing rape against a child less than fourteen years of age, spousal rape, rape or penetration by foreign object, lewd or lascivious acts "upon or with the body . . . with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child," committing those same lewd or lascivious acts "by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another

250. *Id.* § 3456(a)(2) (enacted by 2011 Stat. ch. 15, amended by 2011 Stat. ch. 39, amended by 2011–12 1st Ex. Sess. ch. 12).

251. *Id.* § 3456(a)(3) (enacted by 2011 Stat. ch. 15, amended by 2011 Stat. ch. 39, amended by 2011–12 1st Ex. Sess. ch. 12).

252. *Id.* § 3451(a) (enacted by 2011 Stat. ch. 15, amended by 2011 Stat. ch. 39).

253. The corrections realignment legislation increased the parole period "so that the amendments to [the] Penal Code section [on parole] could be made with a majority vote of the Legislature, rather than the two-thirds vote required by Jessica's Law." KATHRYN B. STORTON & LISA R. RODRIGUEZ, CAL. DIST. ATT'YS ASS'N, PROSECUTORS' ANALYSIS OF THE 2011 CRIMINAL JUSTICE REALIGNMENT 34 (2011), available at <http://www.cpoc.org/php/realign/ab109other/CDAARealignGuide.pdf> (on file with the *McGeorge Law Review*). See generally Cal. Proposition 83 (2006) (enacting the "Sexual Predator Punishment and Control Act: Jessica's Law" and providing that proposed amendments to the Penal Code sections on parole require a two-thirds vote of the state legislature to become law unless the proposed amendments increase the lengths of the parole periods contained in those sections).

254. PENAL § 3001(c) (amended by 2011 Stat. ch. 15, amended by 2011 Stat. ch. 39, amended by 2011–12 1st Ex. Sess. ch. 12). See generally *id.* § 209(b) (West 2008) (defining kidnapping); *id.* § 264.1 (defining rape or penetration by foreign object); *id.* § 288 (defining lewd or lascivious acts); *id.* § 289 (defining forcible sexual penetration); *id.* § 667.51 (West 2010) (defining lewd or lascivious acts with a child under fourteen); *id.* § 667.61 (West 2011) (defining recidivist sex offenses); *id.* § 667.71 (defining habitual sex offenses).

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person,” continuous sexual abuse of a child, or forcible acts of sexual penetration.<sup>255</sup>

### 3. *Post-Release Supervision Revocation Laws: County Jail for Violators of State or County Post-Release Supervision*

Under corrections realignment, California’s trial courts conduct post-release supervision revocation proceedings for all supervisees and (beginning July 1, 2013) parolees<sup>256</sup> through court-appointed revocation hearing officers.<sup>257</sup> Most supervision violations are punishable only by “intermediate sanctions” authorized by county probation departments, “up to and including referral to a reentry court . . . or flash incarceration in a county jail.”<sup>258</sup> In effect, corrections realignment makes it difficult to return parolees and supervisees to prison.

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255. *Id.* § 3000(b)(4)(A) (amended by 2011 Stat. ch. 15, amended by 2011 Stat. ch. 39). *See generally* *id.* § 261 (West 2008) (defining rape); *id.* § 262 (defining spousal rape); *id.* § 264.1 (West Supp. 2011) (defining “rape or penetration by foreign object”); *id.* § 288(a) (defining lewd or lascivious acts with a person or child “with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or . . . child”); *id.* § 288(b)(1) (defining lewd or lascivious acts “by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person”); *id.* § 288.5 (West 2008) (defining continuous sexual abuse of a child); *id.* § 289 (West Supp. 2011) (defining forcible acts of sexual penetration).

256. *See id.* § 3455 (enacted by 2011 Stat. ch. 15, amended by 2011 Stat. ch. 39, amended by 2011–12 1st Ex. Sess. ch. 12) (requiring a “revocation hearing officer” to conduct all post-release community supervision revocation proceedings beginning October 1, 2011); *id.* § 3000.08(a), (e) (2011 Stat. ch. 39, amended by 2011–12 1st Ex. Sess. ch. 12) (requiring California’s trial courts to hear all parole revocation proceedings beginning July 1, 2013).

257. *See* CAL. GOV’T CODE § 71622.5(b) (enacted by 2011 Stat. ch. 39) (requiring court-appointed hearing officers to “make determinations at [revocation] hearings pursuant to applicable law”). The following individuals qualify to be hearing officers: a person who “has been an active member of the State Bar of California for at least 10 years continuously prior to appointment,” *id.* § 71622.5(c)(1)(A); a current or former “judge of a court of record of California within the last five years, or [any person] eligible for the assigned judge program,” *id.* § 71622.5(c)(1)(B); or a current or former “commissioner, magistrate, referee, or hearing officer authorized to perform the duties of a subordinate judicial officer of a court of record of California within the last five years.” *Id.* § 71622.5(c)(1)(C). A “superior court may prescribe additional minimum qualifications for hearing officers . . . and may prescribe mandatory training for those hearing officers in addition to any training and education that may be required as judges or employees of the superior court.” *Id.* § 71622.5(c)(2). Further, superior courts determine hearing officers’ appointment procedures and compensation. *Id.* § 71622.5(d). A revocation hearing officer may work in multiple counties. *Id.* § 71622.5(e).

258. PENAL § 3454(b) (enacted by 2011 Stat. ch. 15, amended by 2011 Stat. ch. 39, amended by 2011–12 1st Ex. Sess. ch. 12). *See generally* *id.* § 3450(b)(8) (enacted by 2011 Stat. ch. 15, amended by 2011–12 1st Ex. Sess. ch. 12) (defining “Community-based punishment” as “evidence-based correctional sanctions and programming encompassing a range of custodial and noncustodial responses to criminal or noncompliant offender activity”); *id.* § 3450(b)(8)(A) (defining “flash” incarceration as “incarceration in jail for a period of not more than 10 days”). For a statutory definition of reentry court programs, see *supra* note 234. Other examples of intermediate sanctions besides flash incarceration include: “[i]ntensive community supervision,” *id.* § 3450(b)(8)(B); electronic home monitoring, *id.* § 3450(b)(8)(C); community service, *id.* § 3450(b)(8)(D); “[r]estorative justice programs, such as mandatory victim restitution and victim-offender reconciliation,” *id.* § 3450(b)(8)(E); “[w]ork, training, or education in a furlough program,” *id.* § 3450(b)(8)(F); work release, *id.* § 3450(b)(8)(G); day reporting, *id.* § 3450(b)(8)(H); substance abuse treatment, *id.* § 3450(b)(8)(I); random drug testing, *id.* § 3450(b)(8)(J); “[m]other-infant care programs,” *id.* § 3450(b)(8)(K); and community interventions, *id.* § 3450(b)(8)(L).



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### a. *The Post-Release Supervision Revocation Process for Supervisees*

If a county's probation department determines intermediate sanctions are inappropriate responses to a particular supervisee's violations, it may petition the local superior court's revocation hearing officer to begin revocation proceedings.<sup>259</sup> If the hearing officer finds the supervisee violated the conditions of the mandatory pre-release agreement,<sup>260</sup> the officer can sentence the supervisee to a county jail revocation term<sup>261</sup> lasting up to six months.<sup>262</sup> Alternatively, the revocation hearing officer can send the supervisee to an evidence-based program such as a reentry court.<sup>263</sup> The hearing officer may return the supervisee to state prison, but *only* if the supervision violation is a new prosecutable offense.<sup>264</sup>

### b. *The Post-Release Supervision Revocation Process for Parolees*

A parole agent or peace officer initiates the parole revocation process<sup>265</sup> when he or she "has probable cause to believe that [a] parolee is violating any term or condition of his or her parole" and arrests the parolee.<sup>266</sup> Corrections realignment encourages courts to punish parole violators through intermediate sanctions.<sup>267</sup> However, if the CDCR determines intermediate sanctions are insufficient, it can petition the local court's revocation hearing officer to bring revocation proceedings against a parolee.<sup>268</sup> If a hearing officer finds a parolee has violated

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259. *Id.* § 3455(a) (enacted by 2011 Stat. ch. 15, amended by 2011 Stat. ch. 39, amended by 2011–12 1st Ex. Sess. ch. 12). Corrections realignment legislation directed the Judicial Council to "adopt forms and rules of court to establish uniform statewide procedures to implement" post-release community supervision revocation proceedings. *Id.* Accordingly, "The Judicial Council . . . promulgated, effective October 28, 2011, new rules (4.540 and 4.541) and a form (CR-300) for revocation of postrelease community supervision." BYERS, *supra* note 24, at 22. See generally *Judicial Council*, CAL. CTS.: THE JUDICIAL BRANCH OF CAL., <http://www.courts.ca.gov/policyadmin-jc.htm> (last visited Sept. 25, 2012) (on file with the *McGeorge Law Review*) ("The Judicial Council is the policymaking body of the California courts . . . Under the leadership of the Chief Justice and in accordance with the California Constitution, the council is responsible for ensuring the consistent, independent, impartial, and accessible administration of justice."); *Judicial Council Members*, CAL. CTS.: THE JUDICIAL BRANCH OF CAL., <http://www.courts.ca.gov/4645.htm> (last visited Sept. 25, 2012) (on file with the *McGeorge Law Review*) (listing the current membership of the Judicial Council).

260. For a discussion of the supervision agreement's statutorily-mandated conditions, see *supra* note 248.

261. PENAL § 3455(a)(2) (enacted by 2011 Stat. ch. 15, amended by 2011 Stat. ch. 39, amended by 2011–12 1st Ex. Sess. ch. 12).

262. *Id.* § 3000.08(f)(2), (g) (enacted by Chapter 39, amended by 2011–12 1st Ex. Sess. ch. 12).

263. *Id.* § 3455(a)(3) (enacted by 2011 Stat. ch. 15, amended by 2011 Stat. ch. 39, amended by 2011–12 1st Ex. Sess. ch. 12); *id.* § 3000.08(f)(3) (enacted by 39, amended by 2011–12 1st Ex. Sess. ch. 12). For a statutory definition of reentry court programs, see *supra* note 234.

264. PENAL § 3458 (enacted by 2011 Stat. ch. 15).

265. *Id.* § 3000.08(c) (enacted by Chapter 39, amended by 2011–12 1st Ex. Sess. ch. 12).

266. *Id.*

267. *Id.* § 3000.08(d) (enacted by Chapter 39, amended by 2011–12 1st Ex. Sess. ch. 12).

268. *Id.* § 3000.08(f) (enacted by Chapter 39, amended by 2011–12 1st Ex. Sess. ch. 12). See generally *id.* (indicating the "parolee may waive . . . his or her right to counsel, admit the parole violation, waive a court

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the conditions of his or her parole, the officer may sentence the parolee to a revocation term in county jail,<sup>269</sup> but only for up to 180 days.<sup>270</sup> Alternatively, the officer may refer the violator to an evidence-based program, such as a reentry court.<sup>271</sup>

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hearing, and accept the proposed parole modification”).

269. *Id.* § 3455(a)(2) (enacted by 2011 Stat. ch. 15, amended by 2011 Stat. ch. 39, amended by 2011–12 1st Ex. Sess. ch. 12).

270. *Id.* § 3000.08(f)(2), (g) (enacted by Chapter 39, amended by 2011–12 1st Ex. Sess. ch. 12).

271. *Id.* § 3455(a)(3) (enacted by 2011 Stat. ch. 15, amended by 2011 Stat. ch. 39, amended by 2011–12 1st Ex. Sess. ch. 12); *id.* § 3000.08(f)(3) (enacted by Chapter 39, amended by 2011–12 1st Ex. Sess. ch. 12).

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### APPENDIX C: CALIFORNIA'S EARLY RELEASE AND ALTERNATIVE CUSTODY LAWS BEFORE AND AFTER THE 2011 CORRECTIONS REALIGNMENT

*This Appendix considers California's early release and alternative custody laws prior and subsequent to the passage of California's 2011 corrections realignment legislation. The legal changes described in this Appendix increased some jail inmates' chances to procure early release and alternative custody.*

#### A. California's Early Release and Alternative Custody Laws Before Corrections Realignment

Before corrections realignment, conduct credits were calculated at different rates for state prisoners and jail inmates. Additionally, electronic home monitoring was available for only some jail inmates. This Section discusses the laws on those matters in some depth.

##### 1. Early Release: Unequal Conduct Credit Rates for Felons and Misdemeanants

California's criminal law provides that the CDCR awards sentence reduction credits—alternately called “good time credits” or “worktime credits”<sup>272</sup>—to state prisoners convicted under California's determinate sentencing law on the basis of the prisoners' conduct.<sup>273</sup> Under existing law, state prisoners serving determinate sentences are eligible to reduce their sentence lengths by up to one-half through accumulation of such conduct credits<sup>274</sup> for “any period of imprisonment prior to release on parole and any period of imprisonment and parole,”<sup>275</sup> including the time spent housed in a county jail while awaiting transfer to state prison.<sup>276</sup> In other words, felons may become eligible for release after serving as little as fifty

272. *Explanation of California Parole Law*, *supra* note 206.

273. PENAL § 2933(a) (West 2011). *But cf.* LITTLE HOOVER COMM'N, SOLVING CALIFORNIA'S CORRECTIONS CRISIS: TIME IS RUNNING OUT 25–26 (2007), available at <http://www.lhc.ca.gov/lhc/185/Report185.pdf> (on file with the *McGeorge Law Review*) (“[Conduct] credit . . . is used more as a population management tool than an incentive for anything other than staying out of trouble. [Conduct] credits are not awarded for achieving a goal, they are given to any offender who works to keep the prison running or who signs up for a program—even if they are just on a waiting list.”).

274. *See* PENAL § 2933(b) (“For every six months of continuous incarceration, a prisoner shall be awarded [six months' worth of] credit reductions from his or her [total] term of confinement . . .”).

275. *Id.* § 2900.5(c).

276. *Id.* § 4019(a)(4); *accord id.* § 1170(a)(3) (explaining that if a convicted felon's pre-imprisonment conduct credit equals or exceeds his or her court-imposed sentence, existing state law deems the felon's entire sentence served). *But see id.* § 1170(a)(3) (requiring a felony sentence to count as a separate prior prison term for future sentencing purposes even if the felon does not serve any of that sentence in a state prison). *See generally id.* § 667.5 (detailing how a court imposes an “[e]nhancement of prison terms for new offenses because of prior prison terms”).

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percent of their prison sentences.<sup>277</sup> Misdemeanants in California may also reduce the lengths of their county jail sentences by accruing conduct credits.<sup>278</sup> However, before the 2011 corrections realignment, they had to serve at least two-thirds of their sentences before they became eligible for release.<sup>279</sup>

## 2. *Alternative Custody: Electronic Home Monitoring Available for Some County Jail Inmates*

A county correctional administrator<sup>280</sup> may offer a supervised, voluntary electronic-home-detention program<sup>281</sup> to “minimum security” misdemeanants,<sup>282</sup> probationers, and persons “participating in a work furlough program” in lieu of being held in jail or serving on probation.<sup>283</sup> Misdemeanants who are not “minimum security” may also be placed on involuntary electronic home

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277. However, felons required to register as sex offenders, committed for a serious felony, or with a prior conviction for a serious or violent felony, must serve at least two-thirds of their sentences before becoming eligible for release onto parole, *Id.* § 2933(e)(3), and prisoners convicted of committing a violent felony offense must serve at least 85% of their sentences. *Id.* § 2933.1(a). Furthermore, each of the following types of felons must serve their sentences completely before becoming eligible for parole: murderers, *id.* § 2933.2(a); *see also id.* § 187(a) (defining murder), certain third strikers, *id.* § 2933.5(a)(1); *see also id.* § 2933.5(a)(1) (West 2011) (defining third strikers), and prisoners committed by the California Department of Corrections and Rehabilitation to security housing, psychiatric services, behavioral management, or administrative segregation for specified acts of misconduct, *id.* § 2933.6(a). A few kinds of state prisoners are eligible for *enhanced* conduct credit. For example, prisoners who complete certain rehabilitative programming performance objectives may earn additional conduct credits of up to six weeks per each twelve-month period of continuous incarceration. *Id.* § 2933.05(a). *See generally id.* § 2933.05(c) (noting “approved rehabilitation programming” includes “academic programs, vocational programs, vocational training, and core programs such as anger management and social life skills, and substance abuse programs.”). Heroic prisoners and inmate firefighters may also earn conduct credit enhancements. *See id.* § 2935(a), (b) (indicating a prisoner may gain a year’s worth of conduct credits for performing an act of heroism); *id.* § 2933.3 (indicating inmate firefighters may earn two days of credit for every day on assignment or following training for assignment). *See generally* TAYLOR, *supra* note 78, at 17 (Inmate firefighters “carry out fire suppression work and respond to other emergencies, such as floods and earthquakes. . . . [and] work on conservation projects on public lands and provide labor on local community services projects.”).

278. PENAL § 4019.

279. *See id.* § 4019(f) (providing that, for every six-day period, a jail inmate could earn one day off his or her sentence for good behavior and another day off for satisfactorily performing assigned labor).

280. *See id.* § 1203.018(k)(1) (West 2012) (“‘Correctional administrator’ means the sheriff, probation officer, or director of the county department of correction.”).

281. *See id.* § 1203.018(k)(2) (“‘Electronic monitoring program’ includes . . . home detention programs . . .”).

282. *See generally id.* § 1203.016(h)(2) (West 2004 & Supp. 2010) (defining a “minimum security inmate” as one who is eligible under Title 15 of the California Code of Regulations for Type IV local detention, classifiable . . . as a minimum security risk, or eligible “for placement into the community for work or school activities . . .”).

283. *Id.* § 1203.016(a); *see also id.* § 1203.016(e) (indicating “court[s] may recommend or refer a person . . . for placement in the home detention program,” as well as “restrict or deny the defendant’s participation in . . . [the] program”).

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detention,<sup>284</sup> but only under the supervision of a designated peace officer and when doing so is necessary to alleviate or avert jail overcrowding.<sup>285</sup>

Under existing law, each person who voluntarily enters an electronic-home-monitoring program must enter into a written agreement promising to comply with the program's rules.<sup>286</sup> Persons who involuntarily enter electronic-home-detention programs do not enter into written agreements; instead, a county's board of supervisors notifies each involuntary home detainee in writing that the detainee must adhere to the rules of the electronic home detention program.<sup>287</sup> All home detainees must "remain within the interior premises of [their] residence[s] during [designated] . . . hours . . . ."<sup>288</sup> Home detainees may, however, seek work, work training, medical care, and dental care with their respective correctional administrators' permission.<sup>289</sup>

A voluntary home detainee must permit the designated supervising agent to enter the detainee's residence at any time in order to verify the detainee's compliance with the rules of the home detention program.<sup>290</sup> Likewise, an involuntary home detainee must permit the designated supervising peace officer to enter the detainee's residence at any time to verify the detainee's compliance with the rules of the home detention program.<sup>291</sup> All home detainees must permit electronic monitoring "to verify [their] compliance with [home detention] rules and regulations."<sup>292</sup> A correctional administrator or a peace officer acting under the correctional administrator's direction may, without a court order or arrest warrant, return any home detainee to county custody if the detainee's electronic monitoring device fails or if the detainee willfully deviates from the home detention program's rules.<sup>293</sup>

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284. *Id.* § 1203.017(a). "Involuntary" home detention is distinguishable from voluntary home detention in that a correctional administrator places an inmate in a home detention program without seeking the inmate's consent to be placed there. *Id.* §§ 1203.017(c), 1203.016(b)(2).

285. *See id.* § 1203.017(a) (indicating a "correctional administrator [must determine] that conditions in a jail facility warrant the necessity of releasing sentenced misdemeanor inmates prior to them serving the full amount of a given sentence due to lack of jail space" before placing a misdemeanant on involuntary electronic home detention).

286. *Id.* § 1203.016(b), (b)(3) (West 2004 & Supp. 2011). A county's board of supervisors prescribes the rules of home detention in that county, *id.* § 1203.016(b), and may charge a voluntary home detainee a fee (limited to the detainee's ability to pay) for the voluntary home detention program's costs. *Id.* § 1203.016(g).

287. *Id.* § 1203.017(b). A county's board of supervisors prescribes the rules of involuntary home detention in that county, *id.*, and may not charge an involuntary home detainee a fee for the program's costs. *Id.* § 1203.017(j).

288. *Id.* §§ 1203.016(b)(1), 1203.017(b)(1).

289. *Id.* §§ 1203.016(f), 1203.017(f).

290. *Id.* § 1203.016(b)(2).

291. *Id.* § 1203.017(b)(2).

292. *Id.* §§ 1203.016(b)(3), 1203.017(b)(3).

293. *Id.* §§ 1203.015(b)(4), (c), 1203.017(b)(4), (c).

*B. California's Early Release and Alternative Custody Laws After Corrections Realignment*

California's 2011 corrections realignment legislation equalized the conduct credit earning rate for state prisoners and jail inmates and made electronic home monitoring available to all jail inmates.

*1. Early Release: Equal Conduct Credit Rates for All State Prisoners and Jail Inmates*

The corrections realignment legislation made the conduct credit ratio that applies to prison inmates applicable to all county jail inmates, including realigned felons and misdemeanants.<sup>294</sup> Thus, as of the legislation's effective date of October 1, 2011, any person sentenced to a county jail term is eligible to reduce his or her incarceration term by up to one-half by accruing conduct credits.<sup>295</sup>

*2. Alternative Custody: Electronic Home Monitoring Available for All County Jail Inmates*

Under corrections realignment, a correctional administrator may offer voluntary electronic home detention to *any* jail inmate.<sup>296</sup> Further, a correctional administrator may place *any* jail inmate in an involuntary electronic home detention program.<sup>297</sup> And correctional administrators may offer supervised electronic home monitoring, in lieu of bail, to minimum security, pre-trial jail inmates.<sup>298</sup> Under corrections realignment, voluntary and involuntary home detainees are eligible to earn day-for-day conduct credits while in a voluntary or

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294. Compare *id.* § 4019 (amended by 2011 Stat. ch. 15, amended by 2011 Stat. ch. 39, amended by 2011–12 1st Ex. Sess. ch. 12), with *id.* § 2933 (West 2011) (describing the conduct credit program for prison inmates).

295. See *id.* § 4019(b), (c) (amended by 2011 Stat. ch. 15, amended by 2011 Stat. ch. 39, amended by 2011–12 1st Ex. Sess. ch. 12) (providing that “for each four-day period” in confinement, a jail inmate can earn one day of credit for good behavior and one day of credit for performing assigned labor).

296. *Id.* § 1203.016(a) (amended by 2011 Stat. ch. 15).

297. *Id.*

298. *Id.* § 1203.018(b) (enacted by 2011 Stat. ch. 15; amended by 2011 Stat. ch. 39). The inmate “must . . . [have] no holds or outstanding warrants,” *id.* at (c)(1), and a magistrate must approve the electronic monitoring release, or “[t]he inmate. . . [must be] held in custody for at least 30 calendar days from the date of arraignment pending disposition of only misdemeanor charges,” *id.* § 1203.018 (c)(1)(A), or “[t]he inmate . . . [must be] held in custody pending disposition of charges for at least 60 calendar days from the date of arraignment.” *Id.* § 12308(c)(1)(B) (enacted by 2011 Stat. ch. 15; amended by 2011 Stat. ch. 39). The rules applicable to voluntary home detainees, see *supra* text accompanying notes 288–93, also apply to minimum security, pre-trial jail inmates on supervised, electronic home detention. See PENAL § 12308(d)(1)–(4), (f), (h) (enacted by 2011 Stat. ch. 15; amended by 2011 Stat. ch. 39) (providing applicable home detention rules).

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involuntary electronic home detention program, meaning they can reduce their supervised, electronic home detention sentences by up to one-half.<sup>299</sup>

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299. PENAL § 2900.5(a) (amended by 2011 Stat. ch. 15); *id.* § 4019 (amended by 2011 Stat. ch. 15, amended by 2011 Stat. ch. 39, amended by 2011–12 1st Ex. Sess. ch. 12). Prior to corrections realignment, the Penal Code did not refer to home detainees in its enumeration of offenders eligible to earn conduct credits. *See id.* § 2900.5(a) (West 2011) (indicating conduct credit-eligible custody includes “any time spent in a jail, camp, work furlough facility, halfway house, rehabilitation facility, hospital, prison, juvenile detention facility, or similar residential institution”). *See generally* STORTON & RODRIGUEZ, *supra* note 253, at 21 (reporting the legislature removed home detention from conduct credit consideration “approximately 20 years ago”).

*McGeorge Law Review / Vol. 44*APPENDIX D: CODE SECTIONS AFFECTED BY THE 2011 CORRECTIONS  
REALIGNMENT*Code Sections Affected*

Business and Professions Code §§ 585, 650, 654.1, 655.5, 729, 1282.3, 1701, 1701.1, 1960, 2052, 2315, 4324, 5536.5, 6126, 6153, 6788, 7028.16, 7739, 10238.6, 11020, 11023, 11286, 11287, 11320, 16755, 17511.9, 17550.19, 22430, 25618 (amended); Civil Code §§ 892, 1695.8, 1812.125, 1812.217, 2945.7, 2985.2, 2985.3 (amended); Corporations Code §§ 2255, 2256, 6811, 6814, 8812, 8815, 12672, 12675, 22002, 25540, 27202, 28880, 29102, 29550, 31410, 31411, 35301 (amended); Education Code § 7054 (amended); Elections Code §§ 18002, 18100, 18101, 18102, 18106, 18200, 18201, 18203, 18204, 18205, 18310, 18311, 18400, 18403, 18502, 18520, 18521, 18522, 18523, 18524, 18540, 18544, 18545, 18560, 18561, 18564, 18566, 18567, 18568, 18573, 18575, 18578, 18611, 18613, 18614, 18620, 18621, 18640, 18660, 18661, 18680 (amended); Financial Code §§ 3510, 3532, 5300, 5302, 5303, 5304, 5305, 5307, 10004, 12102, 14752, 17700, 18349.5, 18435, 22753, 22780, 31880, 50500 (amended); Fish and Game Code §§ 12004, 12005 (amended); Food and Agriculture Code §§ 17701, 18932, 18933, 19440, 19441, 80174 (amended); Government Code §§ 1195, 1368, 1369, 3108, 3109, 5954, 6200, 6201, 9056, 27443, 51018.7 (amended); Harbors and Navigation Code §§ 264, 310, 668 (amended); Health and Safety Code §§ 1390, 1522.01, 1621.5, 7051, 7051.5, 8113.5, 8785, 11100, 11100.1, 11105, 11153, 11153.5, 11162.5, 11350, 11351, 11351.5, 11352, 11353.5, 11353.6, 11353.7, 11356, 11357, 11358, 11359, 11360, 11362, 11366.5, 11366.6, 11366.8, 11370.6, 11371, 11371.1, 11374.5, 11377, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380.7, 11381, 11383, 11383.5, 11383.6, 11383.7, 12401, 12700, 17061, 18124.5, 25180.7, 25189.5, 25189.6, 25189.7, 25190, 25191, 25395.13, 25515, 25541, 42400.3, 44209, 100895, 109335, 115215, 116730, 116750, 118340, 131130 (amended); Insurance Code §§ 700, 750, 833, 1043, 1215.10, 1764.7, 1814, 1871.4, 10192.165, 11161, 11162, 11163, 11760, 11880, 12660, 12845 (amended); Labor Code §§ 227, 6425, 7771 (amended); Military and Veterans Code §§ 145, 1318, 1672, 1673 (amended); Penal Code §§ 17.5, 1203.018, 1230.1, 2057, 3000.08, 3000.09, 3450, 3451, 3452, 3453, 3454, 3455, 3456, 3457, 3458 (new), §§ 17, 18, 19.2, 33, 38, 67.5, 69, 71, 72, 72.5, 76, 95, 95.1, 96, 99, 107, 109, 113, 114, 115.1, 126, 136.7, 137, 139, 140, 142, 146a, 146e, 148, 148.1, 148.3, 148.4, 148.10, 149, 153, 156, 157, 168, 171c, 171d, 181, 182, 186.10, 186.22, 186.26, 186.28, 186.33, 191.5, 193, 193.5, 210.5, 217.1, 218.1, 219.1, 222, 237, 241.1, 241.4, 241.7, 243, 243.1, 243.6, 244.5, 245, 245.6, 246.3, 247.5, 261.5, 265, 266b, 266e, 266f, 266g, 271, 271a, 273.4, 273.6, 273.65, 273d, 278, 278.5, 280, 284, 288.2, 290.018, 290.4,



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Government Code § 71622.5 (new); Health and Safety Code §§ 11356, 11381, 115215 (amended); Penal Code § 3000.08 (amended, repealed, and new), § 3073.1 (new), §§ 17.5, 186.22, 186.26, 186.33, 245, 273.4, 290.018, 298.2, 299.5, 422, 455, 598c, 598d, 600, 666, 667.5, 800, 1170, 1170.1, 1203.018, 1230, 1230.1, 2057, 2932, 3000, 3000.09, 3000.1, 3001, 3003, 3015, 3056, 3057, 3451, 3453, 3454, 3455, 3456, 4011.10, 4016.5, 4019, 11418, 12021.5, 12022, 12022.5, 12022.9, 12025 (amended), §§ 3060, 4115.55 (new and repealed), § 830.5 (amended and repealed); Vehicle Code §§ 23109, 23110 (amended); Welfare and Institutions Code § 1766.01 (amended), § 1710.5 (repealed); 2011 STAT. Ch. 15 § 636 (amended). AB 117 (Committee on Budget); 2011 STAT. Ch. 39.

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Penal Code heading of Title 4.5 (commencing with § 13600) of Part 4 (amended and new), §§ 13600, 13601, 13602, 13603, 13800, 13812 (repealed and new), 830.5, 1170, 3000.08, 3000.09 (amended), §§ 13810, 13811, 13813 (new and repealed); Welfare and Institutions Code § 1731.5 (amended); Senate Bill 92 of the 2011–12 Regular Session § 83 (amended); Assembly Bill 117 of the 2011–12 Regular Session § 69 (amended).

AB 116 (Committee on Budget); 2011 STAT. Ch. 136.

Government Code §§ 26605, 30025 (amended); Health and Safety Code §§ 11355, 11382 (amended); Penal Code § 2932 (repealed and new), §§ 1233.15, 3460, 3465, 4019.2, 4115.56 (new), §§ 17, 18, 273d, 667.5, 800, 1170, 1170.1, 2933, 3000.08, 3000.09, 3001, 3003, 3056, 3057, 3060.7, 3067, 3073.1, 3450, 3453, 3454, 3455, 3456, 4000, 4019, 4501.1, 4530, 12021.5, 12025 (amended); 2011 STAT. Ch. 136 § 9 (amended), 2011 STAT. Ch. 33 § 2.00 Item 5225-007-0001 (amended).  
ABX1 17 (Blumenfield); 2011 STAT. Ch. 12.