

# Capacity Challenges in California's Jails

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## SUMMARY

In an effort widely known as “realignment,” California has given its counties enormous new responsibilities for corrections—including authority over many new types of felony offenders and parolees. Rather than go to state prison, these offenders now go to county jail or receive an alternative sanction. In the first few months of realignment, California’s jail population increased noticeably—but many jails were already facing capacity concerns. We find that some offenders who would have been incarcerated prior to realignment are now either not locked up or are not spending as much time in jail. Going forward, counties will need to consider a wide variety of approaches for handling their capacity concerns and their expanded offender populations.

## INTRODUCTION

In May 2011, the U.S. Supreme Court upheld a 2009 federal three-judge court ruling ordering the California Department of Corrections and Rehabilitation (CDCR) to reduce its prison population to 137.5% of its design capacity—by about 33,000 prisoners at the time—within two years. To comply, California passed Assembly Bill (AB) 109, shifting significant responsibilities for corrections from the state to local government.<sup>1</sup>

The legislation identifies a set of non-serious, non-violent, non-sexual criminal offenders who, rather than going to state prison, now go to county jail or receive an alternative sanction. Counties are also now

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responsible for managing lower-level offenders after they leave prison—previously these offenders were handled by the state parole system. Additionally, the legislation makes it more difficult to return parolees to prison for non-felonious parole violations—instead, the counties must handle them. Ultimately, the reform is projected to relocate about 30,000 lower-level felons from state prisons to county jails or to some form of community corrections.

## REALIGNMENT AND CALIFORNIA'S JAILS

Realignment appears to be putting pressure on already-challenged county jails. Before realignment began in October 2011, CDCR projected that the state prison population would decrease by around 5,500 inmates between September and December 2011—in reality, it decreased by nearly 12,800.<sup>2</sup> However, because the state prison population was already in decline and is subject to seasonal fluctuations, realignment is not responsible for all of this decrease. A better estimate of the reduction in the prison population caused by realignment is around 11,100 felons (Table 1).<sup>3</sup>



**TABLE 1. INCREASES IN THE JAIL POPULATION ARE MUCH SMALLER THAN DECREASES IN THE PRISON POPULATION**

Changes in prison and jail populations, 4th quarter 2010 and 2011			
	Quarterly change (September to December)		Approximate change due to realignment
	2010	2011	
<b>Change in the state prison population</b>			
Total	-1,681	-12,797	-11,116
New term <sup>1</sup>	-1,163	-4,907	-3,744
Parole violation <sup>2</sup>	-518	-7,890	-7,372
<b>Change in the county jail population</b>			
Total ADP	-3,653	359	4,012
Sentenced ADP	-3,216	4,098	7,314
Unsentenced ADP	-436	-3,741	-3,305

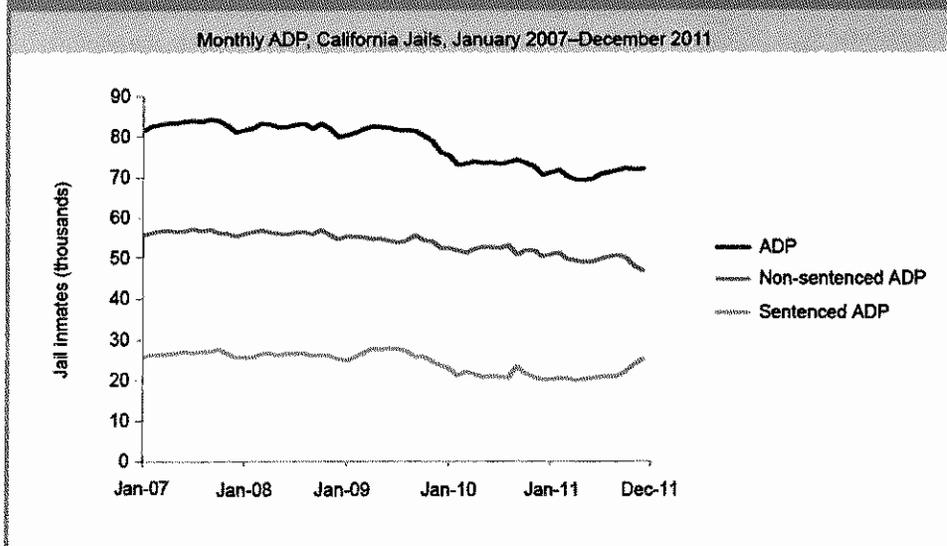
SOURCES: Authors' calculations based on weekly county level prison data provided by the California Department of Corrections and Rehabilitation and the Jail Profile Survey, September 2010–December 2011. Prison population changes are based on cumulative weekly net flows (admissions-releases) from the last week of September through the last week of December. Jail population changes are the differences between the reported ADP in September and December.

<sup>1</sup>Includes parole violators with new terms.

<sup>2</sup>Includes parole violations pending revocation.

During the same period, the average daily jail population (ADP) only increased slightly, by 359 inmates. However, before realignment began, the jail population had been in decline (Figure 1). Between September and December 2010, the ADP of California jails declined by about 3,650 inmates. When we compare that period to the initial months of realignment, it appears that realignment may have actually increased ADP by around 4,000 inmates.

**FIGURE 1. AFTER A PERIOD OF DECLINE, THE JAIL POPULATION IS RISING**



SOURCE: Monthly Jail Profile Survey, January 2007–December 2011.

But these changes in California’s ADP do not provide a complete picture of how counties are managing their inmates. A closer examination reveals that realignment has changed the composition of the jail population. As Figure 1 shows, the balance between sentenced inmates and those who are unsentenced—either awaiting trial or yet to be sentenced—is shifting.

In the first three months of realignment, the share of sentenced inmates in California jails decreased considerably, from 70.7 percent in September 2011 to 65.2 percent in December 2011—a decrease of 5.5 percentage points. Taking into account changes over the same quarter in 2010, the share of unsentenced inmates appears to have dropped even more—by approximately 8.5 percentage points.

This change in the jail population was caused by both an increase in the number of sentenced felons of about 7,300 and a decrease in the number of unsentenced felons of approximately 3,300. The increase in sentenced felons tracks closely to the 7,174 offenders sentenced to jail under AB 109 during this time (*CPOC Issue Brief*, July 2012).

Note that the estimate of 7,738 newly sentenced offenders does not include parole or post-release community supervision violators. Instead, these violators are more likely to be counted among the unsentenced population. Since we are seeing a decrease in that population, it may well be that parole violators—who would previously have been sent back to prison—are now experiencing less time behind bars.

The currently available data do not provide specific details on how the shifts between the prison and jail populations were achieved.<sup>4</sup> However, the data do show quite clearly that in the first three months of realignment, a gap emerged between the decrease of felons in state prison and the increase in offenders in county jails. We find that the average daily jail population in California increases by about one inmate for every three felons no longer housed in prison.<sup>5</sup> This finding suggests that some inmates who would have been incarcerated prior to realignment are now either not locked up or are not spending as much time in jail.

#### COUNTY JAILS BEFORE REALIGNMENT

To provide context for the new pressures realignment is putting on county jails, we examine how jails were faring in the year before realignment. At that time, there were on average 71,060 inmates incarcerated daily in California jails, or 159 people per 100,000 California residents (Table 2).

But counties vary widely in how much they use their jails. In the year before realignment, Sierra County housed the fewest number of jail inmates with a daily average of six, while Los Angeles—the state’s largest county—housed the greatest number of inmates, with a daily average of 14,585.<sup>6</sup>

TABLE 2. THE LARGEST COUNTIES HOUSE MOST JAIL INMATES		
ADP, October 2010–September 2011		
	Area	ADP
	Statewide <sup>1</sup>	71,060
Smallest county jail populations	Sierra	6
	Modoc	20
	Mono	28
Largest county jail populations	San Bernardino	5,373
	Orange <sup>2</sup>	5,736
	Los Angeles	14,585

SOURCE: Jail Profile Survey, October 2010–September 2011.

NOTE: The ADPs are monthly averages averaged over the pre-realignment twelve-month period October 2010–September 2011.

<sup>1</sup>Statewide totals include inmates from the Santa Ana Police Department.

<sup>2</sup>Orange County totals do not include inmates from the Santa Ana Police Department.

Clearly, county population size accounts for many of these differences. However, county jails also differ in incarceration rates. For example, Sierra County's 185 inmates per 100,000 residents is substantially higher than both the state average of 159 and Los Angeles' 147. Marin County had the lowest rate, at 115, while Yuba's rate of 546 was the highest (Table 3).<sup>7</sup>

**TABLE 3. JAIL INCARCERATION RATES VARY WIDELY ACROSS COUNTIES**

Jail incarceration rates, October 2010–September 2011

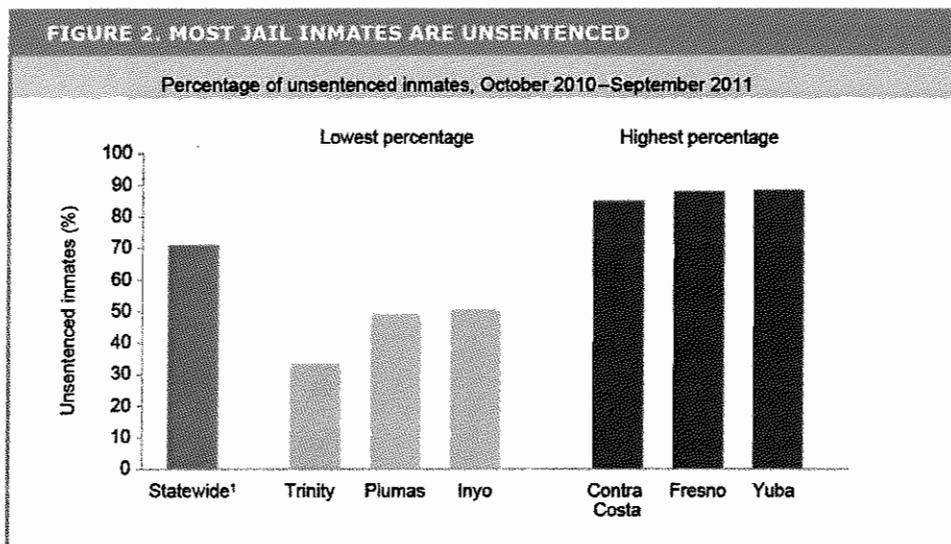
	Area	ADP per 100,000 residents
	Statewide <sup>1</sup>	159
Lowest county jail incarceration rates	Marin	115
	Shasta	129
	San Mateo	137
Highest county jail incarceration rates	Del Norte	392
	Inyo	392
	Yuba	546

SOURCES: Jail Profile Survey, October 2010–September 2011; Census County Population Estimates, 2011.

NOTES: The ADPs per 100,000 residents are monthly averages averaged over the pre-realignment twelve-month period October 2010–September 2011.

<sup>1</sup>Statewide totals include inmates from the Santa Ana Police Department.

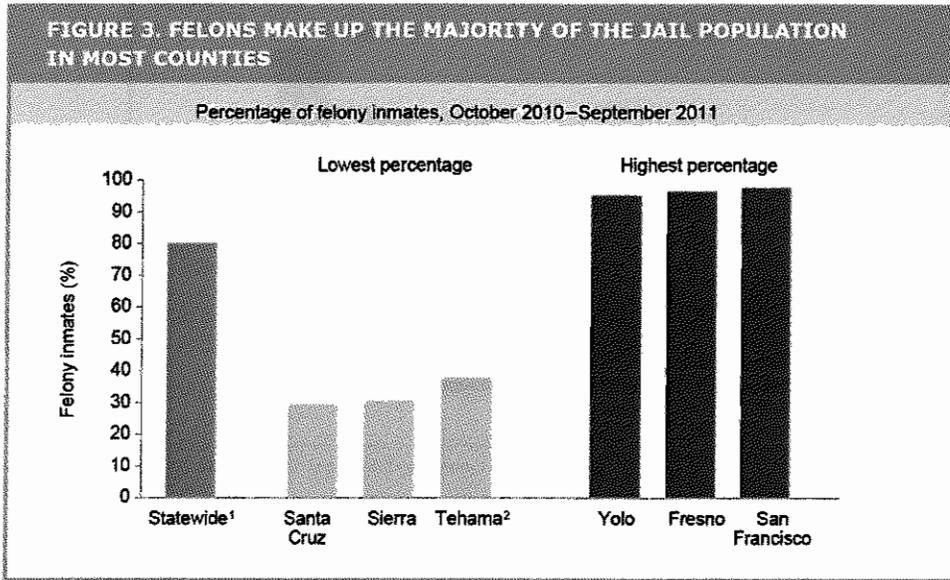
This pre-realignment year also saw a wide range in the number of sentenced and non-sentenced inmates housed in county jails. For instance, in Trinity and Plumas Counties non-sentenced inmates made up a minority of the jail population, at 33.4 percent and 49.2 percent respectively (Figure 2). However, in all other counties non-sentenced inmates made up a majority of the jail population, with Yuba having the largest percentage of non-sentenced inmates at 88.5 percent.



SOURCE: Jail Profile Survey, October 2010–September 2011.

<sup>1</sup>Statewide totals include inmates from the Santa Ana Police Department.

There were also large differences in the percentage of inmates who were in jail for a felony offense (Figure 3). Less than half of the inmates were being held on felonies in Santa Cruz, Sierra, and Tehama Counties. San Francisco County had the highest share of felons in its jails, at 97.8 percent.



SOURCE: Jail Profile Survey, October 2010–September 2011.

<sup>1</sup>Statewide totals include inmates from the Santa Ana Police Department.

<sup>2</sup>Based on the eight months for which the data was reported.

### CAPACITY CONSTRAINTS

Many county jail systems already faced capacity problems when realignment began: 17 counties were operating under court orders limiting the number of inmates in their jails.<sup>8</sup> Still, in the year before realignment, there were 75,987 rated beds in California jails—more than the average daily jail population of 71,060, suggesting that at least statewide there was sufficient capacity.<sup>9</sup>

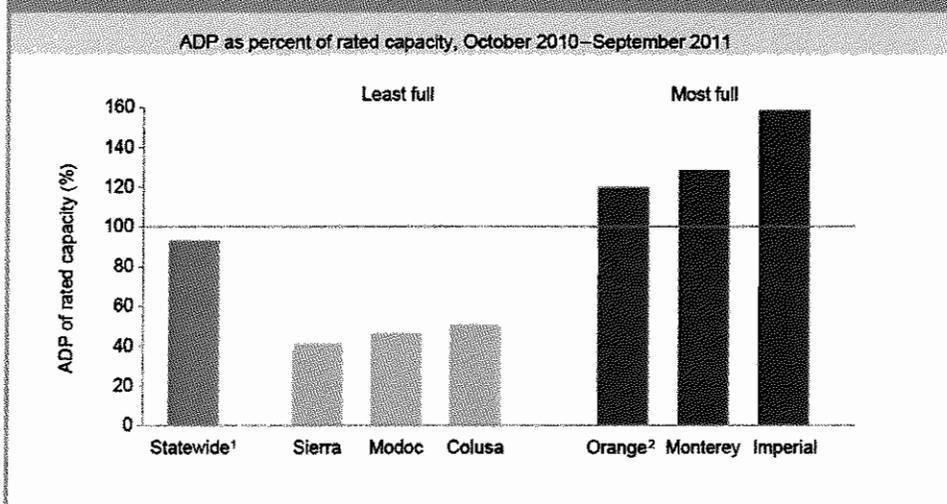
However, monthly averages of the daily jail population may not be the best indicator of a county's need for jail capacity because jail populations fluctuate both daily and seasonally. These fluctuations can mean that there are more inmates than beds. In the year before realignment, the highest one-day count of inmates was 78,204—that is, 2,217 more than the overall rated capacity.<sup>10</sup>

**Many county jail systems already faced capacity problems when realignment began.**

Yet while some counties face severe capacity constraints, others have excess capacity. In the year before realignment, Sierra County used the least amount of its jail capacity, on average, with a daily population of 41 percent of capacity (Figure 4). Imperial

County was the farthest over capacity, on average, with a daily population of 159 percent of capacity. In all, 13 counties—including some of the biggest, such as Los Angeles, Orange, San Diego, and Sacramento—had average daily populations that were larger than the number of beds their jails were rated for.

**FIGURE 4. MANY JAILS OPERATED CLOSE TO OR ABOVE CAPACITY BEFORE REALIGNMENT**



SOURCES: Jail Profile Survey, October 2010–September 2011; Board of State and Community Corrections, Type II III IV Facilities.

<sup>1</sup>Statewide totals include inmates from the Santa Ana Police Department.

<sup>2</sup>Orange County total does not include capacity from the Santa Ana Jail.

Because of capacity constraints, a number of counties released both pre-trial and sentenced inmates early. For example, in the year before realignment Los Angeles reported monthly average releases of slightly more than 1,600 sentenced offenders and 300 inmates awaiting trial. San Bernardino County also released a substantial number of inmates—2,430—but these were all pre-trial inmates.

In fact, all but one of the counties under a court-ordered population cap—Sacramento—reported releasing some inmates early because of capacity constraints, and in 15 of these 17 counties these releases included sentenced inmates.<sup>11</sup> Statewide, on average, 6,800 pre-trial inmates and 3,900 sentenced offenders were released early each month in the year before realignment.

#### **ADDRESSING CAPACITY CONSTRAINTS**

Counties have a number of options for managing capacity constraints. One is to build more jail space—to that end, two pieces of legislation have been passed. In 2007, AB 900 created \$1.2 billion in state matching funds for county jail expansions.<sup>12</sup> As of May 2012, 18 counties had received conditional awards for a total planned gain of 9,222 jail beds (Table 4). However, not all counties operating at or above capacity received awards, nor is it likely that all the counties with funding will add enough jail beds to eliminate future overcrowding issues. In June of this year, SB 1022 made available to counties an additional \$500 million in state funds (with a county match of 10%) for jail construction.

But counties will need to analyze closely the long-term benefits of building their way out of capacity problems. The costs of operating new facilities are substantial: construction costs account for less than 10 percent of the total cost of a jail over its lifetime.<sup>13</sup>

**TABLE 4. SEVERAL COUNTIES PLAN ON EXPANDING THEIR JAIL CAPACITY**

Area	Expected number of new beds due to AB900
Statewide	9,222
Amador	89
Calaveras	95
Imperial	228
Kings	252
Los Angeles	1,024
Madera	145
Orange	512
Riverside	1,250
San Bernardino	1,368
San Diego	842
San Joaquin	1,280
San Luis Obispo	155
Santa Barbara	376
Shasta	232
Solano	362
Stanislaus	456
Sutter	42
Tulare	514

SOURCES: AB 900 Jail Construction Financing Program Project Status Update—Phase I: Board of State and Community Corrections; AB 900 Phase II—Jail Construction Funding Awards.

Yet another option is to release certain pretrial inmates who cannot make bail. Depending on the risk level of the inmate, possibilities include releasing an inmate on his own recognizance or releasing an inmate but maintaining supervision in various ways: check-ins, home and work visits, drug and alcohol testing, and/or GPS ankle bracelets. Reducing the bail schedule to lower the number of pretrial inmates is another alternative.

Counties can also implement alternatives to jail time, such as sentencing offenders to attend day reporting centers, substance abuse treatment, work release programs, or restorative justice programs. Home detention with electronic monitoring is also an option.

However, if practical solutions cannot be implemented, and with the threat of lawsuits asserting inadequate conditions and unconstitutionally inadequate health care, counties may continue to release inmates early.

## CONCLUSIONS

California’s county jails faced serious capacity constraints even before realignment began—and in spite of a declining jail population. It now appears that realignment will add substantial pressures and force counties to make some difficult decisions.

Evidence from the first three months of realignment suggests that, as expected, counties are incarcerating the vast majority of newly sentenced felons. But inmates awaiting or on trial are less likely now than they were before realignment to be incarcerated—or they are being incarcerated for shorter periods of time. Parole or PRCS technical violators are also less likely to spend time behind bars—and may even spend no time at all. The effect of these changes on public safety in the state will be among the most consequential—and watched—outcomes of realignment. ■

Additional resources—tables and an interactive map—are available in the PPIC data depot and map room.

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## NOTES

1. The legislation moved quickly from introduction to enactment: it was first proposed in the governor's budget of January 2011, was largely passed by April, and the funding arrangements were adopted by June 30. It took effect on October 1, 2011.
2. The removal of the option to send parole violators back to state prison for non-felonious parole violations and instead cap sanctions for these violations to incarceration at a county jail (violators are limited to a "flash incarceration" period of up to 10 days without a court order) was the primary reason for the reduction in the state prison population (M. Lofstrom, J. Petersilia, and S. Raphael, *Evaluating the Effects of California's Corrections Realignment on Public Safety*, PPIC, 2012).
3. To assess the effect of realignment on the prison and jail populations, we compare the change in the incarcerated populations between September 2011 (pre-realignment) and December 2011 (post-realignment). However, such comparisons are also influenced by pre-existing trends and seasonal variation. To address this we subtract out the change over the same months in 2010. The difference between the changes in 2010 and 2011 should then eliminate seasonal effects and pre-existing trends and provide a reasonable approximation of realignment's impact. Tables with county-specific data showing changes in California's prison and jail populations, and jail population and capacity in the year before realignment and an interactive map illustrating much of this data are available in the PPIC data depot and map room.
4. For example, were alternative sanctions, such as electronic monitoring, being used? Did sentencing practices change? Were sentenced inmates released early or did the unsentenced avoid incarceration altogether? The answers to these questions are yet unknown.
5. This estimate is also obtained when county-specific estimates of realignment-induced reductions in the prison population are used in a regression analysis (the estimates are based on a simple county level bivariate regression of changes in the ADP on changes in the prison population).
6. The vast majority (87%) of county inmates were male, and most (71%) were either awaiting trial or had yet to be sentenced. Inmates held on either a felony charge or conviction made up about 80 percent of the jail population. A substantial proportion of inmates also had mental health issues. In the year before realignment, about 20 percent of jail inmates had a reported open mental health case while about 13 percent were reported to be on psychiatric medication.
7. The high proportion of federal inmates on contract housed in Yuba's jail (about 54% of ADP), including those on Immigration and Customs Enforcement (ICE) hold, contributes to the exceptionally high jail incarceration rate.
8. These counties are El Dorado, Fresno, Kern, Los Angeles, Merced, Placer, Riverside, Sacramento, San Bernardino, San Diego, San Joaquin, Santa Barbara, Stanislaus, Tulare, and Yolo, according to the Jail Profile Survey, October 2010–September 2011 and the Butte County Sheriff's Department.
9. All jails in California are under the oversight of the Board of State and Community Corrections (BSCC). Within a two-year interval, the BSCC aims to inspect each jail to determine the number of beds in a jail that meet their standards, referred to as a jail's rated capacity.
10. But even the highest one-day count understates demand since it is unlikely that the inmates in need of a bed would perfectly match the type of beds available. Beds in a male ward cannot be used to house female inmates, for example, and minimum-security beds should not be used to house maximum-security inmates. Using the highest one-day count as a measure of demand for beds also does not take into account the inmates that some counties released due to lack of space. That is, without these early releases, the reported highest one-day count would be even higher.
11. Of the counties without court-ordered caps, ten reported releasing sentenced inmates and six reported releasing both sentenced and unsentenced inmates because of a lack of capacity.
12. Participating Phase I counties need to contribute at least 25 percent of the total project cost. Because of worsened economic conditions in the state, the later Phase II county contribution was reduced to 10 percent.
13. California State Sheriffs' Association, *Do the Crime, Do the Time? Maybe Not, in California* (June 2006). Another incarceration approach to capacity problems is for an impacted county to rent bed space from another county, from the California Department of Corrections and Rehabilitation, or from a community correctional facility.

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## ABOUT THE AUTHORS

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