The Great Experiment: Realigning Criminal Justice in California and Beyond

Hosted by The Sentencing Project in collaboration with the American Academy of Political and Social Science

February 29th, 2016
Presenters

- Marc Mauer, The Sentencing Project
- Margo Schlanger, University of Michigan
- Ryken Grattet, University of California - Davis
- Magnus Lofstrom, Public Policy Institute of California
Marc Mauer
Executive Director
The Sentencing Project
Realignment in California

- Adopted by state Legislature in 2011 in response to U.S. Supreme Court decision in *Brown v. Plata*
- State required to reduce prison population by 25% in 2 years
Incarceration in state prison limited to persons convicted of violent, serious, or sex offenses

Probation and parole violations rarely eligible to be returned to state prison
Impact to Date

- Reduction in prison population has met the court order of no greater than 135% of capacity
- 2/3 reduction in number of individuals on parole supervision
- Substantial increase in local supervision: significant statewide variation in degree of increased jail use or community supervision
Realignment as a “Great Experiment”

- Impact on crime
- Impact on recidivism
- Shift in resources from state corrections to local supervision
The Just Barely Sustainable California Prisoners’ Rights Ecosystem

Prof. Margo Schlanger
Annals, AAPSS, 664, March 2016
Prison litigation has shrunk

PLRA (1996) and similar case law case act in two ways:

• Friction: the statute and case law have made prisoners’ right cases harder to bring, win, and maintain

• Starvation: simultaneously undermine the economics of prisoners’ rights plaintiffs’ practice
The PLRA (1996) undermined prisoners’ ability to bring, settle, and win lawsuits

• Imposed “administrative exhaustion,” 42 U.S.C. §1997e(a)
• Increased filing fees, 28 U.S.C. §1915(b)
• Decreased attorneys’ fees, 42 U.S.C. §1997e(d)(2-3)
• Limited damages, 42 U.S.C. §1997e(e)
• Constrained injunctive settlements, 18 U.S.C. §3626(a)(1)(A)
• Limited prison and jail population caps, 18 U.S.C. §3626(a)(3)
• Invited frequent relitigation of injunctive remedies, 18 U.S.C. §3626(b)
# National Impact

<table>
<thead>
<tr>
<th></th>
<th>Pre-PLRA Peak</th>
<th>Now</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conditions court orders</td>
<td>Covered about half of inmates</td>
<td>Cover ~20% of inmates</td>
</tr>
<tr>
<td>Federal civil rights filings</td>
<td>25/1000 inmates</td>
<td>10/1000 inmates</td>
</tr>
<tr>
<td>Litigation success (broadly defined)</td>
<td>&gt;16% of cases</td>
<td>11% of cases</td>
</tr>
<tr>
<td>Attorney representation</td>
<td>17% of cases</td>
<td>5% of cases</td>
</tr>
</tbody>
</table>
Litigation remains important

Injunctive remedies:
- address overuse of solitary confinement, prisoner sexual abuse, free speech and religion, and more.

Damage actions:
- occasional compensation for wrongful death and injury
- (still more occasionally) induce reform
California resists the trend

• Numerous court orders govern every prison in California

• Prisoner filings in California’s federal courts remain at about the same level as they were at the PLRA’s enactment in 1996—contra the national 60 percent decline in filing rate.

(Note, however, that California’s filing rate was, in the 1990s, very low—so it is currently about average.)
Figure 1: California Criminal Justice Populations, 2000-2014

- **Prison ADP**
- **Parole**
- **Jail ADP**

Max: 172,528
Min: 132,768

"Tentative Ruling" (Feb. 2009)
S.Ct. decision, and AB 109 (May and June 2011)

Max: 83,184
Min: 71,011
Figure 2: Major California Prison Court Orders, 1965 to Present

- Gilmore
- Clutchette
- Spain
- Toussaint
- Lancaster/Thompson
- Gates
- Madrid
- Coleman
- Castillo
- Valdivia
- Armstrong
- Shumate
- Clark
- Plata
- Hecker
- Perez
- L.H.
- Mitchell
- Ashker
- Sassman

[Legend: Pre-Order: light grey; Court Order: dark grey]

PLRA
Why is California different?

1) The California Bar:
   - Large (12% of population; 14% of American lawyers)
   - Slightly disproportionately populated by Biglaw and public interest lawyers.
     Includes the Prison Law Office and the ACLU of Southern California
   - VERY disproportionately populated by “private public interest lawyers.”
   - Includes several firms that litigate prisoners’ rights cases.
Why is California different?

2) The docket in 1996

- Five large-scale injunctive prison cases with existing court orders.
  - Each litigated by dedicated prisoners rights firms.
  - Therefore, for each, compliance work was part of the mission/business model

- Six large-scale injunctive cases in process
Why is California different?

3) Favorable bench – and, in 1996, heading left

4) Fee expertise in the private public interest bar

5) One case leads to another:
   – Expertise and reputation
   – Fact development
Is this sustainable?

• Shrinking term of consent decrees

• Increasing importance of jails:
  – Harder to monitor.
  – Smaller, less financially sustainable for counsel.
Realignment and Recidivism

Ryken Grattet and Mia Bird

Prepared for a webinar hosted by The Sentencing Project in collaboration with the American Academy of Political and Social Science
February 29th, 2016
Realignment gave new responsibilities to counties

- Provided funds and overarching goals to reduce recidivism
- Encouraged evidence-based practices
- Required counties to submit plans for state funding
- Can counties do better in terms of recidivism?
Early data on realignment & recidivism

- Based only on prison releases from CDCR
- Statistically adjusted for changes in composition
- Contrasting “pure” pre-realignment with post-realignment cohorts
- Six month, One year rates
Arrest patterns are changing...

- All arrests: -2.0%
- Felony arrest: 2.1%
- Misdemeanor arrest: -1.2%
- Supervision arrest: -3.7%
- Multiple arrests: 7.4%

Convictions are increasing...

- All convictions: 2.1%
- Felony convictions: 1.0%
- Misdemeanor convictions: 0.2%
- Multiple convictions: 0.4%
- Conviction conditional on arrest: 3.1%

Returns to prison decreasing, but...

Changes in felony arrest rates varied across counties ...

<table>
<thead>
<tr>
<th>County</th>
<th>Percentage Point Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ventura</td>
<td>-13.7%</td>
</tr>
<tr>
<td>Orange</td>
<td>10.5%</td>
</tr>
<tr>
<td>Santa Barbara</td>
<td>8.4%</td>
</tr>
<tr>
<td>Los Angeles</td>
<td>3.4%</td>
</tr>
<tr>
<td>San Diego</td>
<td>3.3%</td>
</tr>
<tr>
<td>Sacramento</td>
<td>1.9%</td>
</tr>
<tr>
<td>Shasta</td>
<td>-1.5%</td>
</tr>
<tr>
<td>Santa Cruz</td>
<td>-2.2%</td>
</tr>
<tr>
<td>San Francisco</td>
<td>-6.0%</td>
</tr>
<tr>
<td>Mendocino</td>
<td>32.9%</td>
</tr>
</tbody>
</table>

Percentage point change in 6 month felony arrest rate

... as did changes in felony conviction rates

Percentage point change in 6 month felony conviction rate

Solano: 9.70%
Contra Costa: 2.50%
Los Angeles: 2.40%
Orange: 1.50%
Kings: 0.70%
San Joaquin: -0.10%
San Bernardino: -0.30%
Shasta: -0.70%
Santa Cruz: -2.10%
Mendocino: -5.10%

County implementation plans cluster into two groups

- **Re-entry focused**
  - Programs and services received more than two times greater budget share
  - A somewhat wider range of re-entry services indicated

- **Enforcement focused**
  - Sheriff, jails, and law enforcement received more than three times greater budget share
  - A narrower range of re-entry services indicated
Reductions in recidivism were greater in counties emphasizing re-entry services.

**Percentage point change**

- **All arrests**: -1.9%
- **Felony arrests**: -3.7%
- **All convictions**: -2.3%
- **Felony convictions**: -1.7%

**SOURCE:** Bird and Grattet. 2014. *Do Local Realignment Policies Affect Recidivism in California?* PPIC.
Is recidivism changing as a result of realignment?

- Depends on the measure, population, location
  - Returns to prison
    - Dropped dramatically (but creeping back up)
    - Returns to jail custody: Unknown
  - Arrest
    - Modest decreases
    - Shift to arrest for felonies and away from supervision violations
    - Multiple arrests increasing
  - Convictions
    - Convictions increasing, especially for felonies
    - Convictions conditional on arrest increasing
  - Local variation
    - Counties adopting enforcement-focused implementation plans have worse performance
Additional Questions

- How are county jail offender (1170h) recidivism patterns changing?
- How are new realignment tools (split sentencing, flash incarceration, alternative custody) affecting recidivism patterns?
- How can we parse behavioral changes from changes in discretionary responses?
- What policies, practices, and interventions reduce recidivism?
Notes on the use of these slides

These slides were created to accompany a presentation. They do not include full documentation of sources, data samples, methods, and interpretations. To avoid misinterpretations, please contact:

Ryken Grattet (grattet@ppic.org; 415-440-1123)

Thank you for your interest in this work.
Incarceration and Crime: Evidence from California’s Public Safety Realignment Reform

Magnus Lofstrom
Steven Raphael
Realignment was the state’s answer to prison overcrowding

- Two key features of the law to reduce overcrowding
  - Parole violators no longer sent back to state prison
  - Lower-level felons now go to county jails
- Quick and mostly unanticipated enactment
  - 9 months from proposal to implementation
    - January 2011-October 1, 2011
Quick and substantial decline in prison population
Sizable “realignment dose”, varies across counties

<table>
<thead>
<tr>
<th>Area/County</th>
<th>Prison Incarceration Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>June 2011</td>
</tr>
<tr>
<td>Total Statewide</td>
<td>435</td>
</tr>
<tr>
<td>Largest declines</td>
<td></td>
</tr>
<tr>
<td>Kings</td>
<td>1,052</td>
</tr>
<tr>
<td>Shasta</td>
<td>852</td>
</tr>
<tr>
<td>Smallest declines</td>
<td></td>
</tr>
<tr>
<td>Contra Costa</td>
<td>182</td>
</tr>
<tr>
<td>Marin</td>
<td>152</td>
</tr>
<tr>
<td>75th Percentile</td>
<td>516</td>
</tr>
<tr>
<td>25th Percentile</td>
<td>280</td>
</tr>
</tbody>
</table>
Research questions

- With the substantial changes in incarceration, what are the effects of realignment on crime?
  - Specifically, identify incarceration effect on crime
    - Exploit cross-county heterogeneity in the impact of the reform on county-specific incarceration rates
    - Also, state level synthetic control strategy

- Is incarceration a cost effective crime preventive strategy?
Empirical strategy: county level data

- View realignment as a natural experiment
- Focus on the role of changes in prison incarceration to identify possible impact on crime
  - Take advantage of the realignment induced exogenous county-specific variation in the number of incarcerated offenders
- Purge data of county specific seasonality/near term trends (pre-realignment)
- Adjust for county jail incarceration responses and unobservable county level time invariant characteristics (county fixed effects)

Regression adjusted comparison of county-level difference-in-difference changes in prison incarceration rates and crime rates
Only auto theft increases can convincingly be attributed to realignment.
Empirical strategy: state level data

- Generate estimates of what crime trends would have been if realignment had not been implemented
  - Counterfactual for California
- Identify suitable combination of states with pre-realignment crime trends similar to California’s and compare post-realignment trends
  - Synthetic control approach (Abadie, Diamond & Hainmueller, 2010)
California’s violent crime trend continues to match trends in comparison states
The property crime rate gap between California and comparison states persisted in 2013.
Conclusions

- Realignment decreased California’s reliance on incarceration
- No evidence of an impact on violent crime rates
- Modest increase in property crime due to rise in motor vehicle thefts
  - Increased auto theft rate by about 70 per 100,000 residents
  - Each prison year served prevents roughly 1.2 auto thefts
- Incarceration does prevent some crime, but at current rates its effect is very limited
  - Additional $1 spent on incarceration yields 23¢ in crime savings
  - $1 spent on additional policing yields $1.6 in crime savings (Chalfin and McCrary, 2013)
- Need for alternative cost effective crime prevention strategies
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Magnus Lofstrom (lofstrom@ppic.org; 415-291-4454)

Thank you for your interest in this work.
Q&A

Please submit questions using the “Questions” pane of the webinar window.

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Appendix

Some additional slides for informational purposes
Composition of prison releases have changed

Felony arrests and convictions of all types increased among PRCS after realignment

- Felony convictions: 1.9%
- All convictions: 2.3%
- Felony arrests: 4.7%
- All arrests: 0.0%

Pre-realignment recidivism patterns were stable and high

Three-year CDCR Recidivism Rates by FY

California 3-year return to prison rates are among the highest in the U.S.