

# THE PERFECT STORM: *BROWN V. PLATA* AND CALIFORNIA'S FINANCIAL CRISIS

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## I. INTRODUCTION

On May 23, 2011, the Supreme Court issued a decision in *Brown v. Plata* addressing the overcrowded prisons crisis in California.<sup>1</sup> To remedy and prevent constitutional violations caused by such overcrowding, the Supreme Court affirmed the judgment of a three-judge court ordering California to reduce its prison population from over 300% design capacity<sup>2</sup> to 137.5% design capacity by June 2013.<sup>3</sup> While human rights activists like the American Civil Liberties Union (ACLU) praised the decision, many of California's government officials—including correctional officers, district attorneys, county sheriffs, and the Secretary of the California Department of Corrections and Rehabilitation (CDCR)—warned of the colossal social impact of releasing more than 34,000 inmates prior to the end of their sentences.<sup>4</sup>

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<sup>1</sup> *Brown v. Plata*, 131 S. Ct. 1910 (2011).

<sup>2</sup> Design capacity is "[t]he number of inmates that planners or architects intended for the facility." *Corrections: Terms and Definitions*, BUREAU OF JUSTICE STATISTICS, [http://www.bjs.gov/index.cfm?ty=tp&tid=1#terms\\_def](http://www.bjs.gov/index.cfm?ty=tp&tid=1#terms_def) (last visited July 21, 2013).

<sup>3</sup> *Plata*, 131 S. Ct. at 1947 (the 137.5% cap is roughly 112,032 prisoners); Paige St. John, *Even After Realignment, Prison Projections Rise*, L.A. TIMES (Nov. 1, 2012, 7:00 AM), <http://latimesblogs.latimes.com/california-politics/2012/10/even-after-realignment-prison-count-expected-to-rise.html>.

<sup>4</sup> For commentary on the impact of decreasing the design capacity in California prisons, see

Although realignment efforts to shift the density of the prison population to county jails began on October 1, 2011,<sup>5</sup> California will be unable to avoid a mass release of thousands of prisoners. At the same time, California is experiencing a financial meltdown, resulting in 11.7% unemployment in September 2011,<sup>6</sup> huge cuts to rehabilitation, vocational, and drug programs,<sup>7</sup> and layoffs of parole officers and vocational prison instructors.<sup>8</sup> The *Plata* order will ultimately force California to release or transfer thousands of prisoners without adequate rehabilitation services. In response to this premature release of dangerous and un-rehabilitated criminals, the steadily decreasing crime rates will likely rise again.

This Note argues that the *Plata* decision, current market conditions, and recent budget cuts to parole and rehabilitation programs will collectively cause a “perfect storm” over the next several years, dramatically increasing recidivism and crime rates. Ultimately, this Note postulates that after *Plata*, efforts to reduce prison overcrowding will ironically exacerbate the issue by increasing the prison population in the coming years due to reoffending. At the same time, this Note argues that California’s best chances at reducing overcrowded prisons rest in adopting rehabilitation programs and funding distributions.

Part II of this Note discusses the history behind California’s prison overcrowding problem. Part III examines the *Plata* ruling and other relevant cases. Part IV evaluates California’s reaction to the ruling. Part V looks at California’s recent financial crisis and its impact on the prison system. Part VI analyzes the disparity between the recidivism rates in California and the rest of the country. Part VII explains the importance of rehabilitation programs. Part VIII assesses how certain factors will work

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Don Thompson & Thomas Watkins, *Calif. Prison Overhaul May Cut Inmate Time Behind Bars*, NBCNEWS.COM (Sept. 29, 2011, 6:28 PM), [http://www.msnbc.msn.com/id/44723557/ns/us\\_news-crime\\_and\\_courts/t/calif-prison-overhaul-may-cut-inmate-time-behind-bars/#.Tz6-zJj0MSK](http://www.msnbc.msn.com/id/44723557/ns/us_news-crime_and_courts/t/calif-prison-overhaul-may-cut-inmate-time-behind-bars/#.Tz6-zJj0MSK).

<sup>5</sup> CAL. DEP’T OF CORR. & REHAB., *Overview . . . AB 109 & AB 117 Public Safety Realignment of 2011*, [http://www.cdcr.ca.gov/realignment/docs/AB\\_109-PowerPoint-Overview.pdf](http://www.cdcr.ca.gov/realignment/docs/AB_109-PowerPoint-Overview.pdf) (last visited July 21, 2013).

<sup>6</sup> U.S. DEP’T OF LABOR, BUREAU OF LABOR STATISTICS, *Regional and State Employment and Unemployment—September 2012* (Oct. 19, 2012), available at [http://www.bls.gov/news.release/archives/laus\\_10192012.pdf](http://www.bls.gov/news.release/archives/laus_10192012.pdf).

<sup>7</sup> Michael Rothfeld, *As Rehab Programs Are Cut, Prisons Do Less to Keep Inmates from Returning*, L.A. TIMES (Oct. 17, 2009), <http://articles.latimes.com/2009/oct/17/local/me-rehab17>.

<sup>8</sup> *California Prison Layoffs: 548 Employees Get Notices*, HUFFPOST L.A. (Jan. 27, 2012, 7:21 PM), [http://www.huffingtonpost.com/2012/01/27/hundreds-of-prison-employ\\_0\\_n\\_1237860.html](http://www.huffingtonpost.com/2012/01/27/hundreds-of-prison-employ_0_n_1237860.html).

together to increase the prison population and crime rates. Part IX recommends alternatives for compliance with *Plata*. Finally, Part X offers some final thoughts on the topic.

## II. CALIFORNIA'S HISTORY OF OVERCROWDING

California's prison system has been headed for trouble for at least two decades. Between 1990 and 2005, California's prison population increased from 443 prisoners per 100,000 adults to 595 prisoners per 100,000 adults.<sup>9</sup> As a result, California's prisons are currently operating at 160% design capacity, with thirty-three prisons operating at double capacity.<sup>10</sup> Design capacity is the number of inmates the architects or planners intended for the prison based on single-capacity cells, or single-level bunks in dormitories.<sup>11</sup> Current design capacity for California's thirty-three institutions is 79,650, but as of February 1, 2012, there were more than 129,106 inmates detained in the thirty-three institutions.<sup>12</sup>

To accommodate such large populations, two or three inmates frequently share one-person cells, and beds are placed in common spaces such as gyms and classrooms.<sup>13</sup> Further, there are backlogs of up to 700 inmates awaiting medical and mental treatment and as many as fifty-four people sharing a single toilet.<sup>14</sup> Many analysts relate this to the high suicide rate in California's prisons, which is almost 80% higher than the national average.<sup>15</sup>

Before *Plata*, California had almost 600 state inmates per 100,000 adult citizens.<sup>16</sup> While these numbers are down from their peak in the late

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<sup>9</sup> Blake Bunch, *California Governor Challenges Prison Inmate Population Cap*, IVN (Jan. 09, 2013), <http://ivn.us/2013/01/09/california-governor-challenges-prison-inmate-population-cap/>.

<sup>10</sup> Adam Skolnick, *Runaway Prison Costs Trash State Budgets*, THE FISCAL TIMES (Feb. 9, 2011), <http://www.thefiscaltimes.com/Articles/2011/02/09/Runaway-Prison-Costs-Thrash-State-Budgets.aspx#page1>.

<sup>11</sup> *Corrections: Terms and Definitions*, *supra* note 2.

<sup>12</sup> CAL. DEP'T. OF CORR. & REHAB, DATA ANALYSIS UNIT, *Weekly Report of Population as of Midnight February 1, 2012* (Feb. 6, 2012), available at [http://www.cdcr.ca.gov/Reports\\_Research/Offender\\_Information\\_Services\\_Branch/WeeklyWed/TPOP1A/TPOP1Ad120201.pdf](http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/WeeklyWed/TPOP1A/TPOP1Ad120201.pdf).

<sup>13</sup> Kirk Wilbur, *Chapter 22: Another Step Toward Curing Constitutional Deficiencies in California's Prisons*, 42 MCGEORGE L. REV. 612, 612 (2011).

<sup>14</sup> Melissa Riess, *Brown v. Plata*, HASTINGS L.J. (June 17, 2011), <http://www.hastingslawjournal.org/brown-v-plata>.

<sup>15</sup> *Id.*

<sup>16</sup> Bunch, *supra* note 9.

1990s,<sup>17</sup> California still has one of the largest prison systems in the country.<sup>18</sup> California's initial response was to build more correctional facilities, and between the 1970s and 1997, it built twenty-one new prisons, for a total of thirty-three.<sup>19</sup> The most recent prison opened in June 2005 and contains nearly 3,000 beds,<sup>20</sup> however, the entire system operates at over double design capacity.<sup>21</sup>

Most experts and political commentators agree that the current downward spiral of prison conditions began in the 1980s with a series of "get tough on crime" legislation, and worsened in 1994 with the "three-strikes" laws.<sup>22</sup> Inflexible sentencing guidelines and the "War on Drugs" also increased California's prison population.<sup>23</sup> Together, these factors set the stage for *Plata*.

### III. *BROWN V. PLATA*

The *Plata* ruling was the result of two similar cases that stretched back twenty-five years, *Plata v. Schwarzenegger*<sup>24</sup> and *Coleman v. Schwarzenegger*.<sup>25</sup> The issue in both cases was whether poor medical and mental health care in California's prisons violated the Eighth Amendment.<sup>26</sup>

The first case, *Coleman v. Schwarzenegger* was originally filed in Federal District Court in April 1990 as a class action suit by mentally ill prisoners claiming that the mental health care provided while in prison

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<sup>17</sup> *Id.*

<sup>18</sup> Skolnick, *supra* note 10.

<sup>19</sup> STANFORD CRIM. JUSTICE CTR., CALIFORNIA SENTENCING AND CORRECTIONS: SIGNIFICANT ISSUES 1–7, 4, available at [http://www.defenseforsvp.com/Resources/Misc\\_info/CA\\_Sentencing\\_and\\_Corrections.pdf](http://www.defenseforsvp.com/Resources/Misc_info/CA_Sentencing_and_Corrections.pdf) (last visited July 27, 2013) [hereinafter STANFORD, CALIFORNIA SENTENCING].

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Laura Sullivan, *Folsom Embodies California's Prison Blues*, NPR (Aug. 13, 2009, 3:31 PM), <http://www.npr.org/2009/08/13/111843426/folsom-embodies-californias-prison-blues>.

<sup>23</sup> Fareed Zakaria, *Incarceration Nation*, TIME MAGAZINE (Apr. 2, 2012), <http://www.time.com/time/magazine/article/0,9171,2109777,00.html>.

<sup>24</sup> *Plata v. Schwarzenegger*, No. C01-1351 TEH, 2007 WL 2122657 (N.D. Cal. July 23, 2007).

<sup>25</sup> *Coleman v. Schwarzenegger*, No. CIV S-90-0520 LKK JFM P, 2007 WL 2122636 (E.D. Cal. July 23, 2007).

<sup>26</sup> Alexander Scott Jester, *Coleman v. Schwarzenegger: Liberal Activism Run Amok or Measured Response to a System in Crisis?*, 20 S. CAL. REV. L. & SOC. JUST. 535, 535–36 (2011).

was “so inadequate that their rights under the Eighth and Fourteenth Amendments to the United States Constitution [were] violated.”<sup>27</sup> After four years, the court determined that there were shortcomings in the staffing of mental health care personnel, access to care, and record keeping.<sup>28</sup> The court found that these inadequacies left prisoners with serious, untreated mental disorders, and sometimes even intensified their mental health issues.<sup>29</sup> Although some progress was made to comply with the court’s order, in 2007, a three-judge court determined that the mental health care of inmates failed to meet Eighth Amendment standards.<sup>30</sup>

The second case, *Plata v. Schwarzenegger*, was also filed as a class action in April 2001, “alleging that [California provided] constitutionally inadequate medical care at all California state prisons.”<sup>31</sup> In response to the suit, the State ultimately agreed to implement “comprehensive new medical care policies and procedures at all institutions,” and the court stipulated specific measures to be taken in order to reach the minimum standards of care under the Eighth Amendment.<sup>32</sup> Nonetheless, the State failed to meet—or even attempt to meet—the benchmarks required by the stipulation.<sup>33</sup>

Controversy over the failed attempts first surfaced in the public eye in 2006 when Governor Arnold Schwarzenegger issued the Prison Overcrowding State of Emergency Proclamation.<sup>34</sup> The Proclamation “declared that all thirty-three . . . prisons were at or above [design] capacity and that ‘extreme peril to the safety of persons’ existed in twenty-nine of those facilities.”<sup>35</sup> Despite Governor Schwarzenegger’s Proclamation, little action was taken until a second three-judge court reviewed the case in 2009.<sup>36</sup>

In August 2009, the cases were consolidated and a three-judge court ordered California to create a prison reduction plan that would reduce the

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<sup>27</sup> *Coleman v. Wilson*, 912 F. Supp. 1282, 1293 (E.D. Cal. 1995).

<sup>28</sup> *Id.* at 1307, 1309, 1315.

<sup>29</sup> *Id.* at 1306.

<sup>30</sup> *Jester*, *supra* note 26, at 546.

<sup>31</sup> *Plata v. Schwarzenegger*, No. C01-1351 TEH, 2005 WL 2932253, at \*1 (N.D. Cal. Oct. 3, 2005).

<sup>32</sup> *Id.* (citing June 13, 2002 Stipulation for Injunctive Relief).

<sup>33</sup> *Jester*, *supra* note 26, at 547.

<sup>34</sup> *Id.* at 536 (citing Arnold Schwarzenegger, Governor, Prison Overcrowding State of Emergency Proclamation (Oct. 04, 2006), available at <http://gov.ca.gov/news.php?id=4278>).

<sup>35</sup> *Id.*

<sup>36</sup> *See id.* at 535–36.

entire adult penal population to 137.5% of their combined design capacity within two years.<sup>37</sup> Finding that overcrowding was the ultimate cause of the constitutional violation, the court ruled that no other relief would remedy the violation, and executed a Prison Release Order.<sup>38</sup> California immediately appealed the ruling to the Supreme Court.<sup>39</sup>

The Supreme Court issued its decision on May 23, 2011, affirming the entirety of the three-judge court's ruling.<sup>40</sup> The ruling set four benchmark dates for California and required progress updates at six-month intervals to ensure that the State was meeting the benchmarks.<sup>41</sup> Under the ruling, the inmate population at all of California's thirty-three prisons must be: (1) at or below 167% of design capacity by December 27, 2011; (2) 155% by June 27, 2012; (3) 147% by December 27, 2012; and (4) 137.5% by June 27, 2013.<sup>42</sup> Despite setting these benchmarks, the Court did not specify how California must go about achieving them.<sup>43</sup> Instead, Justice Kennedy, writing for the majority, discussed some potential methods to achieve these requirements, such as building new facilities, or transferring inmates to local or privately-operated prisons.<sup>44</sup>

As a result, an inmate headcount conducted on December 28, 2011 indicated that California met its first benchmark, with prisons at an overall 166.8% of design capacity.<sup>45</sup> The State also managed to reach the second benchmark in April 2012 with 155% of design capacity.<sup>46</sup> Despite reaching this second benchmark two months early and with a promise of "no need . . . to modify the order," the State requested a modification of the original Court order in November 2012.<sup>47</sup> In fact, the mandated status

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<sup>37</sup> *Id.* at 550 (citing *Coleman v. Schwarzenegger*, No. CIV S-90-0520 LKK JFM P, 2009 WL 2430820, at \* 116 (E.D. Cal. Aug. 4, 2009)).

<sup>38</sup> *Id.*

<sup>39</sup> *Brown v. Plata*, 131 S. Ct. 1910, 1922–23 (2011).

<sup>40</sup> *Id.*

<sup>41</sup> OPEC Staff, *CDCR Meets Federal Court Order to Reduce Prison Overcrowding*, INSIDE CDCR NEWS (Jan. 10, 2012), <http://www.insidecdcr.ca.gov/2012/01/cdcr-meets-federal-court-order-to-reduce-prison-overcrowding/>.

<sup>42</sup> *Id.*

<sup>43</sup> Riess, *supra* note 14.

<sup>44</sup> *Id.*

<sup>45</sup> OPEC Staff, *supra* note 41.

<sup>46</sup> *CDCR Meets Second Court Benchmark to Reduce Prison Overcrowding*, INSIDE CDCR NEWS (June 27, 2012), <http://www.insidecdcr.ca.gov/2012/06/cdcr-meets-second-court-benchmark-to-reduce-prison-overcrowding/>.

<sup>47</sup> Defendants' Nov. 2012 Status Report and Motion to Modify June 30, 2011 Order Requiring Interim Reports at 1–2, (2:90 cv 00520 LKK JFM P) (Nov. 15, 2012), *available at* <http://www.cdcr.ca.gov/News/docs/3JC-Nov-2012-Status-Report-and-Motion-Filed.pdf>

report in November 2012 stated that despite the initial success of the State's efforts, the prison population "has remained basically unchanged over the last two months, and Defendants now believe that the population will end up slightly above the 147% benchmark by the current December 27, 2012 target date."<sup>48</sup> The new plan requested that the third benchmark be moved back to June 27, 2012, with the final benchmark of 137.5% of design capacity extended six months to December 27, 2013.<sup>49</sup> On January 27, 2013, a three-judge panel found for the State and agreed to give California six more months to comply with the next benchmark.<sup>50</sup>

The recent stagnation in the size of the prison population is largely due to the tapering out of the effects of legislation implemented soon after the original ruling, including Assembly Bill 109 (AB 109),<sup>51</sup> also known as the 2011 Public Safety Realignment.<sup>52</sup>

#### IV. REALIGNMENT AND OTHER DE-POPULATION STRATEGIES

##### A. ASSEMBLY BILL 109

Assembly Bill 109, implemented on October 1, 2011, shifts the responsibility of low-level offenders<sup>53</sup> from the State to the counties.<sup>54</sup> Instead of being housed in state facilities upon sentencing, inmates are sent back to their counties of origin to serve their sentence or participate in probation.<sup>55</sup> This means that low-level offenders are sentenced by local courts, housed in local facilities, and supervised or paroled by local law enforcement.<sup>56</sup> While this reduces the State's burden dramatically, it has

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[hereinafter Defendants' Nov. 2012 Status Report].

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> Paige St. John, *Federal Courts Give California More Time to Ease Prison Crowding*, L.A. TIMES (Jan. 29, 2013, 5:20 PM), <http://latimesblogs.latimes.com/california-politics/2013/01/federal-courts-give-california-more-time-to-ease-prison-crowding.html>.

<sup>51</sup> A.B. 109, 2011–12 Reg. Sess. (Cal. 2011).

<sup>52</sup> See OPEC Staff, *supra* note 41.

<sup>53</sup> Low-level offenders are non-serious, non-violent, non-sex offenders. *Id.*

<sup>54</sup> *Id.*; 2011 Public Safety Realignment: Key Provisions in AB 109/AB 117: Adult Offender Population Transfers to Counties, CAL. ST. ASS'N OF CNTYS. (July 22, 2011), [http://www.cmhda.org/go/portals/0/cmhda%20files/committees/forensics/1107\\_forensics/csac-cssa-cpoc\\_2011\\_public\\_safety\\_realignment\\_key\\_provisions\\_%287-22-11%29.pdf](http://www.cmhda.org/go/portals/0/cmhda%20files/committees/forensics/1107_forensics/csac-cssa-cpoc_2011_public_safety_realignment_key_provisions_%287-22-11%29.pdf).

<sup>55</sup> Barry Krisberg & Eleanor Taylor-Nicholson, REALIGNMENT: A BOLD NEW ERA IN CALIFORNIA CORRECTIONS 2 (Sept. 2011), available at [http://www.law.berkeley.edu/files/REALIGNMENT\\_FINAL9.28.11.pdf](http://www.law.berkeley.edu/files/REALIGNMENT_FINAL9.28.11.pdf).

<sup>56</sup> EDMUND G. BROWN, JR., 2011–12 STATE BUDGET 35 (2012), available at

the obvious outcome of shifting the burden of many inmates onto the counties, therefore straining county personnel, budgets, and space.

In anticipation of this burden shifting, the State required each county to make extensive plans to accommodate and fund the realignment efforts.<sup>57</sup> Despite the colossal efforts and funding necessary on the part of each county, AB 109 provides only minimal funding to assist with the influx of new prisoners.<sup>58</sup> Based on the number of new inmates received, each county's Board of Supervisors is given a disbursement from the State Comptroller.<sup>59</sup> Even with this funding, however, counties are operating without "reliable estimates of county budgetary needs to meet the legal requirements for medical care, mental health treatment, education, religious programming, and disabled services that the courts and federal and state laws mandate."<sup>60</sup> As a result, local officials in nearly every county have expressed concern about both the current and future levels of funding, as well as their capacity to house additional prisoners.<sup>61</sup> This concern is especially prominent because many local jails already operate at design capacity, and as many as twenty counties operate jails under court-ordered population limits.<sup>62</sup>

Further, counties also suffered during the recent economic crisis, and pre-realignment budget cuts have left the counties vastly unprepared for the additional prisoners.<sup>63</sup> Counties vary widely in their ability to handle additional caseloads because of the differences in availability of rehabilitation programs, treatment standards, risk assessment, and technology.<sup>64</sup> Moreover, because of these discrepancies between counties, local officials could face litigation from prisoners pointing to discrepancies in care between different counties and claiming additional constitutional violations.<sup>65</sup>

For example, the Los Angeles, Orange, and San Bernardino Counties all experienced a larger influx of prisoners than the State projected.<sup>66</sup> Both

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<http://www.ebudget.ca.gov/2011-12-EN/pdf/Enacted/BudgetSummary/FullBudgetSummary.pdf>.

<sup>57</sup> Krisberg & Taylor-Nicholson, *supra* note 55, at 4–5.

<sup>58</sup> *Id.* at 4.

<sup>59</sup> *Id.* at 2.

<sup>60</sup> *Id.* at 4.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> Richard Winton & Andrew Blankstein, *California's County Jails Struggle to House*



Los Angeles and Orange County are hoping to handle the extra prisoners with alternatives to incarceration—such as electronic monitoring for low-risk offenders and work release programs—although Orange County Sheriff Sandra Hutchens has warned that this is far from ideal.<sup>67</sup> Since Los Angeles County is already under an individual court order to prevent jail overcrowding, some inmates must be released in order for the county to accommodate state prisoners.<sup>68</sup> With Los Angeles County potentially receiving a majority of the State's prisoners—up to 7,000—it is likely that it will have to release low-level offenders early, some of whom have only served twenty percent of their sentences.<sup>69</sup> This additional influx is also causing San Bernardino County's jail system to approach design capacity, even though it uses work release programs to keep its inmate population low.<sup>70</sup>

#### B. CHANGES TO PAROLE

In addition to prisoner realignment to county jails, the California Legislature altered sentencing and parole guidelines to reduce inmate populations.<sup>71</sup> Sentencing credits help to reduce the population by giving extra time credits to prisoners in order to release them early.<sup>72</sup> Similarly, Senate Bill 18 (SB 18) helps “to reduce the short term, revolving door parole violator population” by promoting and establishing “drug, mental health and parolee re-entry courts,” rather than returning those who violate their parole to prison, placing them on a parole hold or reporting them to

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*Influx of State Prisoners*, L.A. TIMES, Dec. 10, 2011, <http://articles.latimes.com/2011/dec/10/local/la-me-jails-20111210>.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> Jack Dunphy, *Cascade Effect: California's Prison Release Program*, PJ MEDIA (Oct. 5, 2011, 12:06 AM), <http://pjmedia.com/blog/cascade-effect-californias-prison-release-program/>; Christina Villacorte, *Sheriff's, Probation Departments Brace for Shift of Inmates, Increased Caseloads*, L.A. DAILYNEWS (Sept. 30, 2011, 1:00 AM), [http://www.dailynews.com/news/ci\\_19008715?source=rss](http://www.dailynews.com/news/ci_19008715?source=rss).

<sup>70</sup> Winton & Blankstein, *supra* note 66.

<sup>71</sup> John E. Dannenberg, *California DOC Complies With Population Reduction Order in Plata v. Brown*, PRISON LEGAL NEWS, [https://www.prisonlegalnews.org/\(S\(dugm4a45zx10cnbw0fhpel45\)\)/23642\\_displayArticle.aspx](https://www.prisonlegalnews.org/(S(dugm4a45zx10cnbw0fhpel45))/23642_displayArticle.aspx) (last visited July 27, 2013).

<sup>72</sup> *Id.* (“Major reductions were effectuated by increasing sentencing credits: (1) six weeks of credit per year for completion of approved rehabilitation programs; (2) day-for-day credits for eligible parole violators; (3) two days credit for every day served upon endorsement to a fire camp; (4) day-for-day credits for discipline-free prisoners who are on wait-lists for qualifying programs; (5) day-for-day credits for pre-prison time in county jail.”).

the Board of Parole Hearings.<sup>73</sup> SB 18 ensures that inmates eligible for parole are assessed for risk on a case-by-case basis, and “low risk parolees [are] placed on administrative parole with no active supervision.”<sup>74</sup> While this may sound like a dramatic change, “California is one of just two states that place[s] every felony offender on parole and the only state where parole can last three years, [which can be] longer than the actual prison term served.”<sup>75</sup> While these new strategies may decrease California incarceration rates, they will have little impact on recidivism and crime rates because they do not address rehabilitation.<sup>76</sup>

In January 2010, the Parole Reform Task Force proposed a new and dramatic parole policy.<sup>77</sup> The Task Force explained that 66% of California’s parolees returned to prison within three years because the system failed to address the difficulties of transitioning into life after prison.<sup>78</sup> To address this reality, the Task Force created the California Parole Supervision and Reintegration Model (CPSRM).<sup>79</sup> The CPSRM advocates for the use of evidence-based practices,<sup>80</sup> which are used to assess the risk factors for each parolee and tailor an individual transition and treatment plan based on its findings.<sup>81</sup> While the CPSRM also aims to reduce the average parole officer’s caseload from seventy to fifty-three cases; budget constraints can prevent this reduction.<sup>82</sup> Although there is a good chance that the CPSRM will be successful, its plan was not initially

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<sup>73</sup> *Id.* (SB 18 operates provided that the parolees “do not have any of the following disqualifiers: (1) registered sex offender; (2) currently committed for sexually violent offense; (3) ever were committed for sexually violent offense; (4) ever had violent/serious convictions; (5) had a serious disciplinary offense in recent prison term; (6) are validated gang member or associate; (7) refused parole conditions; (8) are high risk for re[-]offense.”).

<sup>74</sup> STANFORD CRIM. JUSTICE CTR., CALIFORNIA CORRECTIONS: FACTS AND FIGURES 1–2, available at <http://www.law.stanford.edu/sites/default/files/event/264011/media/slspublic/California%20Corrections%20Overview.pdf> (last visited July 27, 2013).

<sup>75</sup> STANFORD, CALIFORNIA SENTENCING, *supra* note 19, at 4.

<sup>76</sup> See *infra* Parts VI–VII.

<sup>77</sup> PAROLE REFORM TASK FORCE, PAROLE REFORM IN CALIFORNIA: AN EVIDENCE-BASED AND BEST PRACTICES APPROACH 8–9, 12 (Jan. 15, 2010), available at [http://www.cdcr.ca.gov/Parole/Road\\_Map/docs/CA\\_Parole\\_Reintegration\\_Supervision\\_Model\\_Manual.pdf](http://www.cdcr.ca.gov/Parole/Road_Map/docs/CA_Parole_Reintegration_Supervision_Model_Manual.pdf).

<sup>78</sup> *Id.* at 1.

<sup>79</sup> *Id.* at 7.

<sup>80</sup> See *infra* Part IV.D.

<sup>81</sup> See CAL. DEP’T OF CORR. & REHAB. *The Division of Adult Parole Operations - A Five-Year Roadmap to Our Future*, CA.GOV (June 2012), [http://www.cdcr.ca.gov/Parole/road\\_map/index.html](http://www.cdcr.ca.gov/Parole/road_map/index.html).

<sup>82</sup> *Id.*

implemented on a widespread basis in Southern California,<sup>83</sup> where 66% of California's inmate population is committed.<sup>84</sup> Instead, the CPSRM was first implemented in Bakersfield, Santa Rosa, the San Gabriel Valley, and San Bernardino County, and has slowly expanded statewide.<sup>85</sup> This means that many locations desperate for sweeping reform are still waiting. In the end, the Task Force is clearly moving in the right direction, but the progress has been slow and its plan is unlikely to be fully implemented before the final benchmark deadline.

### C. REENTRY COURTS

As mentioned previously, SB 18 establishes drug, mental health, and parole reentry courts.<sup>86</sup> Reentry courts are an attempt to facilitate reintegration after prison.<sup>87</sup> While reentry courts have had great success in adjusting prisoners to civilian life and decreasing recidivism rates, only six counties have established parole reentry courts.<sup>88</sup> Alameda, San Francisco, Los Angeles, Santa Clara, San Joaquin, and San Diego were able to establish reentry courts because the 2009–10 State budget specially allocated \$9.5 million to fund the programs.<sup>89</sup> These counties may now refer parole violators with substance abuse or mental health issues to the exclusive control of a reentry court.<sup>90</sup> While preliminary data is not yet available, reentry courts are likely to be California's best chance at a long-term solution to address crime rates, recidivism, and the prison population because of the individual attention parolees can receive. Consequently, reentry courts and transitional programs are discussed at length in Parts VII and IX.

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<sup>83</sup> *Id.*

<sup>84</sup> CAL. DEP'T OF CORR. & REHAB., CORRECTIONS: YEAR AT A GLANCE 17 (2011), available at [http://www.cdcr.ca.gov/News/docs/2011\\_Annual\\_Report\\_FINAL.pdf](http://www.cdcr.ca.gov/News/docs/2011_Annual_Report_FINAL.pdf).

<sup>85</sup> *The Division of Adult Parole Operations—A Five-Year Roadmap to Our Future*, *supra* note 81.

<sup>86</sup> Dannenberg, *supra* note 71.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> J. Richard Couzens, EVIDENCE-BASED PRACTICES: REDUCING RECIDIVISM TO INCREASE PUBLIC SAFETY: A COOPERATIVE EFFORT BY COURTS AND PROBATION 3 (June 27, 2011), available at <http://www.courts.ca.gov/documents/EVIDENCE-BASED-PRACTICES-Summary-6-27-11.pdf>.

<sup>90</sup> *Id.*

## D. EVIDENCE-BASED PRACTICES

California also made initial efforts to collect the data necessary to create additional evidence-based programs.<sup>91</sup> Evidence-based practices are “supervision policies, procedures, programs, and practices demonstrated by scientific research to reduce recidivism among individuals under probation, parole or post-release supervision.”<sup>92</sup> To address the lack of evidence-based practices in the State, the California Risk Assessment Pilot Project (Cal RAPP) was established to track recidivism rates in up to six counties—currently only Napa, San Francisco, Santa Cruz, and Yolo—with the goal of focusing on risk needs assessment tools and their impact on recidivism.<sup>93</sup> Although this will make a great difference in the future, many counties remain at a standstill.

As a result of this standstill, Senate Bill 678 (SB 678) was passed in 2009.<sup>94</sup> SB 678 creates performance-based incentives for county probation departments to implement evidence-based practices for felony probation supervision.<sup>95</sup> These incentives will likely have a positive impact on the overcrowding crisis in the long run for two main reasons. First, SB 678’s goals align with California’s long-term need to reduce recidivism by managing individual risks during the transition back into the community.<sup>96</sup> Second, successful counties will share the money saved by addressing probation and recidivism within the State in proportion to their success rates.<sup>97</sup>

Thus far, SB 678 has been successful. After one year of implementation, forty-seven of the fifty-eight counties saw some form of reduction in probation failures, with the overall rate of probation failure declining from 7.9% to 6.1%.<sup>98</sup> Nonetheless, “California is the only state [with] no sustained state funding of probation services,” and so it is unclear what will happen to the counties after this year.<sup>99</sup>

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<sup>91</sup> *Id.* at 4–5.

<sup>92</sup> *Id.* at 5 (quoting CAL. PENAL CODE § 1229(d) (West 2013)).

<sup>93</sup> *Id.* at 3.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *See id.* at 1.

<sup>97</sup> *Id.* at 3.

<sup>98</sup> JUDICIAL COUNSEL OF CAL., SB678 YEAR 1 REPORT 3 (June 8, 2011), available at <http://www.courts.ca.gov/documents/SB678-Year-1-Report-FINAL.pdf>.

<sup>99</sup> Couzens, *supra* note 89, at 1.

## E. SPLIT SENTENCING

Realignment legislation also allows for the use of “split” or “blended” sentencing as an alternative to parole and incarceration.<sup>100</sup> In split sentencing, the court can decide to put an inmate under the supervision of a county’s probation department for a portion of the time he or she would have spent in county jail.<sup>101</sup> This not only reduces the population in county jails, but also gives courts wide discretion in determining both the length of custody and non-custody supervision.<sup>102</sup> No specific guidance is given to courts in making these decisions, but presumably the hope is that sentencing will reflect the needs and risks of the individual.<sup>103</sup> While some may view split sentencing as another way criminals are being inadequately punished, it is likely a fair compromise given the space and funding limitations. Nonetheless, there are logistical questions over whether the non-custody aspect of a split sentence qualifies as probation, which would cause the court to lose all jurisdiction over the prisoner for possible further punishment.<sup>104</sup> Additionally, split sentencing could overburden probation departments with heavier caseloads since probation officers would not have otherwise handled these cases.

## F. SHORT-TERM SOLUTIONS

In addition to the programs discussed above, California created other short-term solutions in order to meet the *Plata* benchmarks. For example, Senate Bill 1399, allows prisoners in debilitated conditions—those prisoners who are non-dangerous and who have conditions that are expensive to maintain—to be released on medical parole.<sup>105</sup> California also transferred about 10,000 prisoners to out-of-state private prisons to further reduce the strain on already-full facilities.<sup>106</sup> Last, former juvenile

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<sup>100</sup> J. Richard Couzens & Tricia A. Bigelow, *FELONY SENTENCING AFTER REALIGNMENT* 11–13 (June 6, 2013), available at [http://www.courts.ca.gov/partners/documents/felony\\_sentencing.pdf](http://www.courts.ca.gov/partners/documents/felony_sentencing.pdf).

<sup>101</sup> *Id.* at 11. There are some crimes for which split sentencing is not an option, such as the serious crimes excluded from realignment under AB 109. *Id.* at 7.

<sup>102</sup> *Id.*

<sup>103</sup> See *id.* at 11–13.

<sup>104</sup> Garrick Byers, *REALIGNMENT* 43–44 (Dec. 3, 2011), available at <http://www.ceb.com/lawalerts/Realignment4.doc>.

<sup>105</sup> See Dannenberg, *supra* note 71.

<sup>106</sup> *Id.* Most notably, California has transferred inmates to prisons in Arizona, Mississippi and Oklahoma. CAL. DEP’T. OF CORR. & REHAB. DATA ANALYSIS UNIT, *supra* note 12, at 1–2; Julie Small, *What Are California’s Best Options for Reducing State Prison Population?*, KPCC

facilities were converted to adult facilities to help shoulder some of the overcrowding in the facilities currently in use.<sup>107</sup>

## V. CALIFORNIA'S FINANCIAL CRISIS AND BUDGET CUTS TO THE CDCR

California's prisons reached the brink of crisis at the same time as California's economy. California's unemployment rate reached a then-record 11.5% in May 2009,<sup>108</sup> roughly at the same time most of California's prisons reached double design capacity.<sup>109</sup> Unfortunately, California's unemployment rate peaked at 12.5% in December 2011, deepening the State's financial crisis.<sup>110</sup> The State's response to the economic disaster has been to dramatically cut government funding in a variety of sectors, including funding for the CDCR.<sup>111</sup> In fact, due to "the State's fiscal crisis, adult offender rehabilitation programs were reduced by \$250 million, including education, vocational, substance abuse and other programs for inmates and parolees."<sup>112</sup> With California's recidivism rate among the highest in the nation, the budget cuts to rehabilitation have made it obvious that "California is a state with its back against the wall."<sup>113</sup>

There is no doubt that California is in desperate need of a budget overhaul to reallocate funding within the prison system. It costs nearly \$45,000 to incarcerate a prisoner for a single year in California, which is significantly higher than the national average of \$28,817.<sup>114</sup> With numbers like these, it is no wonder that budget cuts to programs that help convicted felons and petty criminals seem appealing to the public.

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(May 24, 2011, 6:48 AM), <http://www.scpr.org/news/2011/05/24/26863/californias-best-options-reducing-state-prison-pop/>.

<sup>107</sup> Michael Rothfeld, *California to Close its Largest Juvenile Prison*, L.A. TIMES, Aug. 28, 2009, <http://articles.latimes.com/2009/aug/28/local/me-prisons28>.

<sup>108</sup> Marc Lifsher & Alana Semuels, *California Unemployment Rises to Record 11.5% in May*, L.A. TIMES, June 20, 2009, <http://articles.latimes.com/2009/jun/20/business/fi-california-jobless20>.

<sup>109</sup> Skolnick, *supra* note 10.

<sup>110</sup> Alana Semuels, *California Unemployment Rate is Second Highest in Nation*, L.A. TIMES, Jan. 26, 2011, <http://articles.latimes.com/2011/jan/26/business/la-fi-0126-california-unemployment-20110126>.

<sup>111</sup> Skolnick, *supra* note 10.

<sup>112</sup> CAL. DEP'T OF CORR. & REHAB., CORRECTIONS: YEAR AT A GLANCE 24 (2010), available at [http://www.cdcr.ca.gov/News/docs/CDCR\\_Year\\_At\\_A\\_Glance2010.pdf](http://www.cdcr.ca.gov/News/docs/CDCR_Year_At_A_Glance2010.pdf).

<sup>113</sup> Skolnick, *supra* note 10.

<sup>114</sup> *Id.*

In 2009 and 2010, the CDCR suffered enormous budget cuts.<sup>115</sup> As of February 2011, “[t]he budget for the Department of Corrections and Rehabilitation was slashed by \$1 billion in 2010, and under Governor Brown’s new budget the hope is [that] \$1.4 billion more can be saved in 2011, [which] includes a \$150 million reduction in rehabilitation programs at a time when recidivism is at an alarming rate.”<sup>116</sup> Further, the CDCR laid off as many as 900 educational and vocational prison instructors, who could have provided the newly released prisoners with the crucial vocational training, literacy education, and substance abuse programs necessary for a successful transition into post-prison life.<sup>117</sup> Consequently, rehabilitation programs are floundering at a time when they are needed most. As Mike Jimenez, President of the California Correctional Peace Officers Association, stated:

Inmate rehabilitation programs are failing, turning prison gates into revolving doors, giving California one of the nation’s highest recidivism rates. Thousands of inmates who have served their sentences are being released without the education, job training or basic life skills needed to function in society. With few chances to succeed, they have little choice but to return to crime.<sup>118</sup>

“Education and rehabilitation programs have suffered some of the deepest cuts of any part of state government.”<sup>119</sup> Even worse, the almost 45% of budget cuts to the rehabilitation programs do not include the nearly 40% cut to substance abuse programs in 2010–11.<sup>120</sup>

The 2011–12 budget report reduces funding specifically for the CDCR’s rehabilitation services by another \$101 million, but qualifies the decrease as a result of the changing population of inmates, presumably based on the fact that many will be released early and without parole.<sup>121</sup>

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<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> Harriet Salarno & Ted Lieu, *Prisons Can't Afford to Cut Rehabilitation Funds*, S.F. CHRONICLE (Feb. 17, 2010, 4:00 AM), <http://www.sfgate.com/opinion/openforum/article/Prisons-can-t-afford-to-cut-rehabilitation-funds-3199050.php>.

<sup>118</sup> CAL. CORR. PEACE OFFICERS ASS’N, *NEW DIRECTIONS: A BLUEPRINT FOR REFORMING CALIFORNIA’S PRISON SYSTEM TO PROTECT THE PUBLIC, REDUCE COSTS AND REHABILITATE INMATES 1* (Jan. 2010), available at [http://www.ccpoa.org/files/ccpoablueprint0110\\_1.pdf](http://www.ccpoa.org/files/ccpoablueprint0110_1.pdf).

<sup>119</sup> Ryan Gabrielson, *Fewer Repeat Offenders, But Cuts Planned for Prison Rehab, Literacy*, CAL. WATCH (Nov. 8, 2010), <http://californiawatch.org/dailyreport/fewer-repeat-offenders-cuts-planned-prison-rehab-literacy-6490>.

<sup>120</sup> *Id.*

<sup>121</sup> BROWN, *supra* note 56, at 35–36 (“A one time decrease of \$101 million General Fund for CDCR rehabilitation services to restructure these services in light of the significant changes to CDCR’s inmate population.”). Further, a lower inmate population could impact CDCR’s

Nonetheless, with more than 55% of California inmates locked up as repeat offenders and recidivism rates at 65%,<sup>122</sup> California needs funding for rehabilitation programs now more than ever. Without major changes to the allocation of funds within the prison system, it is clear that California will face a whole new kind of crisis.

## VI. RECIDIVISM IN CALIFORNIA

The success of a penal system is often measured by recidivism rates, which is the rate at which a released prisoner re-engages in criminal offenses despite already having been incarcerated or otherwise punished.<sup>123</sup> This includes any prior prisoner who has been rearrested, reconvicted, or returned to custody for either committing a new crime or for violating probation or parole.<sup>124</sup>

The mass incarceration crisis in California has long been indicative of its high recidivism rates. The CDCR reports a 63.7% recidivism rate in California after three years for all released prisoners.<sup>125</sup> This rate is on average 20.3% higher for re-released prisoners than first-time releases.<sup>126</sup> 18% of the recidivists in 2004 committed a new crime, while 40% committed a parole or other technical violation.<sup>127</sup> According to a 2009 study, California felons had a 40.2% recidivism rate after one year out of prison, and a 52.3% recidivism rate after two years.<sup>128</sup> Most recidivists return to prison within a single year of release, which means that Californians may see the impact of budget cuts to rehabilitation programs—and skyrocketing recidivism and crime rates—almost

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construction plans for new prisons as the budget could be reduced from \$6 billion to \$1.9 billion. Chris Megerian, *California Prisons Detail Plan to Downsize, Cut Costs*, L.A. TIMES (Apr. 23, 2012, 1:17 PM), <http://latimesblogs.latimes.com/california-politics/2012/04/california-prisons-unveil-plan-downsize.html>.

<sup>122</sup> Skolnick, *supra* note 10.

<sup>123</sup> PEW CTR. ON THE STATES, STATE OF RECIDIVISM: THE REVOLVING DOOR OF AMERICA'S PRISONS 6–7 (Apr. 2011), *available at* [http://www.pewstates.org/uploadedFiles/PCS\\_Assets/2011/Pew\\_State\\_of\\_Recidivism.pdf](http://www.pewstates.org/uploadedFiles/PCS_Assets/2011/Pew_State_of_Recidivism.pdf).

<sup>124</sup> *Id.*

<sup>125</sup> CAL. DEP'T OF CORR. & REHAB., 2012 OUTCOME EVALUATION REPORT 13 (Oct. 2012), *available at* [http://www.cdcr.ca.gov/Adult\\_Research\\_Branch/Research\\_Documents/ARB\\_FY\\_0708\\_Recidivism\\_Report\\_10.23.12.pdf](http://www.cdcr.ca.gov/Adult_Research_Branch/Research_Documents/ARB_FY_0708_Recidivism_Report_10.23.12.pdf). This is the most recent CDCR data available, although it is for 2007–08. CDCR collects and reports recidivism data in three-year cycles.

<sup>126</sup> *Id.*

<sup>127</sup> PEW CTR. ON THE STATES, *supra* note 123, at 14.

<sup>128</sup> THE SENTENCING PROJECT, STATE RECIDIVISM STUDIES (2010), *available at* [http://sentencingproject.org/doc/publications/inc\\_StateRecidivismStudies2010.pdf](http://sentencingproject.org/doc/publications/inc_StateRecidivismStudies2010.pdf).



immediately.

The CDCR did see recidivism rates decline slightly in 2006–07, mainly due to a small decline among first-time releases.<sup>129</sup> Despite this minor improvement, 73,885 prisoners were re-incarcerated within three years, with nearly half returning to prison only six months after release.<sup>130</sup> Further, California's recidivism rate is almost 15% higher than the national average of 43.3%.<sup>131</sup>

Ultimately, University of California, Hastings College of Law Professor Hadar Aviram summarizes the issue well:

The recidivism rates in general, while not surprising, are disheartening, and attest to the complete failure of our prison system in achieving deterrence, rehabilitation, or both. . . . It is telling that the statistics haven't changed significantly over time, despite increased punitive measures. Clearly, what we are doing under the title "corrections and rehabilitation" does not correct or rehabilitate.<sup>132</sup>

## VII. WHY REHABILITATION MATTERS

Many studies prove that rehabilitation programs lower recidivism rates.<sup>133</sup> Prisons with the most successful rehabilitation programs typically begin their reentry services during incarceration by focusing on employment, housing, and drug treatment.<sup>134</sup> These programs are successful because prison populations face significant challenges "related to substance abuse, mental and physical health, employment, and housing" upon release.<sup>135</sup> Without state assistance, many newly released prisoners

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<sup>129</sup> CAL. DEP'T OF CORR. & REHAB, *supra* note 125, at 22.

<sup>130</sup> *Id.* at 14–15.

<sup>131</sup> See PEW CTR. ON THE STATES, *supra* note 123, at 10–11. Admittedly, this data can be dramatically impacted by external factors such as individual state laws on sentencing, how inmates are selected for release, and varying responses to parole and supervision violations. Since California reincarcerates parole violators while many states do not, its recidivism rates are skewed when contrasting them to other averages. *Id.* at 17–18.

<sup>132</sup> Bernice Yeung, *California DOC Report Looks at Recidivism Rates*, CORRECTIONSONE.COM (Nov. 4, 2010), <http://www.correctionsone.com/re-entry-and-recidivism/articles/2865158-California-DOC-report-looks-at-recidivism-rates/>.

<sup>133</sup> See, e.g., Joseph A. Adams, *Texas Rehabilitation Programs Reduce Recidivism Rates*, RIGHT ON CRIME (May 16, 2011), <http://www.rightoncrime.com/2011/05/texas-rehabilitation-programs-reduce-recidivism-rates/> (discussing a Texas study that shows that completion of rehabilitation programs lowers recidivism rates).

<sup>134</sup> See AMY L. SOLOMON ET AL., *LIFE AFTER LOCKUP: IMPROVING REENTRY FROM JAIL TO THE COMMUNITY* 15–16, 19 (2008), available at [http://www.urban.org/UploadedPDF/411660\\_life\\_after\\_lockup.pdf](http://www.urban.org/UploadedPDF/411660_life_after_lockup.pdf).

<sup>135</sup> *Id.* at 19.

find themselves in poverty, homeless, and unemployed, with little or no social support.<sup>136</sup> Lacking such crucial resources, returning to crime seems like the only viable option; thus, directly linking rehabilitation and recidivism.<sup>137</sup> The following sections focus on the most important aspects of inmate rehabilitation.

#### A. EDUCATION, JOB SKILLS, AND PLACEMENT

Education may be the most important factor in reducing recidivism. A study from the Bard Prison Initiative found that “[p]rison-based education is the single most effective tool for lowering recidivism.”<sup>138</sup> According to other studies sponsored by the U.S. Federal Bureau of Prisons, “recidivism rates are inversely related to educational program participation while in prison,” and “[t]he more educational programs successfully completed, . . . the lower the recidivism rate.”<sup>139</sup> Most inmates are “unskilled, undereducated, and highly likely to become involved in crime again,” and a lack of vocational skills and education are often why crime became an outlet for many in the first place.<sup>140</sup> Therefore, it flows that programs which address education and vocational training can make a huge difference in the life of a released prisoner.

For example, University of California, Berkeley School of Law Lecturer Barry Krisberg comments “that education, vocational training, expanded drug treatment, [and] increased family visiting programs in prison” are undeniably associated with lower recidivism rates.<sup>141</sup> Krisberg also notes that, despite this strong correlation, “[the State is] cutting exactly the programs that would make more people succeed once [they are] released, so the situation is getting worse, not better.”<sup>142</sup> In fact, because many ex-offenders are unemployed and will apply for State welfare, the first fourteen months are critical for transitioning back into the

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<sup>136</sup> See *id.* at 20–21.

<sup>137</sup> CAL. CORR. PEACE OFFICERS ASS’N, *supra* note 118, at 1.

<sup>138</sup> DANIEL KARPOWITZ & MAX KENNER, EDUCATION AS CRIME PREVENTION: THE CASE FOR REINSTATING PELL GRANT ELIGIBILITY FOR THE INCARCERATED 4, *available at* <http://www.stcloudstate.edu/continuingstudies/distance/documents/EducationasCrimePreventionTheCaseForReinstatingthePellGrantforOffendersKarpowitzandKenner.pdf> (last visited July 27, 2013).

<sup>139</sup> *Id.* at 3–4.

<sup>140</sup> *Id.* at 4.

<sup>141</sup> Yeung, *supra* note 132.

<sup>142</sup> *Id.*

community.<sup>143</sup> Without State assistance for job placement or rehabilitation, it is highly likely that these ex-inmates will continue to end up behind bars.<sup>144</sup>

Terry Thornton, Deputy Press Secretary for the CDCR, further highlights the tension surrounding the importance of prisoner education: “Think of this economy [we are] in. We have people with master’s degrees applying for entry-level jobs. How is a prisoner going to compete?”<sup>145</sup> Jean Bracy, Program Administrator and School Principal of Folsom State Prison, echoes the same sentiments—“I have 1,797 inmates who read below the 9th grade level; 394 of those read below the 4th grade level . . . [w]hen we put them back out on the streets, [they are] not employable.”<sup>146</sup> Bracy also notes that after budget cuts, vocational programs “reach less than 10 percent of Folsom’s inmates,” and although it only costs \$100,000, she expects the State to cut the current vocational program budget in half.<sup>147</sup> This is especially disheartening because Folsom used to have programs to train inmates to be butchers, landscapers, and welders, all of which have been canceled or cut back because the prison cannot afford to pay teachers.<sup>148</sup> Unfortunately, the experiences at Folsom are indicative of the entire prison system; prisons simply cannot afford the cost of education and training that could dramatically reduce recidivism rates.

## B. DRUG REHABILITATION

Substance abuse programs are also effective at reducing recidivism because many recidivists’ crimes often stem from drug addiction.<sup>149</sup> A 2009 Annual Report of the Office of Substance Abuse Treatment Services concluded that the recidivism rate for offenders completing both in-prison and out-of-prison community-based drug treatment for one year was 18% lower than that for all offenders.<sup>150</sup> This success is strongly correlated to

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<sup>143</sup> Skolnick, *supra* note 10.

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> See Sullivan, *supra* note 22.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> N.Y. STATE COMM’N ON DRUGS AND THE COURTS, CONFRONTING THE CYCLE OF ADDICTION & RECIDIVISM: A REPORT TO CHIEF JUDGE JUDITH S. KAYE (June 2000), available at <http://www.nycourts.gov/reports/addictionrecidivism.shtml#15>.

<sup>150</sup> See Gordon Hinkle & Peggy Bengs, *Substance Abuse Programs Reduce Recidivism*, CORRECTIONS.COM (Oct. 8, 2009), <http://www.corrections.com/news/article/22508-substance->

the fact that in 2008, 28.4% of the CDCR commitments were for substance abuse offenses.<sup>151</sup> For these reasons, Matthew Cate, CDCR Secretary, made drug treatment a priority within the CDCR, stating that “[e]ffective treatment for alcohol and drug addiction is crucial for successful reintegration into the community when inmates are released . . . [o]ur emphasis on encouraging inmates who complete substance abuse programs in prison to continue in community aftercare treatment has proven to be successful.”<sup>152</sup>

As a result, many drug treatment programs have remained relatively intact during the budget cuts, faring significantly better than other rehabilitative options.<sup>153</sup> Nonetheless, the CDCR has shortened the time an inmate may participate in an in-prison substance abuse program from between six and thirty-six months, to only three months, and the data on the effectiveness of such a drastically reduced treatment cycle has yet to be collected.<sup>154</sup> Nonetheless, providing only half the treatment from previous years will most likely yield predictably disappointing results.

### C. HOUSING

One of the most important facets of transitioning into society for a newly released prisoner is locating stable housing. “At any given time in Los Angeles and San Francisco, 30 to 50[%] of all people under parole supervision are homeless.”<sup>155</sup> The National Alliance to End Homelessness estimates that one in five newly released prisoners becomes homeless immediately upon release or shortly thereafter.<sup>156</sup> This is because prisoners have been with minimal or no income for the duration of their incarceration, and often cannot afford basic necessities.<sup>157</sup> Further, because of their criminal record, many newly released prisoners are unable

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abuse-programs-reduce-recidivism.

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *See id.* (“During this time of fiscal crisis and significant budget reductions, our department remains focused on core substance abuse programs that reduce recidivism,” said Elizabeth Siggins, Acting Chief Deputy Secretary of Adult Programs.”).

<sup>154</sup> *Id.*

<sup>155</sup> NINO RODRIGUEZ & BRENNER BROWN, PREVENTING HOMELESSNESS AMONG PEOPLE LEAVING PRISON 2 (Dec. 2003), available at [http://www.prisonpolicy.org/scans/vera/209\\_407.pdf](http://www.prisonpolicy.org/scans/vera/209_407.pdf); *see also* *Re-Entry*, NAT’L ALLIANCE TO END HOMELESSNESS, [http://www.endhomelessness.org/pages/re\\_entry](http://www.endhomelessness.org/pages/re_entry) (last visited July 8, 2013).

<sup>156</sup> *Re-Entry*, *supra* note 155.

<sup>157</sup> RODRIGUEZ & BROWN, *supra* note 155, at 3.

to obtain low-income housing.<sup>158</sup>

Homelessness can exacerbate other problems for prisoners. Although homeless shelters are generally available, newly released prisoners living in shelters or on the streets lack a permanent address where potential employers can contact them.<sup>159</sup> Thus, even those prisoners who received educational or vocational training while incarcerated will still have difficulty finding and retaining employment without stable housing. Moreover, since the prison system does not have a division for handling homelessness among prisoners, the burden falls on social service agencies, which are already overwhelmed with other cases.<sup>160</sup>

Assembly Bill 2034, also known as Systems of Care for Severely Mentally Ill Homeless, provides housing resources for newly released prisoners with mental illness.<sup>161</sup> Given that at least 95% of state prisoners are released at some point, there are relatively few resources for prisoners without mental illness.<sup>162</sup> County programs facing realignment under AB 109 are generally unprepared to handle an influx of state prisoners who may end up homeless. For example, Jerry Wengerd, Riverside County's Mental Health Department Chief, stated that while "his office can find placements for those who need mental health or substance abuse treatment, [finding housing] for former inmates released without those issues [is hard]."<sup>163</sup> In fact, many county parole officers and mental health providers are already struggling with the effects of realignment, often searching for ex-inmates in parks and neighborhoods they have given as their living location.<sup>164</sup> While there are ideas on how to solve the pending re-entry housing crisis, there is no funding to support such projects.<sup>165</sup>

In the end, the financial crisis in California has led to dramatic

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<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> HOUS. CAL. & CORP. FOR SUPPORTIVE HOUS., PROGRAM OVERVIEW: REDUCING PAROLEE RECIDIVISM THROUGH SUPPORTIVE HOMES 1, *available at* [http://www.housingca.org/site/DocServer/ISMIP\\_2-page-Overview.pdf?docID=188](http://www.housingca.org/site/DocServer/ISMIP_2-page-Overview.pdf?docID=188) (last visited July 27, 2013).

<sup>162</sup> FEDERAL INTERAGENCY REENTRY COUNCIL, REENTRY IN BRIEF 1-2 (May 2011), [http://csgjusticecenter.org/documents/0000/1059/Reentry\\_Brief.pdf](http://csgjusticecenter.org/documents/0000/1059/Reentry_Brief.pdf).

<sup>163</sup> Richard K. De Atley, *INLAND: Realignment Presents Challenges in Housing, Mental Health Treatment*, THE PRESS-ENTERPRISE (Feb. 1, 2012, 8:15 PM), <http://www.pe.com/local-news/topics/topics-public-safety-headlines/20120201-inland-realignment-presents-challenges-in-housing-mental-health-treatment.ece>.

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

funding cuts for all types of prisoner rehabilitative programs, especially those most needed, such as vocational training, housing, and drug treatment. This means that California's prisoners are not only leaving prison *en masse* after the *Plata* ruling, but are being released without the skills and resources necessary to live successfully in society. The inmates released or realigned in California as a result of the *Plata* ruling will be more unprepared than ever to re-enter local communities and Californians will have little choice but to watch crime and recidivism rates rise as a result.

### VIII. THE PERFECT STORM

Between high unemployment, drastic cuts to rehabilitation programs, and soaring recidivism rates, California is headed for disaster. While California already learned the hard way that tough-on-crime policies can easily become out of control and wildly expensive, the State may soon realize that cutting rehabilitation programs and releasing low-level offenders is more dangerous and more expensive in the long run.

While there is little compiled data on crime rates after previous mass prison releases, the people closest to the problem—such as sheriffs and district attorneys—have few positive things to say about the future. Some officials, like Ventura County District Attorney Gregory Totten, are cautiously optimistic.<sup>166</sup> Others, however, are more concerned.<sup>167</sup> According to Los Angeles County District Attorney Steve Cooley, “[d]efendants responsible for a wide variety of felony crimes will escape appropriate sentences . . . [and t]he crime rate will predictably and significantly rise.”<sup>168</sup> He ultimately concludes that “[t]he law-abiding public is going to pay a huge price as they become the victims of a tremendously spiking crime rate.”<sup>169</sup>

Thus far, there are conflicting numbers on crime and the impact of the release of prisoners. Although the crime rate in Los Angeles continued to decrease in 2011 and 2012, thefts rose 4.3% from 2011 to 2012, and cellphone thefts rose 30% in 2012.<sup>170</sup> As of August 2012, almost a year

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<sup>166</sup> Thompson & Watkins, *supra* note 4 (“It’s a sea change. . . [t]hat policy of ‘Just lock ‘em up’ is changing.”).

<sup>167</sup> See, e.g., Dunphy, *supra* note 69.

<sup>168</sup> *Id.*

<sup>169</sup> Thompson & Watkins, *supra* note 4.

<sup>170</sup> David Knowles, *Crime Rate in Los Angeles Falls for 10th Straight Year, Making it the Safest Big City in America, but Cell Phone Thefts Are Way Up*, N.Y. DAILY NEWS (Jan. 8, 2013,

after the beginning of realignment, Los Angeles released over 7,000 inmates.<sup>171</sup> Of these 7,000, only 545—less than 8%—entered alcohol or drug treatment programs.<sup>172</sup> While it is still too early to see the overall effects of realignment, it is likely that Los Angeles' crime rate will rise, and the already reduced budgetary resources in the prison system and police departments will be stretched even more thin.

Sacramento County Sheriff Scott Jones called realignment a process that “is destined to failure.”<sup>173</sup> He commented that even when the inmates serve only half of their sentences behind bars, instead of the two-thirds, he could not open enough cells to keep pace with the number of inmates entering prison.<sup>174</sup> Jones ultimately concluded that when you take into account the “people on the street that otherwise would have been in jails or prison” and “add to that a statistical certainty of a 70[%] recidivism rate,” there is no room to reasonably argue “[there is] not going to be more crimes in the community.”<sup>175</sup> For professionals closest to the problem, like Jones and Cooley, higher crime rates and continued overcrowding will not be a surprise.

Jones and Cooley see the perfect storm brewing in California. The CDCR reports California recidivism rates at 63.7% after three years for all released prisoners.<sup>176</sup> Additionally, the recidivism rate is significantly higher for those convicts who have been in prison before compared to first-time offenders.<sup>177</sup> In fact, the CDCR reports the recidivism rate for re-release offenders at 75.4%, which makes the overall recidivism rate misleadingly low.<sup>178</sup> Further, all of this data is based on the CDCR programs in 2007–08,<sup>179</sup> prior to the major cuts in funding for rehabilitative programs that began in 2010, and before the economy and unemployment began spiraling downward in 2008. There are currently no accurate predictions of what recidivism rates will look like once the complete effects of the funding limitations have taken hold, but these

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5:54 PM), <http://www.nydailynews.com/news/crime/los-angeles-crime-rate-falls-10th-straight-year-article-1.1235916>.

<sup>171</sup> Press Release, Criminal Justice Legal Foundation, *Realignment Continuing to Drive Up Crime Across California* (Aug. 21, 2012), *available at* <http://www.cjlf.org/releases/12-16.htm>.

<sup>172</sup> *Id.*

<sup>173</sup> See Thompson & Watkins, *supra* note 4.

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> CAL. DEP'T OF CORR. & REHAB., *supra* note 125, at 13.

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> *Id.* at 2.

programs were doing more good than harm, and recidivism rates will spike. Similarly, it would be logical to presume that California's financial condition will have a huge impact on the ability of newly released prisoners to find legitimate work and re-integrate back into the community.

Ultimately, the problem boils down to simple math. About 116,000 prisoners are released annually.<sup>180</sup> Consequently, roughly 348,000 prisoners will be released between 2011 and 2013. Of these 348,000 released prisoners, *even if recidivism rates remain stable*, about two thirds—or 221,676—will return to prison within three years.<sup>181</sup> This means that by December 27, 2013,<sup>182</sup> when California should reach the extended final benchmark set by the Supreme Court in *Plata*, the real overcrowding will have just begun.

Even with new evidence-based practices, reentry courts, and parole reform, there is simply no way California can reach the 137.5% of design capacity benchmark<sup>183</sup> by December 2013 with the potential of more than 200,000 prisoners returning to prison. Even worse, California felons have a 40.2% recidivism rate after one year and a 52.3% recidivism rate after two years.<sup>184</sup> This means that, at a bare minimum, roughly half of all State prisoners released will be re-incarcerated within two years. More astoundingly, this estimate disregards the likely 42,555 new felon admissions annually that the State will need to house in state-owned facilities.<sup>185</sup> Further, even if California somehow manages to meet the new deadline, high recidivism rates and cuts to rehabilitation will likely mean that California's overcrowding crisis will still be increasing after meeting the final *Plata* benchmark. When this occurs, the State will quickly realize that the quick-fix strategies will have severe and adverse consequences on the size of the prison population in the long run.<sup>186</sup>

Despite extensive planning and high praise for the realignment

<sup>180</sup> *Id.* at 7.

<sup>181</sup> This re-incarceration figure is calculated using CDCR's current recidivism rate of 63.7%. *Id.* at 13.

<sup>182</sup> St. John, *supra* note 50.

<sup>183</sup> *Id.* at 1920–21.

<sup>184</sup> THE SENTENCING PROJECT, *supra* note 128.

<sup>185</sup> CAL. DEP'T OF CORR. & REHAB., *supra* note 84, at 16. Also, there will likely be another 17,166 parole violators sentenced to new terms that may or may not be subject to realignment to a county jail. *Id.*

<sup>186</sup> This is in addition to the negative consequences on crime rates, as well as prisoners' mental health care, which was the initial purpose behind the *Plata* ruling.



system, the CDCR conceded in November 2012 that it knew, seven months in advance that it would not meet the third and final benchmark by June 2013.<sup>187</sup> As a result, the CDCR asked the Eastern and Northern Districts to extend the final benchmark to December 2013, and to set the June 2013 benchmark at 147% of design capacity—10% higher than the original benchmark.<sup>188</sup> This request was granted.<sup>189</sup> The motion to increase the benchmark allowances proves what law enforcement officials have known all along—the groundbreaking and “historic”<sup>190</sup> system of realignment was a short-term solution with little hope of long-term success. The State also submitted a newly proposed plan to accompany the request for an extension, which included measures to expand inmate credits that shorten sentences, expand realignment to include the relocation of more felons to county jails, expand alternative custody programs, increase the use of private prisons, and release more inmates earlier.<sup>191</sup> State attorneys have called *all* of these measures “unwise” and emphasized that they may very likely “jeopardize public safety.”<sup>192</sup>

Despite the State’s request to extend the final benchmark in November 2012, the Governor in early January 2013 announced that the prison crisis was over, and promised to continue the hard legal battle over the “nit-picky” and “heavy-handed intrusion of the federal government.”<sup>193</sup> Reporters and news agencies were quick to question the Governor’s statements<sup>194</sup> in light of the recent statistics, relating both to the population reduction efforts and to the provision of adequate mental health care. For example, independent reviewers found that there were forty-three deaths in 2011 that could have been prevented by adequate mental health care, and that the 2011 prison suicide rate was at its highest since 2006 due to a chronic shortage of staff psychiatrists.<sup>195</sup> The data

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<sup>187</sup> St. John, *supra* note 50.

<sup>188</sup> Defendants’ Nov. 2012 Status Report, *supra* note 47, at 3.

<sup>189</sup> St. John, *supra* note 50.

<sup>190</sup> Defendants’ Nov. 2012 Status Report, *supra* note 47, at 2.

<sup>191</sup> Julie Small, *California Files Plan with Federal Court to Ease Prison Overcrowding*, KPPC (Jan. 8, 2013, 6:00 PM), <http://www.scpr.org/news/2013/01/08/35550/ca-offers-plan-ease-prison-overcrowding/>.

<sup>192</sup> *Id.*

<sup>193</sup> Sadhbh Walshe, *Governor Jerry Brown, California's Prison Crisis Is Not Over*, THE GUARDIAN (Jan. 10, 2013, 3:50 PM), <http://www.guardian.co.uk/commentisfree/2013/jan/10/governor-jerry-brown-california-prison-crisis> (internal quotation marks omitted).

<sup>194</sup> See, e.g., *id.* (“Brown’s announcement is fantastic news . . . Except for the small caveat that it isn’t true: the emergency is far from over.”).

<sup>195</sup> Small, *supra* note 191.

revolving around realignment and reducing the population is equally depressing. Records demonstrate that the prison population decreased by only seventy-seven prisoners in August 2012.<sup>196</sup> Based on these figures, the *Los Angeles Times* predicts that the State will have more than 7,000 prisoners over the mandated limit by the old June 2013 benchmark—a number, as the *Times* points out, that could easily fill another prison.<sup>197</sup>

Despite Governor Brown's statements, it is clear that the prison-overcrowding crisis in California is far from over. Between California's high recidivism rates, a failing economy, and disappointing results from realignment, it seems unlikely that the State, even with the benchmark extension, will be able to meet 137.5% of design capacity by December 2013. Even worse, there is little hope of ever operating at actual design capacity—a mere 79,650<sup>198</sup> between all thirty-three prisons—if there are more than 200,000 prisoners returning to prison in three year cycles, assuming recidivism rates remain stable.<sup>199</sup> While there are too many variables to accurately predict exact numbers, Californians can expect to see increased recidivism, higher crime rates, and a continuation of the overcrowding crisis.

## IX. ALTERNATIVES

Even with budget cuts and the financial crisis, there are alternatives to California's response to *Plata*.<sup>200</sup> Nationwide data suggests that prisons may only cut crime rates by up to one-third, meaning that other factors, such as probation and rehabilitation, account for at least two-thirds of crime rate reductions.<sup>201</sup> Additionally, since prisons are the most expensive way to cut crime rates, many states have created resourceful and successful alternatives to reducing both recidivism and the inmate population.<sup>202</sup> Among these states, Oregon, Michigan, and Missouri stand out for taking deliberate and well-researched steps to reduce recidivism, prison costs, and incarceration rates.<sup>203</sup> Their solutions serve as useful models for how California might better shape its prison reform. It is also

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<sup>196</sup> St. John, *supra* note 3.

<sup>197</sup> *Id.*

<sup>198</sup> CAL. DEP'T. OF CORR. & REHAB. DATA ANALYSIS UNIT, *supra* note 12.

<sup>199</sup> See *supra* note 181 and accompanying text.

<sup>200</sup> *Brown v. Plata*, 131 S. Ct. 1910 (2011).

<sup>201</sup> PEW CTR. ON THE STATES, *supra* note 123, at 6.

<sup>202</sup> *Id.* at 18–23.

<sup>203</sup> *Id.*

striking to see how each of these three states comprehensively addressed each of the rehabilitation factors listed above—factors that were eliminated or substantially reduced in California.

#### A. OREGON

For the most recent cycle of data collected, Oregon had the lowest recidivism rate in the country at 22.8%.<sup>204</sup> In fact, between 1999 and 2004, Oregon had the biggest drop in recidivism, at 31.9%, compared to all other states.<sup>205</sup> This success is largely due to SB 267, passed in 2003, which required any state-funded correctional program in Oregon to be evidence-based in design and execution.<sup>206</sup> This legislation caused widespread change at all levels of the prison system, from swift and uniform parole sanctions, to shifts in sentencing within the judiciary.<sup>207</sup>

Most notable of these changes is Oregon's system of risk assessment and re-entry programs for inmates while in prison.<sup>208</sup> Once imprisoned, Oregon inmates automatically receive risk and needs assessments, which then form the foundation for "targeted case management during incarceration, along with detailed transition planning that begins six months before release."<sup>209</sup> These individually-tailored risk management plans give Oregon inmates the assistance they need to prepare for life on the outside by addressing their personal risk factors that led to their incarceration. Consequently, Oregon inmates are prepared to reintegrate into society upon release, and have a support system in place to facilitate their successful transition.

#### B. MICHIGAN

A decade ago, Michigan's correctional system was rife with problems.<sup>210</sup> In 2002, the Pew Center described Michigan as a state that was far from a model of correctional reform.<sup>211</sup> "Its myriad [of] problems included high crime rates, a sharply rising inmate population,

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<sup>204</sup> *Id.* at 20.

<sup>205</sup> *Id.*

<sup>206</sup> *Id.*

<sup>207</sup> *Id.*

<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

<sup>210</sup> *Id.* at 21.

<sup>211</sup> *Id.*

disappointing recidivism numbers and an economy deeply wounded by the ailing auto industry. By 2002, the state was sinking \$1.6 billion a year into corrections, almost one-fifth of its general fund.”<sup>212</sup> In 2003, it was clear that change was critical to save Michigan from a fate like California’s, and the Michigan Prisoner Reentry Initiative (MPRI) was passed.<sup>213</sup> The MPRI’s goal is “to equip every released offender with tools to succeed in the community,” by assessing individual risks and needs at intake, and developing personalized programming while in prison.<sup>214</sup> Further, before release, “offenders are transferred to a reentry facility, and a transition plan, which addresses employment, housing, transportation, mentoring, counseling and any necessary treatment for mental illness or addictions, is finalized in close collaboration with community service providers.”<sup>215</sup>

Although not enough time has elapsed for Michigan to collect comprehensive data, preliminary numbers suggest that prisoners treated under the MPRI’s framework are returning to prison 33% less frequently than non-participants.<sup>216</sup> As a result, parole revocations for new crimes and technical violations have reached their lowest level in twenty-three years, since the state began keeping records.<sup>217</sup>

Former Michigan Director of Corrections Patricia L. Caruso explains Michigan’s new system, and provides a great explanation of how Michigan could be the perfect model for California:

Although the roots of [the] MPRI were clearly in a budget crisis, it was never only about saving money—it was a belief that doing corrections ‘right’ would result in a smaller prison system and large savings . . . . We had to change our entire culture to focus on success. It was challenging, but fortunately, it worked.<sup>218</sup>

### C. MISSOURI

Like Michigan, Missouri faced a similar crisis in the early 2000s. “A jump in the prison population had stretched capacity to the limit, yet budget woes and other funding priorities meant there were no dollars to

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<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

<sup>217</sup> *Id.*

<sup>218</sup> *Id.* at 22.

increase prison capacity.”<sup>219</sup> Instead of building new prisons or releasing low-level offenders, Missouri focused its efforts on evidence-based practices involving parole and technical violations.<sup>220</sup> Parole supervisors used risk assessment tools to identify at-risk parolees and to determine the appropriate individualized level of supervision.<sup>221</sup> Parole agents have an incredibly wide range of sanctions at their disposal—everything from verbal reprimands and electronic monitoring, to residential drug treatment, or as a last resort, jail time.<sup>222</sup>

Missouri’s success, even when reforming only the parole system, is remarkable. It has maintained its prison population at a steady number since 2005, while simultaneously decreasing recidivism and parole violations by almost 10%.<sup>223</sup> Describing the rationale behind the current approach, Chief Justice William Ray Price, Jr. of Supreme Court of Missouri comments that:

[W]e need to do a better job teaching nonviolent offenders the right lessons. That takes more than prison . . . . Drug and alcohol addiction must be broken; discipline and job skills must be learned. When that can be done better, outside of expensive prison walls, that is what we should do. Results matter, public safety matters, taxpayer dollars matter, saving lives and restoring families matter.<sup>224</sup>

There are many lessons that California can take from Missouri, Michigan, and Oregon. Reallocating funding to rehabilitation, risk monitoring, and transitional assistance can make huge differences in recidivism rates alone. Further, these practices combined with evidence-based, state-tailored methods can render even more successful results. While California has made remarkable strides to implement evidence-based practices in addition to addressing specific risks in parolees with mental health and drug abuse problems under SB 18,<sup>225</sup> the State has not yet funneled personnel or money into holistic programs that assist all offenders *while still in prison*. California will most likely see improvement with just these programs, as did Missouri, but the State would be better off following the models of Oregon and Michigan and instituting rehabilitative and reentry programs for inmates before release. Moreover,

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<sup>219</sup> *Id.*

<sup>220</sup> *Id.* at 23.

<sup>221</sup> *Id.*

<sup>222</sup> *Id.*

<sup>223</sup> *Id.*

<sup>224</sup> *Id.* at 22.

<sup>225</sup> See *supra* notes 73–76 and accompanying text.

while both reentry courts and the CPSRM parallel the exact goals and evidence-based practices of these successful programs, the CDCR has been slow to implement and expand the CPSRM and reentry courts past their original pilot counties.<sup>226</sup> This has made progress toward a solution, as well as the mandatory benchmarks set in *Plata*, a painstakingly slow process. Hopefully, counties looking for successful evidence-based programs will look to Oregon, Michigan, and Missouri as models of successful reform that have prevailed amid serious financial crises and budgetary reform.

## X. CONCLUSION

Between high unemployment, massive state budget cuts, and the *Plata* ruling, there is no doubt that California is facing difficult economic times. For many, the easiest solution appears to be reducing funding for the prison system. This seems logical, as California spent \$9.6 billion on the prison system alone in 2011—an astounding amount, particularly in contrast to the \$5.7 billion spent on higher education, including *both* the UC and CSU systems.<sup>227</sup> Consequently, cutting funding to help convicted criminals seems like an obvious choice for Californians. Nonetheless, Adam Gelb of the Pew Center on the States calls this decision “pennywise and pound foolish. Especially if your goal is to get taxpayers a better return on their security and law enforcement investment.”<sup>228</sup>

Kentucky Governor Steve Beshear echoes these sentiments in explaining his State’s success, explaining that “[b]y reducing the rate of offenders who return to prison, we keep our communities safer, our families more intact, and [we are] able to begin reinvesting incarceration costs to other critical services.”<sup>229</sup> California, however, seems to have missed a step. By cutting costs without first investing in rehabilitation programs that reduce recidivism, California is making a risky move that will likely result in higher crime and incarceration rates. This will not only work counter to the benchmarks set by the Supreme Court in *Plata*, but it will also exacerbate prison overcrowding as a state-wide catastrophe.

Ultimately, this is a problem that must be addressed by the California

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<sup>226</sup> See Couzens, *supra* note 89, at 3.

<sup>227</sup> Jennifer Gollan & Sydney Lupkin, *Education vs. Prisons: Shifting Priorities*, THE BAY CITIZEN (Aug. 30, 2011, 12:46 PM), <http://www.baycitizen.org/education/interactive/education-vs-prisons-shifting-priorities/>.

<sup>228</sup> Skolnick, *supra* note 10.

<sup>229</sup> PEW CTR. ON THE STATES, *supra* note 123, at 3.

legislature. As University of California, Berkeley School of Law Lecturer Barry Krisberg summarizes: “[I am] not blaming the [CDCR] because [they are] being dealt a hand by [the] legislature where [they are] telling them to make cuts to their funding. The legislature refuses to save money through policy reform by investing in programs that reduce recidivism.”<sup>230</sup> Unless the State legislature takes swift action to derail California’s current path, the perfect storm will culminate in a few short years, leaving the State with record-breaking recidivism rates and a burgeoning prison population spun out of control. In the end, California’s legislature must think like Minnesota Commissioner of Corrections, Tom Roy:

Catching the guy and prosecuting him is really important work, but if we [do not] do anything with that individual after [we have] . . . him, then shame on us. If all that effort goes to waste and we just open the doors five years later, and [it is] the same guy walking out the door and the same criminal thinking, [we have] failed in our mission.<sup>231</sup>

The “perfect storm” leaves the CDCR with little choice but to fail its inmates and the population it was created to protect. There is no doubt that California has made momentous and positive strides toward a permanent solution to prison overcrowding by shifting toward evidence-based practices and reforming sentencing and parole. Nevertheless, the implementation of these plans has been painstakingly slow, even in the face of the strict benchmarks set in *Plata*. Unless California can more quickly and efficiently shift funding to rehabilitation programs that focus on reducing recidivism, Californians will pay the price—in the form of higher unemployment, increased crime rates, and compromised funding for other state agencies—for decades to come.

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<sup>230</sup> Yeung, *supra* note 132.

<sup>231</sup> PEW CTR. ON THE STATES, *supra* note 123, at 8.