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California Jails under Realignment and Proposition 47

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Introduction

The year 2015 marked the 30th anniversary of John Irwin's classic ethnographic study of San Francisco county jail, succinctly entitled *The Jail* (Irwin 2013). At the time, Irwin noted that despite the enduring place of jails in the American criminal justice system, very little research attention has been paid to them, as compared to prisons. Three decades later, the same is largely true (Subramanian et al. 2015). And yet, as a result of recent corrections reforms in California (and elsewhere in the county), a discernible shift is underway to refocus criminal punishments in the communities within which the offending behavior occurs and to rely more on local custody and community-based controls, which makes the focus on jails more urgent.

The most high profile reform reflecting the shift from state to local took place in California in 2011, called Public Safety Realignment (AB 109) (Misczynski 2011, Petersilia 2016). Jails in California are now the required punishment option for a large number of nonserious, nonviolent, and nonsexual offenders who used to be eligible for prison. Jails are also the place where probation and state parole violators must serve their revocations. As such, realignment placed additional burdens on an already stressed jail system. However, in 2014, the voters of California also passed Proposition 47, which reduced penalties for a range of drug and property crimes by limiting them to be misdemeanor level offenses. If realignment changed the state's priorities around the types of offenders who should go to prison, Prop. 47 has changed the types of offenders who will occupy jail beds (Bird, Tafoya, Grattet, and Nguyen 2016, Grattet, Tafoya, Bird, and Nguyen 2016).

Shifting responsibilities from the state to counties rendered important aspects of these policy changes invisible because unlike the state-run prison system, with its centralized and relatively evolved information technology system, the experiences of offenders in local systems are scattered across 58 counties, each of which has its own ways of recording movements and administrative actions. Although there is some useful aggregate data compiled by the California Board of

State and Community Corrections, a statewide picture of how jails in California are changing under realignment and Prop. 47 has been limited by a lack of data, especially data collected at the individual level.

As the prison population has declined, concern among policymakers has shifted to whether the problems that prompted reform of the prison system in the first place are, in fact, being transferred to jail systems, namely, overcrowding, aging of the population, housing offenders for long periods, lack of services, particularly health care services, etc. (Petersilia and Snyder 2013). Because of the historical significance of realignment and the opacity of how it is playing out in counties, the Public Policy Institute of California partnered with the California Board of State and Community Corrections and 12 counties to collect data that would help the state understand how community corrections systems are functioning under realignment. We call this project the “Multi-County Study,” or MCS (Tafoya, Grattet, and Bird 2014). This article presents findings from the initial stage of data collection and from a segment of the data focused on jails.

In this article, we contribute to the existing body of knowledge about how jail populations in California are changing in the aftermath of two major reforms and consider the policy questions such changes prompt. The article is structured as follows. The next section provides some background on California’s Public Safety Realignment and Prop. 47 and what is known about their impacts on jails thus far. A following section then briefly describes the MCS, including the data we have collected to fill the gaps in what is known and what we plan to include in the future. Next we turn to a discussion of how jails are changing in the wake of these reforms, in particular shifting toward housing more serious types of offenders, but at the same time retaining their function as multipurpose institutions designed to manage a wide range of people and community problems. Although population pressures have eased somewhat, jails remain challenged by the diversity of roles they are expected to play in local criminal justice systems. We conclude by describing policy options and considerations counties and the state might entertain in the coming years to improve outcomes for offenders and for public safety.

Public Safety Realignment and Proposition 47: Reprioritizing Prison and Jail Use in California

Public Safety Realignment (aka AB 109) was a historic corrections reform undertaken in 2011 to address the chronic overcrowding in the state prison system in order to save money and comply with a pair of federal court cases.¹ In terms of impacts on jails, it altered the relationship between state and local correctional systems in three major ways. First, it mandated that offenders convicted of a wide range of nonserious, nonviolent, and nonsexual offenses who have no previous convictions for serious, violent, or sexual offenses serve their sentences in county jails. Many offenders that used to go state prison now serve—sometimes quite long—sentences in county jails.² Second, it required revocations for parole and probation violators to be served in

¹ The two cases are *Coleman v. Brown* and *Plata v. Brown*, which deal with medical and mental health care delivered in California prisons and were initiated in the 1990 and 2001, respectively. The federal court has found in favor of the plaintiffs that the quality of care delivered constitutes a violation of the 8th amendment’s prohibition of “cruel and unusual punishment.” In 2009, the U.S. Supreme Court ordered the state to reduce its prison population.

² Paige St. John, “Long-Term Inmates—and Prison Culture—Move into County Jails.” *Los Angeles Times*, September 8, 2013. (<http://articles.latimes.com/2013/sep/08/local/la-me-ff-long-haul-inmates-20130909>).

jails rather than the state prison system. Although revocations tend to reincarcerate violators for a few weeks or months, the volume of revocations under the prerealignment regime and their contribution to the overcrowding of prisons suggests that revocations might have a substantial impact on county facilities under realignment.

Third, realignment provided counties with a number of new tools, notably, “flash incarceration” of certain offenders under probation supervision and “split sentencing” for felony offenders. The former allows probation to place a noncompliant offender in jail for a short period of time without the procedural steps involved in a revocation. Flash incarceration was inspired by recent advances in sanctions research, which has received support in a well-regarded program in Hawaii called Project Hope (Hawken and Kleiman 2009) and which relies on swift, certain, and short sanctions as a deterrence to recidivism. The latter, “split sentencing,” is a change to sentencing policy that allows judges to design sentences that have both custody and a community supervision “tail.” Both flash incarceration and split sentencing were designed to provide local decision-makers with some key alternatives to the heavy reliance on custody alone as a punishment for individuals convicted of felonies in California.

After realignment, the jail population began to rise. By October of 2014 the Average Daily Population (ADP) had risen to 82,923, a 16 percent increase in the three years after realignment took effect. At last count, 19 counties were under court-ordered population caps and must periodically release large numbers of inmates (Tafoya 2015). This population increase was driven by an increase in the number of sentenced inmates, which increased the ratio of sentenced to unsentenced in the jail population. Also, because realignment required some previously prison-eligible offenders to remain local, the population now included inmates serving longer-term sentences (Martin and Lofstrom 2014).

Proposition 47 was passed in November 2014 and jail population pressure began to ease immediately. As of March 2015, statewide jail population ADP dropped to 72,894, roughly where it stood on the eve of realignment four and half years earlier (Grattet, Tafoya, Bird, and Nguyen 2016). Capacity releases that had become common under realignment decreased. For a specific set of lower-level drug and property offenses, Prop. 47 limited the charge level to misdemeanor. Many defendants faced felony charges carrying multi-year sentences for these offenses before Prop. 47, and now most face misdemeanor charges which carry a maximum jail incarceration term of one year (Bird, Tafoya, Grattet, & Nguyen 2016). Individuals with prior convictions for serious or violent offenses, such as murder, rape, certain sex offenses, and certain gun crimes, are not eligible for these penalty reductions. For those who were already serving sentences for these offenses at the time of passage, the proposition allows individuals to file petitions to have their sentences reduced. However, judges can deny resentencing petitions if they determine the offender poses a present public safety danger.

Statewide summary data shows that use of jails is changing in California—without much public discussion or debate. However, there are limitations to existing data, which hinder the ability to understand the scope and depth of the change. For this reason, we developed a data collection project that would allow for a more nuanced view of the evolving role of jails in California’s criminal justice system.

BSCC-PPIC Multi-County Study Data

Realignment was made possible by the state’s willingness to pay counties to assume responsibilities for offenders that were previously under state control and supervision. Over the first

two years, the state paid the counties 1.2 billion dollars with few limitations on what they could spend those resources on (Bird and Hayes 2013). In fact, counties spent these funds in highly varied ways (Bird and Grattet 2015, Lin and Petersilia 2014). However, despite the wording of the realignment legislation emphasizing “data-driven” strategies and “evidence-based practice” no funds were earmarked for data collection and research. If a county wanted to use the money to enhance their ability to capture data they could certainly do so. A few did, but most did not. This meant that the effects of one of the biggest correctional reforms in the state’s history would be rendered largely invisible from a statewide perspective. Beyond the Board of State and Community Corrections (BSCC) data, described above, and data from the California Department of Corrections and Rehabilitation on offenders released from prison to counties, there would be no ability to look across counties to see how offender populations are changing, what kinds of programs and services offenders are receiving, and what recidivism patterns look like—all questions policymakers across the state have expressed an interest in (Brannon 2014, Rodriguez 2013).

In response to these challenges, the Public Policy Institute of California (PPIC) launched a data collection effort to compile data on offenders moving through 12 county correctional systems³ and to link that data to state data sources that can provide detailed criminal history and recidivism data. Counties were selected to reflect the diversity of the state in terms of population demographics, urbanicity, and region, as well as the diversity of approaches to implementing realignment. Together the counties encompass nearly two-thirds of the state’s jail population.

The project was endorsed by several state-level stakeholders, including the Chief Probation Officers of California, the California State Sheriff’s Association, California State Association of Counties, the County Administrative Officers Association of California, the California Department of Justice, and the California Department of Corrections and Rehabilitation. The project was approved by the BSCC in July of 2013 as a joint project between the BSCC and PPIC with the expectation that PPIC will design and build the data collection system and BSCC will ultimately assume responsibility for managing access to the data.⁴

In the spring of 2014, PPIC began receiving the first wave of data from counties, which contain a subset of the data that will ultimately be collected. These data focus on entry and exit to jail and community supervision.⁵ The data are individual-level transactional data that cover the period from October 1, 2011 (the official start date of realignment) to October 31, 2015, covering the first four years after realignment was implemented. The monthly aggregation of the MCS data correlates strongly with the only other available source of jail data, which presents summary population figures for all county jails (California Board of State and Community Corrections 2016).

In the discussion that follows we focus on characterizing the population in terms of bookings, average daily population, length of stay, and release types. These are well recognized concepts in the study of jails, but they can be operationalized in different ways (Cunniff 2002). Here we define and measure these concepts in the following ways:

³ The counties recruited to participate in the study include Alameda, Contra Costa, Fresno, Humboldt, Kern, Los Angeles, Orange, Sacramento, San Bernardino, San Francisco, Shasta, and Stanislaus.

⁴ PPIC is not funded by any state agency to do this work; however, it has received partial support from the National Institute of Justice, the California Endowment, the California Wellness Foundation, the Robert Wood Johnson Foundation, and the Russell Sage Foundation to carry out analysis of the resulting data.

⁵ For the purposes of this article, we set aside the probation segment to focus on changing jail populations under realignment and Proposition 47.

Average Daily Population (ADP)—Our data are based upon booking dates and release dates. As a result, we can assess who is in jail on any given day in each of the counties. These data can be averaged weekly, monthly, or annually to provide average number of inmates as well as summaries of the composition based upon booking charge, charge type (infractions, misdemeanors, felonies, supervision violations, etc.), and demographic characteristics.

Bookings—Bookings refer to the formal process of documenting entry into jail custody. We delineate between booking types (arrest, warrants, commitment, supervision violations, flash incarceration), and booking charges (by California code section), which we report based upon the most serious charge according to the California Department of Justice’s code hierarchy.

Release types—Release types refer to the manner in which a person is released from custody. For individuals held prior to their trial, the major types of release are cite and release, release on “own recognizance” (OR), release to a pretrial supervision program, or release on bail.⁶ For sentenced inmates, release types include releases for time served or release required to keep the population below capacity.

Length of Stay (LOS)—Length of stay measures can be computed upon exit for all inmates. LOS for pretrial releases is computed for individuals who exited jail via a “cite and release,” bail, unsentenced capacity release, or release to pretrial program. LOS for sentenced inmates is based upon individuals released for time served or as a result of sentenced capacity releases. Given that it tends to be positively skewed, we present all lengths of stay as medians.

Findings

Who Is in Jail?

On a daily basis, California jails are comprised primarily of unsentenced inmates, people held for felonies, males, and nonwhites. In the MCS counties, 67.1 percent of jail ADP is comprised of unsentenced individuals. Among the unsentenced, 72.6 percent are held on felonies, 15.7 percent are held on misdemeanors, and 8.7 percent are held on supervision violations. In comparison, 68.2 percent of sentenced inmates are held on felonies, 21.6 percent on misdemeanors, and 9.8 percent on supervision violations.⁷ The large share of unsentenced inmates and individuals being held for misdemeanors represent important ways that jails differ from prisons.

The majority of jail inmates are individuals awaiting arraignment, trial, or sentencing (Tafoya, Bird, Nguyen, and Grattet 2017). Because the unsentenced segment is so large, recent policy attention has focused on expanding pretrial release policies, including changing the way bail works.⁸ We describe the use of these kinds of releases below, however, it is important to recognize that counties vary quite a bit in the volume of unsentenced inmates. Four counties in the

⁶ Eligibility for cite and release is based on the booking offenses and is typically granted to eligible individuals at the time of booking. Many individuals are also eligible to post bail based on their booking offenses. Alternatively, individuals are held until arraignment, at which point the judge may release the defendant on their own recognizance (OR), allow the defendant to post bail, or determine the defendant must be held pretrial.

⁷ These percentages are calculated for the period 2012 to 2014 to allow for the calculations based on individuals that have been released from jail in our data. The remaining individuals are held on infractions (0.2 percent).

⁸ Tafoya (2015) showed that California uses pretrial release at lower rates than the national average.

MCS have had proportions of unsentenced inmates exceeding 80 percent of ADP.⁹ As a result, some counties may have more to gain in terms of freed up jail space from expanded use of alternatives to incarceration in the pretrial phase than others.

California jails increasingly house more serious inmates. In the first three years of realignment, from October 2011 to October 2014, the number of individuals held on felonies increased by 20 percent (California Board of State and Community Corrections 2016). Realignment identified a range of offenses that were no longer presumptively eligible for prison sentences. These are listed in the California Penal Code § 1170(h) and include offenses that do not qualify as serious, violent, or sexual offenses (Cousins and Bigelow 2017). Several terms are used to denote these offenses: “triple nons,” “non-non-nons,” “county jail felonies,” or, what we use here, “1170(h) offenses.” The 1170(h) offenses include most drug and property crimes. Predictably, ADP for drug and property offenders increased from October 2011 until the passage of Prop. 47 in November of 2014. Over this period ADP in the MCS counties grew by 7,581 inmates overall, and 5,705 (or 75.3 percent) were individuals being held for a 1170(h) offense.¹⁰ The pressure local jails experienced during this period—which swelled the population to near historic highs—was largely due to the additional load of 1170(h) offenders (Figure 1).

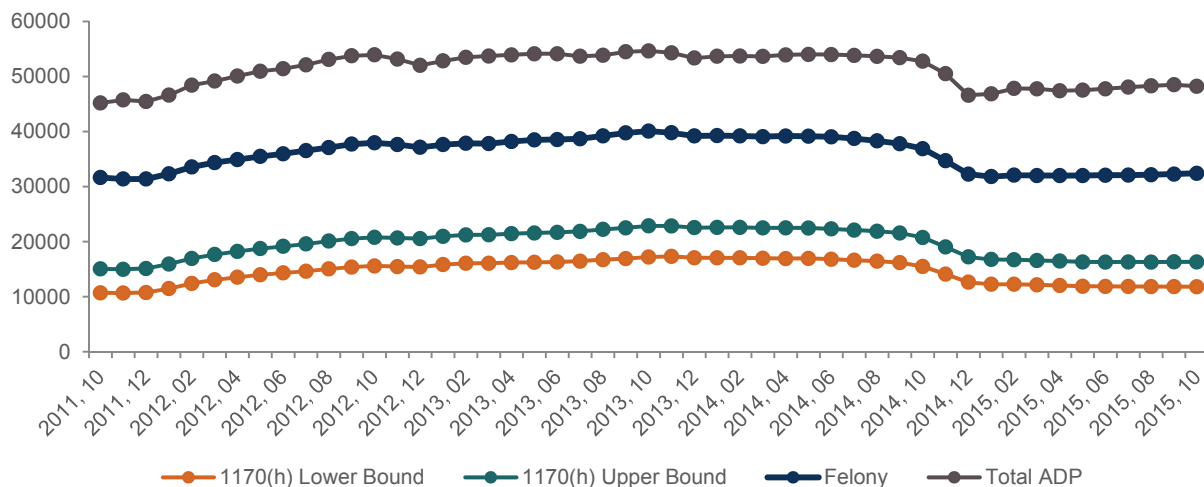
Under Prop. 47 the pressure on MCS jails eased somewhat. The percent of ADP that entered jail on a Prop. 47 charge decreased dramatically in the wake of Prop. 47, from 32.5 percent in October 2014 to 21.5 percent in October 2015. MCS data shows that two factors drove the decrease. The first was a decrease in Prop. 47 as a share of bookings into jail. The reduction in penalties for these offenses appears to have discouraged law enforcement from bringing individuals involved in those offenses into custody (Greene 2015). The second factor was increases in custody cite and releases, which includes individuals booked into jail but released right away. The consequence of this appears to be that although ADP decreased after Prop. 47, it did so largely through decreasing the number of lowest level offenders booked into custody (Bird, Tafoya, Grattet, and Nguyen 2016). At the same time, jails continued to incarcerate higher level offenders, namely individuals booked for crimes against persons (Grattet, Tafoya, Bird, and Nguyen 2016). For example, from October 2014 to October 2015, the number of inmates held for property crime decreased by 13.6 percent, and the number of inmates held on drug offenses decreased by 34.6 percent. In contrast, the number of inmates held on crimes against persons increased by 7.3 percent over the period.

Despite these changes in terms of offense composition, shifts in the demography of the jail have been more mixed. Racial and ethnic disparities observed nationally in prisons and jails are also evident in the MCS counties. Latinos make up 40.7 percent of the MCS county population, but are 42.5 percent of the MCS jail population. Much greater disparities emerge with respect to African Americans, who are just 7.9 percent of the MCS county population, but are 26.1 percent of the MCS jail population. While the overrepresentation of African Americans in jails is large, it is not quite as high as in the state prison system. In the California, African Americans comprise

⁹ Sentenced inmates are identified based upon whether their release type is for time served or sentenced capacity release, and then they are retrospectively assigned to the sentenced portion of the population. All others are treated as unsentenced.

¹⁰ We computed two different estimates of the size of the 1170(h). The lower bound estimate refers to an individual whose most serious offense, based upon the California Department of Justice crime severity rankings, qualifies under 1170(h). The upper bound estimate refers to an individual whose most serious offense did not qualify under 1170(h), but an additional offense did. The text above reports the more conservative, lower bound measure.

Figure 1. Jail Felony ADP Corresponds to the Volume of 1170(h) Offenders Held in Custody



Source: Author’s calculations based on the BSCC-PPIC Multi-County Study data (2011–2015).

Note: 1170(h) Upper Bound refers to individuals who have at least one offense qualifies under California Penal Code § 1170(h), even if the offense is not the most serious offense. The Lower Bound estimate refers to individuals for whom their most serious offense qualifies under 1170(h).

29.0 percent of the prison population compared with only 6.0 percent of the state population. These disparities have remained under realignment and Prop. 47.

Women increased from 12.1 to 13.3 percent of the MCS jail population during the first three years under realignment. This is because realignment reform targeted the types of offenses women typically commit, namely felony drug and property offenses. After Prop. 47, women’s percentage of the population declined slightly to 13.1 percent, due again to the fact that women are more likely to commit the lower level drug and property offenses targeted by the proposition (Nguyen and Grattet 2016).

There has also been a slight aging of the jail population under realignment and Prop. 47. Because realignment required some individuals who previously would have gone to state prison to serve their sentences locally, some expected that the jail population would begin to age. From October 2011 to October 2015 there was a 2.9 percentage point increase in inmates aged 31 to 40 and a decrease of 3.9 percentage points in inmates aged 18 to 21. All of the other age categories remained the same. If these trends persist, over the long term we could see increases in geriatric inmates in jails. However, it seems likely that this situation will develop slowly.

Changes in jail composition drive program and security needs. As the inmate population becomes more serious, jail safety and security potentially become more salient. Moreover, as the population ages and people serve longer sentences, health care needs of the population increase; given that drug and property offenders are often substance abusers themselves, the need for substance abuse programs grows; and women offenders often need different gender-responsive programs as the sources of their involvement in crime tend to be different than men. Thus, the

changes that resulted from the statewide policy shifts have implications for the how jails can best manage inmates and prepare them for reentering society.¹¹

How Do People Get into Jail?

The vast majority of bookings (81.6 percent) into jail come from fresh arrests and warrants. Fresh arrests include individuals arrested in the community for alleged crimes. Warrant arrests include individuals with alleged outstanding offenses, and warrants are issued by the courts. Parole, probation, and flash incarcerations for individuals currently under supervision constitute 17.5 percent of bookings.¹² Bookings for commitments, which are for offenders who have been convicted of crimes but who were released before trial and are subsequently entering jail to serve their sentence are about 5.8 percent of the entries into custody.¹³

To understand the types of offenses jails process it is important to look at booking charges. The most common booking charges are for drug and alcohol offenses, domestic violence, and property crime. For example, the top 10 list of booking charges includes misdemeanor driving under the influence,¹⁴ felony possession of dangerous drugs,¹⁵ felony narcotic possession,¹⁶ misdemeanor drunk and disorderly conduct,¹⁷ felony burglary,¹⁸ felony parole violations,¹⁹ and felony and misdemeanor corporal injury/battery of a spouse, cohabitant, or date. Table 1 shows what a mixed bag of offenses and offenders that jails process, reinforcing the role of jails as multipurpose institutions. Drug and alcohol use appears to be a common underlying circumstance for a large share of booking offenses (e.g., drug possession, drunk driving, and drunk and disorderly conduct). Other offenses, like domestic violence and burglary, although not explicitly targeting substance use behaviors, are often associated with drug and alcohol use (Bennett and Holloway 2009). Jails tend to be poorly designed to address the underlying behavioral health conditions that drive these individuals offending. Many older jails lack space for treatment programs and offenders short lengths of make treatment completion a challenge.²⁰

Jails are also responsible for offenders booked on more severe charges. Between October 2011 and October 2015, 0.5 percent of bookings had murder charges, 0.2 percent of bookings had kidnapping charges, and 0.1 of bookings percent had rape charges. More commonly, assault with a deadly weapon accounted for 2.4 percent of the bookings, and robbery accounted for 1.9percent of the bookings. People booked under these more severe charges tend to await trial in jail and serve their time in prison if convicted.

Booking data also show that many entries into jail are from “repeat customers.” For example, among individuals booked in the first year of realignment, 50.2 percent were booked at least one

¹¹ In fact, some counties, like Stanislaus, have devoted significant resources to new facilities that will provide correctional beds as well as space for health and mental health services.

¹² Fresh arrests and warrants include some individuals who are under parole or probation supervision. As a result, the percentages in this passage sum to greater than 100.

¹³ This estimate excludes Los Angeles because it does not track commitment bookings.

¹⁴ California Vehicle Code § 23152(a) and (b).

¹⁵ California Health & Safety Code § 11377(a).

¹⁶ California Health & Safety Code § 11350(a).

¹⁷ California Penal Code § 647(f).

¹⁸ California Penal Code § 459.

¹⁹ California Penal Code § 3056.

²⁰ For an in-depth discussion of the challenges and opportunities associated with providing substance abuse treatment in jail, see (Center for Substance Abuse Treatment 2005).

Table 1. Top Ten Booking Charges for MCS Jails, 2011–15

Booking Offense	Charge Level	Number of Bookings	% of Bookings	Length of Stay (days)		
				Lower Quartile	Median	Upper Quartile
1. Driving under the influence (Subjective) ²¹	Misdemeanor	127,677	5.8%	1	1	2
2. Driving under the influence (BAC >.08)	Misdemeanor	109,374	5.0%	1	2	5
3. Possession of Dangerous Drugs	Felony	100,078	4.5%	3	8	26
4. Drunk and Disorderly Conduct	Misdemeanor	98,004	4.4%	1	1	2
5. Burglary	Felony	91,698	4.2%	4	27	92
6. Narcotics Possession	Felony	64,237	2.9%	3	8	30
7. Domestic Violence	Misdemeanor	57,432	2.6%	2	3	8
8. Under the influence of Controlled Substance	Misdemeanor	56,628	2.6%	1	2	8
9. Parole Violation		48,211	2.2%	9	24	46
10. Domestic Violence	Felony	44,714	2.0%	3	5	37

Source: Author’s calculations based on the BSCC-PPIC Multi-County Study data (2011–2015).

Note: Number of bookings and percent of bookings is based on all bookings between October 2011 and October 2015. Length of stay calculations are based on all releases between October 2011 and October 2015.

other time in the following three years. Moreover, a share of those inmates racked up many more bookings. For example, 3,373 individuals booked in the first year of realignment were booked into jail 15 or more times in the following three years. Forty-five of those individuals were booked 50 or more times within those three years.²²

Booking types remained relatively unchanged under the first three years of realignment. However, under Proposition 47, the volume of bookings for arrests dropped by 23.5 percent in the first four months (from 27,100 in October 2014 to 20,743 in February 2015) and by October 2015, the volume steadied at a rate 14.3 percent lower than the volume before Proposition 47 (around 23,000 to 23,500 from July 2015 through October 2015). The reason appears to be that with the reclassification of offenses, law enforcement abruptly shifted to either citing and releas-

²¹ California Vehicle Codes § 23152 (a) and (b) distinguish between circumstances where a subjective standard of intoxication is employed and a circumstance where a breathalyzer is used and shows that the suspect’s blood alcohol content is .08 or greater.

²² This count includes commitment bookings, which means that an individual is released pretrial would be counted as having two bookings—one for arrest and one to start serving time. However, commitment bookings are tiny fraction (<5 percent) of all bookings and adjusting for them would have minimal impact on the distribution.

ing individuals for Prop. 47 offenses in the street or not citing them at all rather than booking them into jail (Editorial Board 2016). It is important to note that although penalties for Prop. 47 offenses were lessened, these offenses were not decriminalized. There has been some concern that the deterrence for these crimes has been weakened by the proposition because individuals who might be sanctioned by a booking into jail now only face a citation. However, the counterpoint is that the voters approved Prop. 47 because they prefer penalty reduction that effectively reduced jail incarceration as a sanction for Prop. 47 offenses. In that case, law enforcement's reduced booking of Prop. 47 offenses aligns with the public preferences.

How Do People Get Out of Jail?

Individuals can be released from custody through a variety of mechanisms. Roughly two-fifths of individuals booked into jail are released pretrial. Pretrial release can occur through several mechanisms. Among those released pretrial, the most common forms of release are citation and release (46.8 percent), bail release (28.5 percent), and release on one's own recognizance (15.9 percent).²³ In the postrealignment period, jail pressure increased and jails with court-imposed population caps also released individuals due to capacity constraints. Overall, for the period under study, 6.1 percent of those released pretrial were released through capacity releases. We observe capacity releases in five of the six counties in the MCS under court ordered population caps.²⁴ Finally, individuals can be released to a pretrial release program. Programs provide supervision and assist the individual with returning to court on the date of their trial. These kinds of releases are used in only 2.7 percent of cases and not present in all counties.

California detains individuals at a higher rate than most other states (Tafoya 2015), which has led to proposals designed to expand the use of pretrial release, principally through bail reform. Ability to pay bail is highly contingent upon economic resources. As a result, advocates for bail reform have alleged that the current system is class and race biased, overdetecting poor minority arrestees. Currently, both Sacramento and San Francisco counties are being sued on these grounds in federal court (CBS SF Bay Area 2016).

How an individual is released prior to trial is influenced by their booking offense. The dominant form of pretrial release for those held for misdemeanors is cite and release, while the dominant form of release for those held for felonies is bail. In general, misdemeanors releases are most likely to be cited and released before trial. Felony releases, on the other hand, are less likely to occur as cite and release and more likely to occur through bail. However, nearly half of those held for misdemeanors and more than two-thirds of those held for felonies fail to secure pretrial release (Tafoya, Bird, Grattet, and Nguyen 2017). We do not yet have information on how much of a role the inability to pay bail plays in pretrial detention, but potential reforms that expand the use of pretrial risk assessment and reduce the use of bail may result in increased rates of pretrial release, especially for those held for misdemeanors.

²³ Cite and release typically occurs at the time of booking. Bail release can be based on the bail schedule for those who are eligible for bail release prior to arraignment. At arraignment, which typically occurs within 48 hours of booking, judges can determine whether to hold an individual pretrial or release them on bail, their own recognizance (OR), or to a pretrial program. Those released on OR or to a pretrial program do not pay bail, but have made a commitment to return for any future court dates.

²⁴ During the study period, five of the six counties (Fresno, Kern, Los Angeles, San Bernardino, and Stanislaus), relied on periodic capacity releases to manage their populations. Sacramento County is also under court-ordered cap, but has not used capacity releases during the period of the study.

Table 2. Percent change in Pretrial Release Types after Prop. 47 for Different Groups of Offenders

Release Type	Average # Releases/Month Pre Prop. 47 (October 2011 – October 2014)	Average # Releases/Month Post Prop. 47 (November 2014 – October 2015)	Pre-Post Prop. 47 Percent Change in Average # Releases/Month
Bail	4,620.0	4,775.3	3.4%
Cite and release	7,467.6	8,181.9	9.6%
Own recognizance	2,758.7	2,089.2	-24.3%
Unsentenced capacity release	1,280.5	149.8	-88.3%
Supervised pretrial release	479.6	310.0	-35.4%
Total released pretrial	16,606.4	15,506.1	-6.6%

Source: Author’s calculations based on the BSCC-PPIC Multi-County Study data (2011–2015).

Pretrial release patterns have shifted somewhat under realignment and Prop. 47. Under realignment, as the jail population increased to near historic highs, capacity releases for pretrial inmates increased dramatically (Grattet, Tafoya, Bird, and Nguyen 2016). After Prop. 47, with the easing of jail population pressure, pretrial capacity releases decreased sharply (Table 2). As we described above, the jail population has become more serious under Prop. 47, largely due to the fact that Prop. 47 bookings have declined. As a result, pretrial releases overall have declined a bit (by 6.6 percent). However, release types have also shifted. The use of cite and release and bail increased, while capacity releases and releases to supervision decreased. The increases in cite and release and OR are likely driven largely by increases in the number of Prop. 47 misdemeanor offenders who are receiving them.

How Long Do They Stay?

Most lengths of stay are quite short, although it depends upon whether a person is unsentenced or not and what kinds of offenses are involved. People who are released pretrial serve median lengths of stay of one to three days. Median lengths of stay for convicted individuals released for time served or on sentenced capacity releases are somewhat longer. For sentenced misdemeanants, median time served is between one and two weeks, depending upon the offense type (drug, property, or person), and for sentenced felons the median is between eight and 14 weeks depending upon offense type.

Lengths of stay are shorter for misdemeanors and longer for felonies in counties with court ordered population caps. For all sentenced releases the median length of stay is 19 days in capped counties and 29 days in uncapped counties. For misdemeanants, the median length of stay is seven days in capped counties and 14 days in uncapped counties. For felons, the median length of stay is 76 days in capped counties and 69 in uncapped counties.

Realignment and Prop. 47 have had mixed impacts on lengths of stay. Under realignment, median length of stay for felony drug offenses rose substantially from 48 days in 2011 to 66 days

in 2014.²⁵ The increase is likely due to more felony drug offenders being required by law to serve time locally. This means that overall the population of drug offenders in jail under realignment included a greater portion of individuals whose offenses were more serious and who prior to realignment would have served their term in prison. Under Prop. 47, the median length of stay for individuals released from jails for felony drug offenses rose even higher to 88 days. By reducing the charge level for the lowest-level felony drug offenses, the proposition effectively increased the seriousness of the felony drug offenders who were left in custody, as is reflected in their longer stays in custody.

Median length of stay for felony property offenses also rose under the first couple of years under realignment, growing from 66 days in 2011 to 85 days in 2013. The median length of stay then dropped to 67 days in 2014 and climbed back to 85 days in 2015. Like felony drug offenses, the increase in time served for felony property offenders released under realignment is likely due to individuals held for more serious property crimes remaining in local custody rather than being sent to state prison. In the post-Prop. 47 period, we would expect median length of stay to increase as a share of the lowest level property offenders would now be charged as misdemeanants instead of felons. In addition, decreases in population pressure under Prop. 47 allowed sheriffs to reduce capacity releases and, therefore, increase the length of stay for current inmates.

For sentenced misdemeanants released under realignment, lengths of stay decreased, likely as a result of the accumulating jail population pressure of the felony segment of the population. Decreases were particularly pronounced in the capped counties, where the pressure was greatest and where sheriffs have the discretion to release offenders to keep their jail under the cap. Misdemeanor offenders would be particularly attractive to release in this way. Once Prop. 47 took effect and jail population pressure eased, the length of stay for misdemeanants in capped counties returned to and occasionally surpassed the level found in the early days of realignment. The implication is that policy changes impact the population composition and, in turn, the length of time individuals stay in custody. Policy changes may increase or decrease pressure on the correctional system and shape the use of discretion, particularly around release decisions.

Because policy changes and discretionary decision-making play out differently in different locations, lengths of stay can vary across counties. The implication is that counties will punish and incapacitate the same types of offenders for different periods of time. This variation is critical for learning how incapacitation affects recidivism and whether shortening sentences leads to increases in recidivism by affording some offenders greater “street time.”

Conclusions

Jails are multipurpose institutions that face high expectations from citizens and policymakers about the different functions they must serve. They operate as the “front door” to the correctional system and as such they handle a wide variety of inmates, ranging from individuals brought in for minor offenses who will likely serve little time in jail to those accused of serious or violent offenses who may end up in prison. Recent reforms have put new demands and attention on jails and thus should prompt a discussion about the roles we want jails to play going forward and how they can best manage this heterogeneous population.

Jail incarceration must serve multiple public policy goals, including securing public safety, deterring criminality, encouraging rehabilitation, and providing proportionate and just punish-

²⁵ These statistics are based upon releases in each October from 2011 to 2015.

ment. But the prioritization of these goals has waxed and waned. Recent reforms like realignment and Prop. 47 have sought to move the state toward reserving custody—the most expensive response to criminal behavior—for individuals involved in more serious offending than has been the case previously. The reforms have also raised expectations that the correctional system will rehabilitate offenders and lessen the likelihood that they will return to custody. To the extent that jails are holding more serious offenders, who are staying in custody for longer, there may be greater opportunities for rehabilitative services than previously. However, there is little information available about which in-custody programs counties are currently employing and how these interventions affect recidivism outcomes.

The greater emphasis on reducing incarceration levels and improving reentry outcomes in California and elsewhere has generated demand for locally responsive research and evaluation. State policymakers want to know how major reforms have affected jail populations and post-release outcomes. They are also seeking the kinds of data and evidence that will allow them to monitor progress and create statewide support for successful interventions. At the local level, practitioners are looking for strategies to help them make decisions about how to best allocate resources to reduce costs and maintain public safety. While the literature suggests some promising interventions, there is limited evidence to draw on. In some cases, the evidence that does exist may fail to resonate with local practitioners because it is based on studies in different contexts and time periods. In California, data and research are needed to monitor the ongoing impacts of California's historic correctional reforms, to assess the effectiveness of various interventions counties are using to reduce recidivism, and to provide the factual basis for future policy debates. In the coming years, the Multi-County Study will attempt to provide some of these answers.

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