



# BEYOND REALIGNMENT: COUNTIES' LARGE DISPARITIES IN IMPRISONMENT UNDERLIE ONGOING PRISON CRISIS

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## Introduction

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This publication analyzes the changes in state prison commitments by county since the implementation of the Public Safety Realignment Act of 2011 (AB 109), which redirects people convicted of low-level, non-violent crimes from state to county supervision. AB 109, commonly referred to as Realignment, is intended to reduce unconstitutional levels of prison overcrowding,<sup>1</sup> save money, encourage counties to develop and implement best practices and alternatives to incarceration, and reserve state prisons for people convicted of serious offenses. However, while many counties have followed the mandate and dramatically reduced their prison commitments for low-level offenses, others continue to sentence high rates of these offenders to state prison.

California's in-state prison population has fallen by 17 percent since the implementation of Realignment on October 1, 2011 (from approximately 144,000 inmates to approximately 119,000), bringing the state more than two-thirds of the way toward the Court-ordered goal of 110,000 inmates by June 2013. However, the prison population has remained steady since September 2012, and shows little sign of further reductions.

A major obstacle to Realignment's success is the continued reliance of many counties on the state prison system for low-level property and drug offenders. There are striking disparities in this over-reliance among the 58 counties, both before and after the implementation of Realignment. After Realignment went into effect, some counties dramatically reduced their prison admissions and became more self-reliant. These jurisdictions now supervise those individuals convicted of low-level crimes locally, where offenders can maintain connections with their families and access community-based services. These counties are exploring and developing their own capacities for managing low-level offenders, housing them in county jails and utilizing alternatives to incarceration (CJCJ, 2012). Other counties, however, are continuing to send people convicted of drug, property, and other non-violent crimes to state prison.

The large county-by-county disparities in imprisonment result in a system of justice by geography, raising both civil rights and economic concerns. High-imprisonment, state-dependent jurisdictions consume excessive prison space, contribute to overcrowding and lawsuits, and create higher state taxpayer liabilities than do low-imprisonment, self-reliant counties that manage more offenders locally. At \$51,889 in annual costs to maintain one

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<sup>1</sup> Brown v. Plata (2011) No. 09–1233.

individual in state prison (LAO, 2013), Kings County imposes more than three times the imprisonment costs per adult felony arrestee (\$43,000) on state taxpayers than does adjacent Fresno County (\$13,000). These significant inequalities need resolution either by tightening Realignment standards to further restrict prison admissions, or by state sentencing guidelines that accomplish the same goal of reserving prison space for people convicted of violent, serious, or sex-related crimes. Moreover, as the counties' responsibility for offender management continues to increase, the state must recognize the demand for technical assistance to aid in the local response to Realignment.

## **Methodology**

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This report includes an analysis of new prison admissions by quarter, type of admission, and sentencing offense in posted reports and special data provision by the Data Analysis Unit, California Department of Corrections and Rehabilitation (CDCR, 2012, 2013). CJCJ obtained 2011 adult felony arrest data from the California Department of Justice, Criminal Justice Statistics Center (CJSC, 2013), and 2012 county populations the Demographic Research Unit, California Department of Finance (2013). This report calculates prison admissions per 1,000 felony arrests by offense category and county by dividing new admissions in 2012 by felony arrests for 2011, both of which reflect the most recent data available.

## **Realignment stalls, county disparities widen**

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A previous report analyzing data from the first full year of Realignment showed significant disparities between county implementation (CJCJ, 2012a). While most counties significantly reduced their rates of prison commitments for non-violent, non-serious, and non-sexual offenders, some continued to commit large numbers of lower-level offenders to state prison, despite the mandate of Realignment. This new analysis, which includes data from the fourth quarter of 2012 (October, September, and December), finds these trends continuing, and further examines the county-by-county disparities.

New prison admissions fell by 34 percent in the fourth quarter of 2012 compared to the third quarter of 2011 (the last quarter before Realignment implementation). The majority of this reduction is due to decreases in admissions for non-violent crimes, including drug offenses and property offenses; the number of new admissions for violent offenses has remained roughly the same throughout Realignment (see Table 1). Consistent with the decline in non-violent imprisonments, females and parole violators showed much larger declines than did males and new admissions.

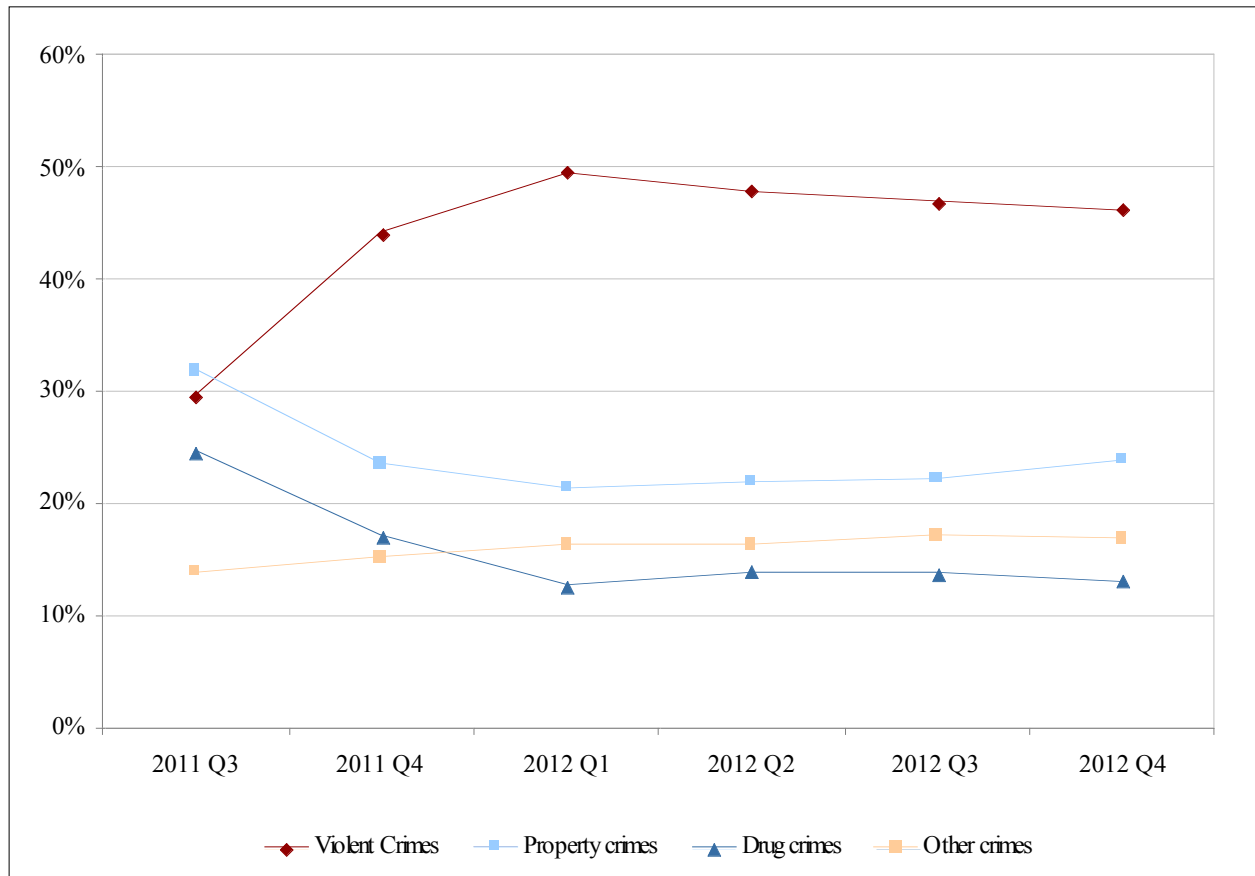
**Table 1. Change in new prison admissions by type and change during Realignment**

<u>Type of admission</u>	<b>Change during Realignment</b>		<u>2012 Q4</u>	<u>2011 Q3</u>
	<u>Percent</u>	<u>Number</u>		
All admissions	-34%	-4,674	8,940	13,614
	<b>Admission category</b>			
New admission	-26%	-2,575	7,148	9,723
Parole violator	-54%	-2,099	1,792	3,891
	<b>Demographic category</b>			
Female	-60%	-878	595	1,473
Male	-31%	-3,796	8,345	12,141
White	-38%	-1,471	2,395	3,866
Black	-32%	-1,022	2,125	3,147
Latino	-33%	-1,977	3,936	5,913
Asian/other	-30%	-204	484	688
Under age 40	-33%	-3,107	6,359	9,466
40 and older	-38%	-1,567	2,581	4,148
	<b>General offense category</b>			
Violent crimes	+2%	+89	4,128	4,039
Property crimes	-51%	-2,196	2,135	4,331
Drug crimes	-65%	-2,191	1,167	3,358
Other crimes	-20%	-376	1,510	1,886
	<b>Selected offenses</b>			
Murder/manslaughter	+3%	+9	292	283
Robbery	-1%	-11	856	867
Rape	+39%	+18	64	46
Aggravated assault	-3%	-31	870	901
Drug sale (non marijuana)	-75%	-1,171	394	1,565
Drug possession (non marijuana)	-55%	-874	716	1,590
Marijuana sale	-74%	-127	44	171
Marijuana possession	-59%	-19	13	32
Petty theft/prior	-60%	-260	176	436

Source: CDCR, 2013, 2012.

Prior to Realignment, about 70 percent of all new prison admissions were for non-violent crimes. In the first quarter of 2012, that number had dropped sharply, to 50 percent. However, the number of new admissions for non-violent offenses, particularly “Other” crimes, has been rising slightly over the last three quarters, reaching 54 percent of all new admissions in the fourth quarter of 2012 (see Figure 1).

**Figure 1. Trend in percent of new admissions by sentencing offense category**



Source: CDCR 2012, 2013.

To analyze imprisonment rates relative to arrest rates, this report uses felony arrest data from 2011, the most recent year available. The 2011 felony arrest data are directly relevant to 2012 imprisonments because of the time that passes between arrest, conviction and sentencing — many arrests in 2011 become imprisonments in subsequent years.

The gaps among California’s 58 counties continued to be significant (see Appendix A). Statewide, for every 1,000 people arrested for a felony, 90, or approximately 9 percent, were committed to prison. However, across counties with populations over 150,000 (“major counties”), the figure ranged from 2.5 percent in San Francisco County to 24 percent in Kings County. Thus, people arrested for felonies in Kings County were significantly more likely to be sentenced to state prison than those in San Francisco.

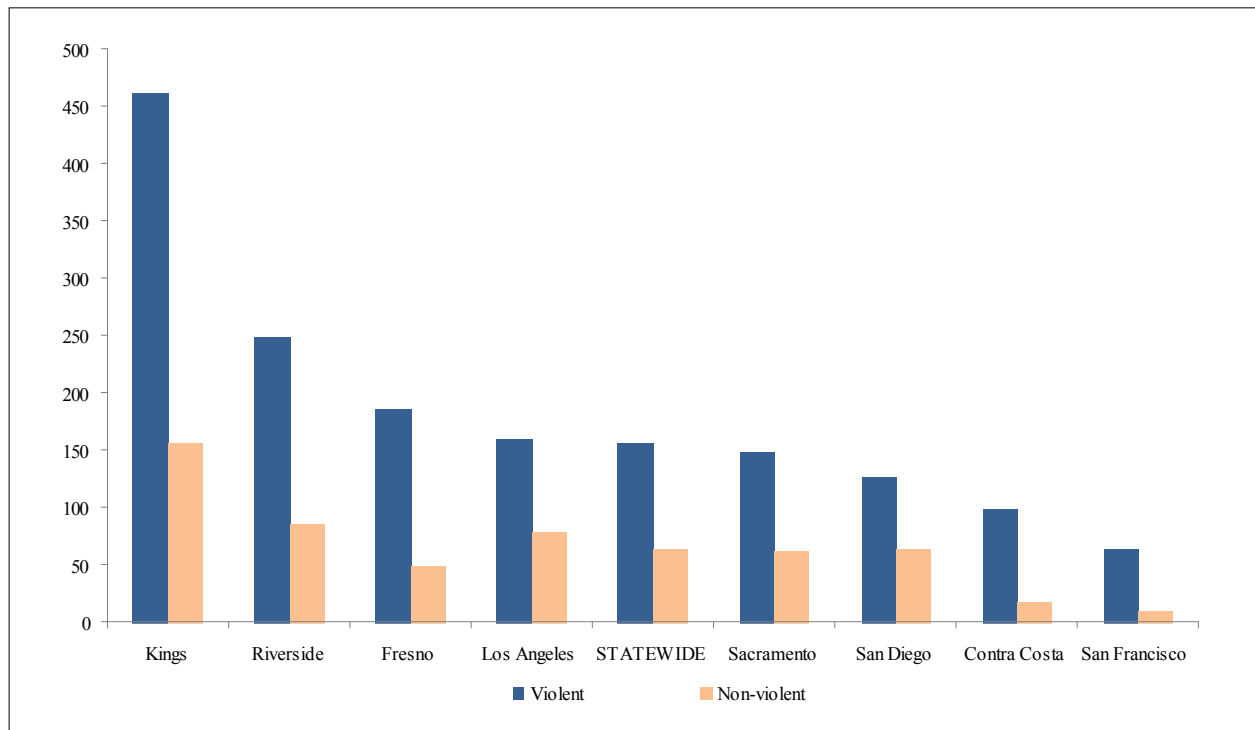
The disparities were not dependent on county size or arrest rates. San Joaquin County has a similar population and nearly identical felony arrest rate to San Francisco County, yet its arrested felons were more than five times as likely to go to state prison than those in the latter county.

The disparities are more significant when distinguishing violent from non-violent crimes (see Figure 2). Under Realignment, the majority of individuals convicted of non-violent crimes must be kept under local supervision — the major exceptions include people convicted of residential

burglary, arson, and selling certain drugs to minors. However, there is broad judicial and prosecutorial discretion during the court process, particularly with regard to consideration of prior offenses. Under Realignment, those who commit non-violent and non-serious offenses can still be sentenced to state prison if they have prior convictions for violent or serious crimes, even if those crimes were committed when the offender was under the age of 18.

Statewide, 6 percent of people arrested for non-violent crimes were sentenced to state prison, but the figure was 16 percent in Kings County and only 1 percent in San Francisco County. For drug offenses, arrestees in Kings County were 19 times more likely to serve time in state prison than in San Francisco County — and 35 times more likely than in Contra Costa County.

**Figure 2. Rate of new prison admissions per 1,000 felony arrests by offense type (major counties)**



Source: CDCR, 2013; CJSC, 2013.

These disparities impact all California taxpayers, who pay \$51,889 per year per state prison inmate (LAO, 2013). For all offenses, about 9 percent of California’s 376,500 adult felony arrestees were admitted to state prison in 2012; thus, each felony arrest cost taxpayers approximately \$4,700 in 2012. The cost of state imprisonments for major counties<sup>2</sup> ranges nearly 10-fold, from \$12,300 per felony arrest in Kings County to \$1,300 in San Francisco County.

The 17 counties that sent their felons to prison at a higher rate than the state average cost state taxpayers nearly \$190 million more in 2012 than they would have if they had imprisoned their felons at the statewide rate. Conversely, the 41 counties that imprisoned their felony arrestees at

<sup>2</sup> Expressed as the cost to imprison each county’s new prison admissions in 2012 divided by the county’s total adult felony arrestees in 2011.



a rate below the state average saved state taxpayers nearly \$190 million in 2012 than if they had used imprisonment at the state average. Thus, taxpayers in more self-reliant counties are subsidizing counties that rely on the state to house their offenders.

## Conclusion

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California's crises of prison overcrowding, unsustainable costs, and court-ordered population reductions are perpetuated by the disparate implementation of Realignment. Within California, there are jurisdictions such as San Francisco, Contra Costa, and Imperial counties which sentenced fewer than 3 in 100 of their adult non-violent felons to state prison, alongside jurisdictions such as Kings, Shasta, and Butte counties which sent 10 to 15 per 100 non-violent felons to state prison.

Counties retain the right to send violent, serious, and sex offenders to prison under Realignment mandates, and minor discrepancies in sentencing by jurisdiction are to be expected. In addition, other factors not considered in this report's analysis, including conviction rates, use of plea bargains, and time to trial, could also contribute to these trends.

Nevertheless, the 5-, 10-, or even 20-fold disparities in the likelihood of a drug offender, a petty thief with prior convictions, or a check forger being sentenced to prison in one county versus another county raises serious questions about equal application of the law. It also allows state-dependent counties to maintain high rates of state incarceration, exacerbating the high costs and legal issues of the state — costs and complications shouldered by all jurisdictions statewide. If, in 2012, all California counties had imprisoned their offenders at the same rate as San Francisco County, prison admissions would have been reduced by 75 percent, a drop of 25,000 new inmates.

Overall, taxpayers in counties that use imprisonment conservatively experience a double indemnity: They are subsidizing the prison commitments of counties that use imprisonment excessively, and they are paying to manage a higher percentage of their own felons locally.

One potential solution to this system of justice by geography is to require jurisdictions to shoulder the cost of using state prison for low-level offenders, similar to the \$24,000 fee now required for state commitments of youth offenders. This strategy would retain local control, but create a disincentive for over-reliance on state incarceration. Instead of simply transferring costs to state taxpayers, jurisdictions would weigh the benefits of state imprisonments against the costs to their own local taxpayers.

A second, more comprehensive reform would be a state sentencing commission, as already exists in varying forms in 21 other states (NCSC, 2008) and has been proposed for California (LHC, 2007). Sentencing commissions establish either advisory or mandatory guidelines for ranges of sentences allowed for each offense, with allowances for mitigating and aggravating factors (Dansky, 2010). These advisory bodies result in more equitable sentences that maintain longer incarceration terms for serious crimes, while reducing local disparities for lesser offenses. Without comprehensive sentencing reform, a solution to the costs, high recidivism rates, and legal crises plaguing California's prison system will likely remain elusive.



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**Please note:** Each year, every county submits their data to the official statewide databases maintained by appointed governmental bodies. While every effort is made to review data for accuracy and to correct information upon revision, CJCJ cannot be responsible for data reporting errors made at the county, state, or national level.

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**Appendix A: Rate of new prison admissions in 2012 per 1,000 felony arrests by county and offense type, ranked by rate for all offenses**

County	All Offenses	Violent Offenses	Non-violent Offenses			Population	
			Total	Property	Drug		Other
Kings	237	463	157	189	173	128	150,843
Shasta	154	336	100	146	103	64	178,477
Butte	151	260	109	113	75	179	221,118
Sierra	139	133	143	143	0	250	3,089
Riverside	131	250	87	115	49	115	2,244,399
San Joaquin	130	192	102	127	54	107	699,003
Madera	127	204	92	133	61	85	151,790
Yolo	126	236	88	118	53	101	204,314
Monterey	121	161	101	108	76	128	422,868
Tehama	117	307	70	98	28	158	63,623
Yuba	110	163	78	107	40	81	73,021
San Bernardino	109	191	78	81	37	166	2,065,016
Amador	102	263	59	140	51	42	36,899
Los Angeles	102	161	79	102	55	91	9,911,665
Kern	96	134	80	84	54	110	855,522
Del Norte	94	103	90	153	47	114	28,359
Santa Barbara	94	160	61	65	48	73	427,358
<b>STATEWIDE</b>	<b>90</b>	<b>156</b>	<b>65</b>	<b>85</b>	<b>41</b>	<b>78</b>	<b>37,826,160</b>
Merced	88	156	62	74	37	79	261,708
Calaveras	88	59	105	74	59	195	45,045
Sacramento	88	149	62	68	30	101	1,439,874
Lake	87	140	60	87	43	69	64,394
Orange	87	159	63	80	46	78	3,071,933
Santa Clara	86	151	56	95	27	54	1,828,597
San Diego	83	128	64	98	34	74	3,147,220
Lassen	83	80	84	100	107	58	33,650
San Benito	82	147	42	48	33	48	56,527
Sutter	81	115	63	75	19	89	95,351
Mendocino	81	142	53	63	23	92	88,566
Fresno	81	187	49	76	33	44	946,823
Stanislaus	80	134	63	97	48	48	522,651
El Dorado	79	138	55	59	55	52	180,599
San Luis Obispo	75	161	41	54	25	50	271,021
Humboldt	70	163	39	68	24	36	134,923
San Mateo	68	120	50	71	22	76	736,362
Tulare	66	106	51	72	40	43	451,627
Glenn	66	108	48	43	44	57	28,208
Siskiyou	61	140	29	53	33	12	44,598
Napa	59	119	41	58	26	39	138,577
Solano	57	102	38	47	25	40	415,913
Colusa	57	200	24	43	20	17	21,614
Ventura	56	96	40	57	28	41	834,109
Alameda	54	149	22	34	6	33	1,540,790
Tuolumne	53	138	36	72	17	42	54,339
Marin	53	84	37	40	10	74	254,882
Sonoma	52	109	32	58	6	69	489,283
Placer*	50	105	36	43	23	40	360,680
Mariposa	50	56	47	73	18	58	17,817
Trinity	49	65	44	53	21	94	13,470
Plumas	48	82	30	73	14	18	19,523
Santa Cruz	45	101	27	36	14	38	267,569
Imperial	41	78	30	34	28	30	178,659
Contra Costa	38	100	19	29	5	25	1,069,803
Nevada	34	51	27	45	4	57	98,202
Modoc	34	61	18	0	53	0	9,518
Inyo	30	27	31	56	22	0	18,637
San Francisco	25	64	11	25	9	7	820,349
Mono	16	26	12	0	0	100	14,258
Alpine	0	0	0	0	0	0	1,127

Note: Felony arrest data are from 2011. Source: CJSC, 2013; CDCR, 2013.