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doompa@gmail.com
April 14, 2014

Hon. Tani G. Cantil-Sakauye, Chief Justice of California, and Members
California Judicial Council
455 Golden Gate Avenue
San Francisco, California 94102-3688

Re: **Mendocino Superior Court's Request for an Adjustment To the Workload-based Allocation and Funding Methodology (WAFM)**

Dear Chief Justice Cantil-Sakauye and Members:

I support the Mendocino Superior Court's request for a WAFM adjustment to recognize the extra cost of its need to operate a full-service branch court to serve its large distant Coast population. (See *letter dated October 15, 2013 from Hon. Richard J. Henderson, then-Presiding Judge of the Mendocino Superior Court, to Hon. Steven Jahr, Administrative Director of the Courts.*)

My support is based on all the documentary evidence (referenced herein in italicized titles) that was presented to the Trial Court Budget Advisory Committee at its meeting held March 25, which I believe will constitute the evidentiary record before you when you consider the Court's request at your April 25 meeting.

The Committee's recommendation is that you deny the Court's request. Notwithstanding my genuine respect for the work and accomplishments of the Committee and its members, many of whom were instrumental in formulation of WAFM and its Adjustment Request Process, I must now reluctantly contend that in its present recommendation to you the Committee has erred.

**The Committee bases its recommendation on six reasons or findings, four of which are not supported by the evidence.**

**In its Reasons Nos. 2 and 4,** the Committee found that the Court's inability to adequately serve Coast residents at its Coast Branch courthouse is entirely a result of not being funded up to its full Resource Assessment Study (RAS) workload need by the state general fund; that is, it is caused by nothing more than the same inadequate funding that all trial courts are suffering throughout the state, and not at all by the greater cost that it takes to operate two courthouses an hour and a half away from each other. Respectfully, this finding is contrary to all the evidence.

The evidence overwhelmingly establishes a common, official understanding that it costs more to serve a county's population from two courthouses distant from each other rather than just from the county seat. Numerous administrative decisions by presiding judges and court executive officers support this conclusion: In just the last two and a half years, superior courts in 19 counties have closed 35 outlying branch courthouses for the express purpose of conserving the funds allocated to them for their court operations. (See *"California Courthouse Locations 2014."*)

The WAFM does not recognize this additional cost. When the WAFM was adopted in April 2013, it was contemplated that, as a unique funding allocation factor, the difficult geography that requires the operation of branch courts to serve outlying populations would be addressed later. See "Trial Court Workload-Based Allocation and Funding Methodology (Updated April 17, 2013)." In August, the WAFM Adjustment Request Process was adopted and now provides the means for a court to try to obtain recognition of this funding allocation need.

It is of course true that all California trial courts are presently underfunded; that is, they are not funded to their full RAS workload need. Among them, however, are some courts that require recognition of an even greater funding allocation need because, unlike the other courts, they have to operate a full-service branch court to serve a large, remote population. This particular additional need is precisely the unique funding allocation factor that the Mendocino Court has identified and, by its present WAFM Adjustment request, seeks to have recognized. Until it is, even after the happy day arrives when all of California's courts are funded to their full RAS workload need, the additional cost of Mendocino's need to adequately serve its many Coast residents at its distant Coast Branch courthouse will remain unrecognized and unmet.

**In its Reason No. 3,** the Committee found that many California trial courts face the same issue identified by this request. Respectfully, the evidence simply does not support this finding.

To qualify for the requested WAFM adjustment, a trial court would have to show that (1) a portion of its county's population is presently served by a branch court, (2) that portion is large, for example 20,000 people or more, and (3) that portion is remote, that is about an hour or farther away from the county seat. Of California's 58 counties, only eight appear potentially able to meet this three-part test. (See *"The Remote Access-Funding Factor Identified by the Mendocino Superior Court is Unique to 8 Counties at Most."*)

**In its Reason No. 6,** the Committee found that the problems and challenges of maintaining branch courts should be addressed only as an "access to justice" issue, requiring decisions and determinations that are beyond the Committee's charge and outside the scope of WAFM. Respectfully, this finding overlooks the express purpose of the WAFM Adjustment Request Process.

> "The primary purpose of the WAFM Adjustment Request Process is to provide trial courts the opportunity to identify factors that they believe the WAFM does not yet address and to assist in the evolution and refinement of WAFM in order to ensure the continued improvement in equity of trial court funding and equal access to justice throughout California."
>
> —WAFM Adjustment Request Process
> adopted by the Judicial Council August 22, 2013

By definition, every successful WAFM Adjustment request will present an access-to-justice issue.

By deciding that to be cognizable under WAFM the request had to be characterized as presenting only the funding allocation issue, the Committee short circuited its inquiry and prevented itself from reaching the questions it needed to address to confidently recommend to you how you should decide Mendocino's request for a WAFM adjustment: What is the standard to apply to the request? (See *"A Suggested Analysis."*) How is that standard to be applied to the special access problems of large counties and rural areas? (See *"Recommendations to the Trial Court Budget Advisory Committee dated March 19, 2014 from Hon. Ronald B. Robie, Chair of the California Commission on Access to Justice to Hon. Laurie M. Earl, Co-Chair of the Trial Court Budget Advisory Committee."*) How is it to be applied to the particular court needs of the people who live on the Mendocino Coast (see *"Fact Sheet"*) and their particular access problems? (See *"Driving Times, Mileages, Roads, and Public Transportation from Mendocino Coast Communities to the Ukiah Courthouse."*) What is the number of non-judicial court staff required to provide full-court core services to the Coast population? (See *"Small Court Populations and the Non-Judicial Staff Allocated to Serve Them."*)

**Although supported by the evidence, the Committee's Reasons Nos. 1 and 5 do not support its recommendation to deny Mendocino's WAFM Adjustment Request.**

**In its Reason No. 1,** the Committee found that WAFM is intended to permit trial courts the opportunity to request ongoing adjustments to the WAFM funding need. **In its Reason No. 5,** the Committee found that Mendocino's concern regarding access to court services related to the geographic location of courthouses is an important issue with statewide funding and policy implications.

Both findings are correct and tend to support approval rather than denial of Mendocino's request.

**The Committee's reference to a trial court's local decision to provide specialized services is inapposite.**

Without directly characterizing Mendocino's request as such, the Committee's recommendation twice notes language in the Adjustment Request Process that "a trial court's local decision to provide specialized services" will not constitute a sufficient factor to warrant a WAFM adjustment. The quoted language is irrelevant: The present request is not to fund a discretionary or optional local decision to provide specialized services. Instead, it is a request for recognition of the extra funding the Mendocino Superior Court needs to discharge its duty to provide an accessible forum to all segments of Mendocino County.

For the reasons stated, I ask that you now make your own fresh determination of Mendocino's WAFM Adjustment request, that you directly engage the fundamental issues of funding allocation and access-to-justice that it presents, that you actually determine **the reasonable population size-remote distance standard** to apply to the request, and that you then apply that standard and decide whether Mendocino's specific request qualifies for an adjustment.

Your WAFM Adjustment Request Process is designed and built to deal fully with this request. Please let it work. Thank you for establishing the Process and for your anticipated thorough consideration of the Mendocino Superior Court's request for an adjustment.

Respectfully,

Jim Luther, Judge (Retired)
Mendocino Superior Court

cc: Hon. Laurie M. Earl, Co-Chair, Trial Court Budget Advisory Committee
Mr. Zlatko Theodorovic, Co-Chair, Trial Court Budget Advisory Committee
Hon. David Nelson, Presiding Judge, Mendocino Superior Court
Mr. James B. Perry, Interim Court Executive Officer, Mendocino Superior Court

P.O. Box 1823
Elk Grove, CA 95759

April 18, 2014

Judicial Council of California
Attention: Cliff Alumno

Honorable Kenneth K. So
Chair
Policy Coordination & Liaison
Committee

Traffic Advisory Committee
Mr. Courtney Tucker
Research Attorney
Office of the General Counsel

Court Technology Committee
Ms. Jackie Woods
Information Services Division

Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Mr. Alumno, Mr. Tucker ~~and~~ Ms Woods, and Judge So,

This letter is very similar to an email I sent to you yesterday at judicialcouncil@jud.ca.gov. I hope that you received that email. The only differences are in the P.S. below.

I am not thoroughly familiar with the Judicial Council's process for making policy but I was advised to begin by writing to each of you.

Tomorrow I will send you a more detailed description of my policy proposal for the Judicial Council. For now I will only send you this brief description and 2 attachments which are letters from Senator Darrell Steinberg, President Pro Tem, in support of my proposal.

California's Silicon Valley is home to the computer revolution. The spread of high technology in increasingly powerful and cheaper computers has reached millions of homes across the Western world and much of the rest of the world. Nearly everybody has a cell phone too. We have become dependent on them for convenience, communication and storage for personal and business use.

Unfortunately this computer revolution has not yet fully reached the Superior Courts of California, in particular the traffic courts. The traffic courts' notice policies leave room for improvement. Due to budget constraints the Superior Courts have stopped sending out courtesy notices to drivers who receive citations. The Sacramento Superior Court, for example, stopped sending out courtesy notices about 3 years ago. At one point the Court was sending out 700 to

1,000 such notices per day at a cost of $12,500 per month, according to the staff in early March. Between ½ and 2/3 of them were returned by the post office. Understandably the Sacramento Superior Court decided to stop sending courtesy notices.

A driver who receives a citation from the California Highway Patrol, for example, now gets no subsequent notice. The only notice is the citation itself, the notice to appear, Notice to Appear form (CHP 215) (Judicial Council of California Form TR-130). That typically gives drivers a 90 day notice.

90 days is a long time and many people operate on the "out of sight, out of mind" mode. A driver who fails to take one of the options shown on the back of the notice by the due date is heavily penalized for this failure. The penalties include a conviction on the underlying offense, a fine of up to $300 per citation, and lack of opportunity to appeal.

For this reason I propose that the Judicial Council adopt as statewide policy, after review and recommendations by the Traffic Advisory Committee and the Court Technology Committee, a policy whereby the Superior Courts, traffic courts, send out courtesy notices via text message or email message.

Although I will more fully explain particulars in my message tomorrow, the basics are as follows:

#1) The information on such an electronic courtesy notice would be the same as it would be if the courtesy notice were sent by regular mail.

#2) The driver would have the opportunity, but not the obligation, to provide a cell phone number and / or email message to the arresting or citing officer at the time of the citation for the specific and sole purpose of receiving courtesy notices via text message.

#3) The driver would have to make that decision at the time of the citation. Failure to decide would be equivalent to a decision to NOT receive courtesy notices via electronic means.

#4) The arresting or citing officer could have a written set of instructions to give to drivers to explain, briefly, what the Court would do and would not do in the event the driver elected to receive courtesy notices via electronic means.

#5) The driver would take full responsibility for changes or interruptions to their cell phone number, email address, cell phone service, internet service, and any and all circumstances which could cause the driver to not receive the electronic courtesy notices.

#6) The Court would program the cell phone number and / or email address described in item #2 above into a computer program that would then automatically send the courtesy notice on a predetermined schedule. While it is up to each Superior Court to decide what that schedule would be, for example it could be one courtesy notice 30 days after the date of the citation, another one 60 days later, another one 2 weeks prior to the due date, another one 2 days prior to the due date, and a final one on the due date.

#7) The computer program could be set up so that a driver would be able to respond to discontinue the courtesy notices for each citation.

The benefit of such a system would be that drivers would be more likely to remember their due date and take action by their due date, avoiding the conviction, the fines up to $300 for failure to appear, and loss of ability to appeal. The benefit to the courts would be fewer missed due dates and therefore a more efficient and fair traffic court.

The disadvantage would be a learning period for the officers issuing citations and for the drivers as well as a loss of fine revenue to the courts.

Such a system is already used by my dentist, Howard Shempp of Davis, California. It is also used by the Livermore Public Library in Livermore, California and certainly by other libraries, banks, and some utilities.

The Judicial Council could set up such a system through its information technology staff. The Superior Courts would have to enter into the computer program the information for each citation for each driver who elected to receive electronic courtesy notices. This would be an ongoing effort. By comparison to the present system (no courtesy notices) and the old system (paper courtesy notices, ½ to 2/3 of which were returned in the mail) this is a huge improvement.

What is the best and fastest way to get my proposal on the agenda of a future Judicial Council meeting for possible approval?

Please feel free to ask me any questions. You can reach me at 530-902-4428 my cell phone.

It is a pleasure to be able to share this idea with you in the hopes of making California's traffic courts more fair and efficient through the use of cell phones and computers.

Sincerely,

Mark Graham
Elk Grove, California

P.S. Here are the other details I have added that were not in my email yesterday.

This proposal is intended to preserve the sanity of California drivers against the frustration and high costs of missing a due date for a traffic citation.

It is in the Judicial Council's interest to create a more efficient, less expensive and less aggravating traffic court system for California drivers.

It is true that drivers have a responsibility to remember their due date and to take one of the available options by then. It is also true that many drivers simply forget to do so for any number of reasons.

California Penal Code 1214.1 authorizes courts to charge a civil assessment in the amount of $300.00 for each citation when a driver fails to appear or resolve a traffic case by the due date. Missing the due date costs a California driver this $300.00 fine, a conviction and the possibility of further fines if the driver fails to act within the 15 days pursuant to a trial by written declaration.

My proposal would not apply to a Superior Court that provides written courtesy notices by mail.

The citing officer will also be required to inform the driver that the Superior Court of the County where the citation is issued does not send out courtesy messages via mail. This could be stated on the written instructions that the citing officer gives to the driver.

My proposal does not require a Superior Court to account for or be responsible for any of the dozens of ways a person can miss a text message, such as a lost, stolen or damaged phone, a change of phone number, or the reasons stated earlier. Once the Superior Court programs the driver's cell phone number or email address and the due date for each citation into its computer system, then assuming that computer system that sends the text messages out is working, the Court will have fully met its obligations under this proposed policy. The driver will not be able to use any of these excuses as a legal defense.

There is room on the bottom of Judicial Council of California Form TR-130 to write a cell phone number or email address. There just isn't a box specifically for this information but that should not be a problem.

The computer program for sending out these automated courtesy notices could be made to sync (synchronize) with the Superior Court's existing computer system so as to avoid having to enter the citation information twice. I do not know specifically what computer program is available to send out such electronic messages but they are out there.

Although I am a political scientist and peace activist I am not an expert at writing proposed policies. My proposal is intended to give as many details as necessary to show how this policy would work. The Traffic Advisory Committee and Court Technology Committee can, of course, make any additions, changes or deletions deemed necessary.

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# California State Senate

SENATOR
DARRELL STEINBERG
PRESIDENT PRO TEMPORE
SIXTH SENATE DISTRICT

STANDING COMMITTEES:
SENATE RULES
CHAIR
APPROPRIATIONS
PUBLIC SAFETY

March 20, 2014

Honorable Kenneth K. So
Chair of Policy Coordination and Liaison Committee
Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Dear Judge So,

I would like to share a proposal that originated from an innovative and thoughtful constituent of mine, Mark Graham. Mr. Graham has recently shared a proposal with my office to reform the traffic violation notice policies of California courts and bring them into the digital age. I forwarded his proposal to Sacramento County Presiding Judge Robert C. Hight. I also request that you consider implementing his proposal throughout California.

Mr. Graham's proposal addresses the courts' current notice practice for traffic violations. Previously, many California superior courts issued courtesy notices of court dates by mail. However, due to the budget cuts in recent years, many courts no longer mail these courtesy notices. Under California Penal Code 1214.1, a driver who fails to appear or resolve a traffic case by the due date is charged a penalty of up to $300.00 for each citation. The driver is also found guilty of the alleged violation. Drivers who once relied on these courtesy notices may now find themselves in the frustrating position of paying a traffic fine, as well as an extra $300.00, without the chance to contest the alleged violation.

Thus, Mr. Graham has proposed that all California superior courts that do not provide mailed courtesy notices to drivers who have been cited for traffic violations should provide electronic courtesy notices. These electronic courtesy notices could take the form of either text messages or email. The court need only send electronic notices to those drivers who voluntarily provide a phone number or email address to the citing or arresting officer for the explicit purpose of receiving such text messages. These electronic reminder messages would contain the same information that they would if sent via mail. This proposal puts the onus on the driver to ensure the phone number or email address is accurate. It is also the driver's responsibility to inform the court if the phone number or email address changes.

Finally, the courts would not be responsible for non-receipt of the electronic message because of factors outside of the courts' control—such as lost devices or interrupted cell phone or Internet service.

As you know, we are living in times when increasing numbers of Californians think that government is dysfunctional. Government owes it to consumers to implement consumer friendly policies and practices. And, government owes it to Californians to implement practices that save financial resources. This proposal has the potential of saving court resources by lessening missed court dates of cited Californians who have not received a reminder notice. Implementing this proposal, generated by a court user, would help move us in the direction of restoring public confidence in government.

Text message and email reminders are common in today's tech-savvy world. The public receives such electronic notices from libraries, dentists, banks, and utility companies, to name but a few. By joining the ranks of these many other public services, the California superior courts would be ensuring a more efficient and equitable traffic violation process. Thus, I urge you to consider my constituent's proposal and ask that you get back to my office regarding Judicial Council's actions surrounding the proposal.

Please do not hesitate to contact Margie Estrada of my policy staff with any questions.

Sincerely,

**DARRELL STEINBERG**
Senate President pro Tempore

DS:me

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# California State Senate

SENATOR
DARRELL STEINBERG
PRESIDENT PRO TEMPORE
SIXTH SENATE DISTRICT

STANDING COMMITTEES:
SENATE RULES
CHAIR
APPROPRIATIONS
PUBLIC SAFETY

March 20, 2014

Honorable Robert C. Hight
Presiding Judge of the Superior Court of California
County of Sacramento
720 9th Street
Sacramento, CA 95814

Dear Judge Hight,

As Senator for the 6th District, I have the pleasure of representing innovative and thoughtful constituents. One such constituent, Mark Graham, has recently shared a proposal with my office to reform the traffic violation notice policies of the California court system.

Specifically, this proposal addresses the courts' current notice practice for traffic violations. Previously, many California superior courts issued courtesy notices of court dates by mail. However, due to the budget cuts in recent years, many courts no longer mail these courtesy notices. Under California Penal Code 1214.1, a driver who fails to appear or resolve a traffic case by the due date is charged a penalty of up to $300.00 for each citation. The driver is also found guilty of the alleged violation. Drivers who once relied on these courtesy notices may now find themselves in the frustrating position of paying a traffic fine, as well as an extra $300.00, without the chance to contest the alleged violation.

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Text message and email reminders are common in today's tech-savvy world. The public receives such electronic notices from libraries, dentists, banks, and utility companies, to name but a few. By joining the ranks of these many other public services, the California superior courts would be ensuring a more efficient and equitable traffic violation process. Thus, I urge you to consider Mr. Graham's proposal.

Please do not hesitate to contact my office with any questions or comments.

Sincerely,

**DARRELL STEINBERG**
President pro Tempore

DS:me

Newdorf Legal

Rye P. Murphy

April 23, 2014

Via Email
judicialcouncil@jud.ca.gov

Judicial Council of California
455 Golden Gate Avenue
San Francisco, California 94102-3688
Attention: Cliff Alumno

**RE: Providing Accessible Template for Responding to Form Interrogatories**

Dear Chief Justice and Judicial Council Members,

The Judicial Branch website provides .pdf forms for propounding form interrogatories. All a propounding attorney must do is download the form and check boxes indicating the questions the attorney wants the other party to answer. This makes sending out form interrogatories very easy.

The Judicial Council should make *responding* to form interrogatories similarly easy. Currently it is not. An attorney who practices in litigation will likely do one of three things. First, answer without spelling out each question before giving the answer. This leads to mistaken numbering and lets attorneys avoid answering questions in full. Second, re-write each question before answering. This would be a huge waste of time. Third, use a template the attorney created for answering form interrogatories. The third option is currently the best, but of course not every attorney is going to take the time and make the effort to create a template for responding.

For other types of discovery, lawyers often email the other side a text version of their discovery questions. This saves everyone time. The Judicial Council could similarly help lawyers, law firms, and clients save resource by providing to the general public a more accessible format for answering form interrogatories. This could be accomplished easily by posting online, perhaps next to the corresponding .pdf files on "Browse Forms" section of the website, a document in Microsoft Word that contains all of the questions. (Perhaps a version in WordPerfect could also be provided, since a lot of lawyers still cling to that.) Upon receiving form interrogatories, a responding party's attorney could then download the questions in word format and import the questions she must answer onto her own pleadings paper, instead of having to resort to the inferior options listed above.

The absence of a form interrogatories template is not a critical problem for the California court system. But neither would its solution be much of a burden. The AOC could farm this out to an intern who could accomplish the task in a week or so. Additionally, I would be happy to volunteer my own time for this purpose.

Thank you for taking the time to consider this.

Sincerely,

Rye P. Murphy

SBN 289427

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**Subject:** FW: Public Comment Notice for Judicial Council meeting in San Francisco on Friday, April 25

**From:** Marty Fox [mailto:martyfox@juno.com]
**Sent:** Monday, April 21, 2014 2:51 PM
**To:** Judicial Council
**Subject:** Public Comment Notice for Judicial Council meeting in San Francisco on Friday, April 25

Dear Mr. Alumno, The purpose of this message is to respectfully request that I be provided an opportunity to address the Judicial Council of California at 455 Golden Gate Avenue in San Francisco when it meets on Friday morning, April 25, 2014 following its discussion of Agenda Item G, concerning Criminal Justice Realignment, which is currently scheduled to take place from 10:25 a.m. until 12:10 p.m. An electronic copy of a document which I would appreciate having distributed to members attending the Friday morning session is in the .pdf file attached to this email.

The Department of Defense announced it intends to reduce Army troop strength by 100,000 before the end of this year, as the war in Afghanistan winds down. I am the former chief legal officer of the Special Court-Martial Convening Authority at Fort Ord, California responsible for Deserter and AWOL apprehension for the Department of the Army in the western U.S. as the Vietnam war was winding down. I believe that it is in California's best interests to have its judicial branch prepared to encounter an increase in the number of military servicemembers and veterans of multiple deployments, who have lived in a treatment resistant culture and trained to be treatment non-compliant, before they come to the attention of the civilian criminal justice system they are returning to by having Assisted Outpatient Treatment adopted statewide.

Thank you,

Martin Fox

Attorney at Law
State Bar No. 182767
Voice: (650)592-5915

# Assisted Outpatient Treatment: Preventive, Recovery-Based Care for the Most Seriously Mentally Ill

Gary Tsai, M.D.
San Mateo County Psychiatry Residency Training Program, San Mateo, Calif.

Mental health systems are struggling to provide care for the seriously ill, with conservative estimates reporting that approximately 30% of the homeless (1) and 20% of the prison population (2) are severely mentally ill . An important contributing factor to these poor outcomes is that almost 50% of those with severe mental illness (defined in this article as schizophrenia, schizoaffective disorder, bipolar disorder, and depressive disorder with psychotic features) in the United States are untreated (3). Although this population only comprises about 4.5% of the general population, this still amounts to a substantial 13 million Americans affected (4).

Not surprisingly, the percentage of untreated severely mentally ill individuals closely mirrors the 40%–50% of individuals in this population who suffer from anosognosia and possess significant deficits in self-awareness (5). While intensive case management practices, such as Assertive Community Treatment/Full Service Partnerships, have been successful in providing care for clients who are amenable to voluntary services, individuals who lack insight remain difficult to engage. Studies have shown that these individuals possess deficits in the frontal lobe and in executive functioning, which impairs their capability for objective self-reflection (6). Research has also revealed a clear link between lack of insight and treatment nonadherence (7), which has been associated with poorer clinical outcomes in terms of illness relapse, response to treatment, hospitalizations, and suicide attempts (8, 9). Without the capacity to recognize their need for help, this subset of the mentally ill frequently declines care, resulting in revolving-door hospitalizations as well as incarceration and victimization or violence (10). While voluntary care is clearly ideal, the difficult reality is that the mentally ill are a heterogeneous group with varying needs.

## Assisted Outpatient Treatment

Assisted outpatient treatment programs, also known as outpatient commitment, arose in response to the challenges of caring for the severely mentally ill. To date, versions of outpatient commitment laws have been enacted in 44 states, most notably in New York via Kendra's Law. These court-ordered programs are community-based, recovery-oriented, multidisciplinary services for seriously ill individuals who have a history of poor adherence to voluntary treatment and repeated hospitalizations and/or incarcerations. Despite regional differences, the challenging patient population receiving services from assisted outpatient treatment and the goals of treatment are generalizable. In most states, mentally ill individuals who decline treatment must meet strict criteria for involuntary treatment; i.e., they must be deemed a danger to themselves, others, or gravely disabled. Rather than waiting until these outcomes are imminent, assisted outpatient treatment engages high-risk individuals through earlier and less restrictive treatment in the community.

Establishing flexible and therapeutic relationships with clients within the evidence-based paradigm of assertive community treatment is the foundation of effective assisted outpatient treatment. In California, comprehensive outpatient services are offered 24/7 at a client-to-clinician ratio of 10:1. Service plan goals are concrete and individualized, and every effort is made to involve patients in their care, empowering their sense of self-worth and independence. The assisted outpatient treatment team is a mobile unit, and the location of services varies depending on client needs. Provided services include psychotherapy, medication management, crisis intervention, nursing, and substance abuse counseling as well as support for housing, benefits, education, and employment. Providers often maintain contact with clients on a daily basis, and any member of the treatment team, including psychiatrists, psychologists, nurses and case workers, can provide services and support.

In 2008, Nevada County became the first and only county in California to fully implement an assisted outpatient treatment program in order to promote ongoing treatment adherence in the community. Although the procedural process varies slightly between states, Nevada County's treatment process begins with a referral submitted to mental health agencies by family members, cohabitants, treatment providers, or peace officers. If the individual meets the eligibility criteria (Figure 1), the treatment team develops a preliminary care plan, which is strategically revised throughout the process to meet the needs and desires of the client. If the individual voluntarily engages with court-supervised treatment, a petition is no longer necessary. However, if the client contests the petition, a public defender is assigned and the court proceeds with a hearing. If granted, the assisted outpatient treatment order is valid for up to 180 days. Regular status hearings, held at least every 60 days, enable the court to both ensure that the client is engaged in treatment and that the treatment team is providing necessary support and services. Importantly, assisted outpatient treatment does not affect existing laws regulating the administration of involuntary medications. If patients decline to engage with the treatment team, they are assessed for the appropriateness of a 72-hour hold for further evaluation and care at a local hospital.

While all assisted outpatient treatment programs involve interactions with law enforcement and the court system, a

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unique feature of Nevada County's program is its degree of systemic integration. During planning, the behavioral health department held meetings with various stakeholders, including representatives from the mental health board, superior court, county counsel, public defender's office, law enforcement, advocacy groups (such as the National Alliance on Mental Illness), and members of the community. As a result of this collaboration, the assisted outpatient treatment team works closely with all involved parties, enhancing the efficiency and impact of these intensive, wrap-around mental health services.

## Results From the Nevada County Assisted Outpatient Treatment Program

Given the difficult target population, one of the most compelling measures of success for Nevada County's assisted outpatient treatment program is the number of people who voluntarily engage in treatment and avoid court-ordered intervention. Between 2008 and 2010, with a county population of 97,000, there were 24 referrals to the program, and 19 met eligibility criteria (11). The vast majority of referrals (15 out of 19) voluntarily engaged with their care team, and a majority remained in treatment even after their court order expired. The Milestones of Recovery Scale was used to assess markers of mental health recovery. Because of out-of-county incarceration or an inability to locate individuals, Milestones of Recovery Scale data were only available for 16 of the 19 individuals who received services. Of these clients, 14 had pre-assisted outpatient treatment scores in the "struggling" category, compared with only eight individuals posttreatment. While five of the 19 clients engaged in treatment were employed prior to treatment, six were employed following treatment.

Assisted outpatient treatment also produced significant cost savings for Nevada County as a result of decreased hospitalizations and incarcerations (Figure 2). The year prior to assisted outpatient

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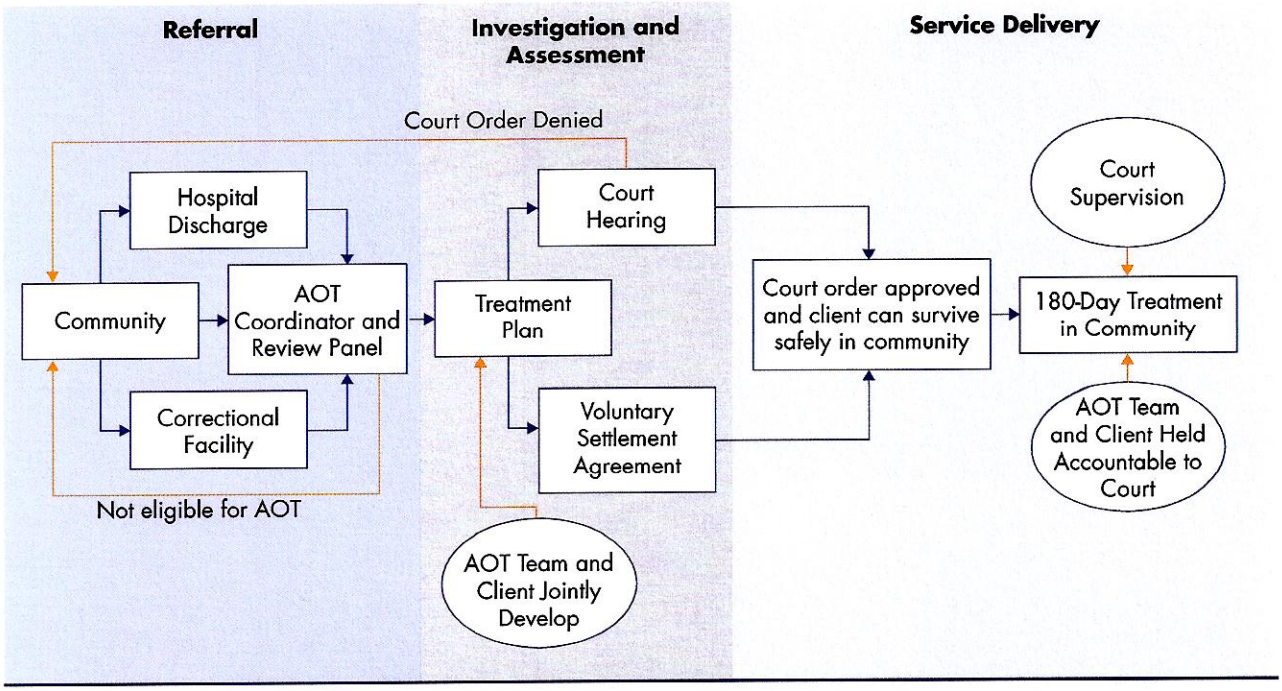
FIGURE 1: Eligibility Criteria and Procedural Process of Assisted Outpatient Treatment (AOT) in California[a]




**AOT Eligibility (California):**

1. Be mentally ill and at least 18 years old.
2. Have a history of poor treatment compliance leading to at least two hospitalizations or incarcerations in the last 36 months, or violent behavior at least once in the last 48 months.
3. Have been offered and to have declined voluntary in the past.
4. Clinical determination needs to indicate that they are unlikely to survive safely in the community without supervision.
5. Participation in AOT needs to be the least restrictive measure necessary to ensure recovery and stability.
6. Condition needs to be substantially deteriorating and must likely benefit from treatment.
7. Not being placed in AOT must likely result in the patient being harmful to self/others and/or gravely disabled.

[a] Data are drawn from criteria as described by the California Psychiatric Association (www.sdcounty.ca.gov/hhsa/programs/bhs/documents/Lauras_Law_AB1421.pdf) and New York State Office of Mental Health (http://bi.omh.ny.gov/aot/files/AOTReport.pdf).

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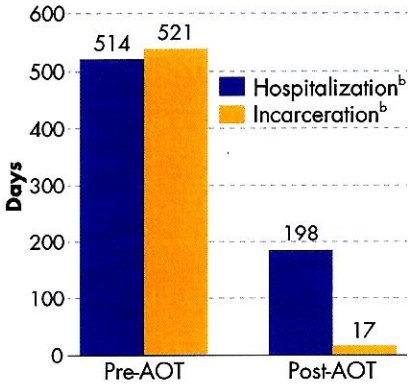
treatment implementation, the 19 participants who received services accounted for 514 days of psychiatric hospitalization. After initiation of treatment, the number of inpatient days for these individuals decreased to 198 days, representing a 61% drop in hospitalization days. Similarly, 521 days of pre-assisted outpatient treatment incarcerations fell to just 17 days posttreatment, representing a 97% reduction in incarceration days. With estimated daily hospitalization costs of $675 and incarceration costs of $150 per day, the assisted outpatient treatment program resulted in a 45% net savings for Nevada County during the 31-month period of this assessment and saved $1.81 for every $1 invested.

FIGURE 2: Outcomes of Nevada County Assisted Outpatient Treatment (AOT) Program[a]




[a] Data are drawn from statistics as reported by the Nevada County Behavioral Health Department.

[b] Data represent number of days.

## Conclusions

The unfortunate irony of psychiatric care today is that oftentimes the patients who are most in need of services are too disorganized and ill to seek assistance themselves. Subsequently, these high-risk clients frequently only receive treatment after they are involuntarily hospitalized or placed in other restrictive settings of care, including the criminal justice system.

The Nevada County assisted outpatient treatment program takes a patient-oriented, multidisciplinary approach to provide community-based services for the severely mentally ill who are historically the most difficult to engage. Objective measures of the program demonstrate that it is cost-efficient and has resulted in overall improvement in clinical functioning, as well as fewer hospitalization and incarceration days. These findings are attributable to effective collaboration between county systems, evidence-based clinical practices, and comprehensive and individualized care management.

In an era of health reform and decreased medical spending, ensuring treatment for the most vulnerable mentally ill individuals is instrumental in maximizing the efficient use of limited resources. Nevada County's assisted outpatient treatment program provides an innovative example of an efficacious and cost-effective model of service delivery for seriously ill individuals that is preventive, recovery-oriented, and evidence-based care.

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April 23, 2014

Judicial Council of California
455 Golden Gate Avenue
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**Re: Written Comment on April 25, 2014 Agenda Item G – Criminal Justice Realignment**

Dear Members of the Judicial Council of California:

I write on behalf of the ACLU of Northern California to provide comment on Agenda Item G on the April 25, 2014 agenda concerning Criminal Justice Realignment ("Realignment"). We are pleased to see the Judicial Council devoting attention to this topic, as the judiciary continues to play a key role the state's shift from an incarceration-focused system to one prioritizing alternatives to incarceration, rehabilitation and recidivism-reduction.

## Continuing Challenges for County Criminal Justice Systems

While the state prison population has fallen by nearly 25,000 since the State enacted Realignment, counties have increased their own jail capacity by more than 7,000 beds, spending tens of millions in state Realignment dollars to expand jail capacity.[1] On top of that, more than one billion dollars in state lease-revenue bonds is now in the pipeline to build another 10,000 county jail beds.[2] This explosion of jail expansion flies in the face of the express legislative intent of Realignment to implement proven recidivism-reducing policies, including alternatives to incarceration.[3] There are a number of potential ramifications of the shift of the overcrowding problem from the State to the counties. Counties with incarceration-focused Realignment plans, many of which are already under court-ordered population caps, are in danger of facing mini-*Plata* lawsuits.[4] Another pressing

1. *See generally* ACLU OF CAL., PUBLIC SAFETY REALIGNMENT: CALIFORNIA AT A CROSSROADS (2012), available at https://www.aclunc.org/docs/criminal_justice/public_safety_realignment_california_at_a_crossroads.pdf

2. A.B. 900, 2007 Leg., Sess. Ch. 7 (Cal. 2007); S.B. 1022, 2011-2012 Leg., Reg. Sess., Ch. 42 (Cal. 2012); *see also* CAL. GOV'T CODE § 15819.40, et seq. This Act, commonly referred to as "AB 900," authorized $1.2 billion in lease revenue bonds for the construction and expansion of county jail facilities. In June of 2012, the State passed SB 1022, which added California Government Code section 15820.922 authorizing an additional five hundred million in lease revenue bond authority for local jail construction. Distribution of the funds is managed by the Board of State and Community Corrections.

3. *See* CAL. PENAL CODE § 17.5.

4. In December 2011, the Prison Law Office filed a class action lawsuit against the Fresno Sheriff on behalf of jail inmates denied mental health care and medical treatment for life-threatening illnesses. As in *Plata*, the plaintiffs alleged

concern is that jails were never designed for long-term incarceration. As a result, many inmates receive inadequate access to exercise, rehabilitation programming, medical and mental health care, and family visits. In addition, county jails may not be sufficiently equipped to meet the ADA needs that come with increased populations. As such, they may face a plethora of lawsuits.[5] As one commentator has warned:

> The ever-present risk of realignment is that it could turn the Plata/Coleman court order into a shell game instead of a solution to California's incarceration conditions problem. Medical and mental health care in California's prisons was indisputably horrendous, but population reduction is finally allowing the other substantive parts of the remedies to work. This achievement would be far less significant if the order turned out to dump on the counties not just population, but the unconstitutional conditions that, in California's prisons, accompanied population. Call this the potential hydra problem: chopping the head off of unconstitutional prison conditions could cause many of the 58 counties to in turn develop unconstitutional conditions of jail confinement.[6]

**Pretrial Release**

It is clear that Realignment's success is inextricably tied to the capacity of county criminal justice systems to meet their new obligations. Critics of Realignment have argued that many county jails are themselves overcrowded, and therefore unable to absorb newly sentenced defendants who would previously have been sent to state prison.[7] County jails, however, are not full of individuals who have been convicted of the charges against them, or even individuals deemed to present a high public safety risk to the community. Most people in county jails have not been convicted of a crime. Instead, more than sixty-three percent of the 82,000 Californians held in county jails on any given day are awaiting trial or other disposition of their case.[8] A substantial amount of them are not being incarcerated pending trial because they pose a significant risk to public safety, or are likely not to appear for their next court appearance, but, rather, are stuck behind bars because they simply cannot afford bail.[9]

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cruel and unusual conditions in violation of their rights under the Eighth and Fourteenth Amendments. Complaint, Hall v. Mims, No. 1:11-cv-02047-LJO-BAM, 2012 WL 1498893 (E.D. Cal. Dec. 13, 2011).

5. *See, e.g.*, Armstrong v. Wilson, 942 F. Supp. 1252 (N.D. Cal. 1996), *aff'd* 124 F.3d 1019 (9th Cir. 1997) (finding that the CDCR was violating the Americans with Disabilities Act and the Rehabilitation Act and issuing an injunction requiring the CDCR to improve access to prison programs for prisoners with physical disabilities at all of California's prisons and parole facilities). *See, e.g.*, Complaint at 1, Legal Servs. for Prisoners with Children v. Ahern, No. RG12656266, (Cal. Super. Ct., Nov. 15, 2012) (alleging systemic and long-term discrimination against persons with disabilities housed at Santa Rita Jail has resulted in unequal treatment of and severe harm to those inmates).

6. Margo Schlanger, *Plata v. Brown And Realignment: Jails, Prisons, Courts, And Politics* 48 Harv. C.R.-C.L. L. Rev., (forthcoming Jan. 2013) (manuscript at 44–49).

7. *See* Kurtis Alexander, *Fresno County Demands More State Funds for Housing Prisoners*, FRESNO BEE (Dec. 2, 2012), http://www.fresnobee.com/2012/12/02/3086872/valley-counties-seek-more-prison.html; Letter from thirteen Central Valley legislators to Governor Jerry Brown (Dec. 5, 2012), *available at* http://news.fresnobeehive.com/wp-content/uploads/2012/12/Realignment-Coalition-Letter-Central-Valley.pdf; Kurtis Alexander, *Valley Lawmakers Ask Governor for More Prison Money*, FRESNO BEE (Dec. 8, 2012), http://news.fresnobeehive.com/archives/731.

8. *See* CAL. BD. OF CORRS., JAIL PROFILE SURVEY, SECOND QUARTER CALENDAR YEAR 2013 7 (2013), *available at* http://www.bscc.ca.gov/download.php?f=/2013_2nd_Qtr_JPS_full_report.pdf.

9. Trial judges are required to evaluate defendants' suitability for bail and to order held without bail those deemed to present too great a risk to public safety. This makes sense: if someone is deemed a public safety risk, the mere fact

High rates of pretrial detention are a threat to public safety and civil liberties. People with financial resources are able to get out of jail and return to their jobs, families, and communities. People who are unable to pay for bail or raise the necessary collateral, however, must stay in jail awaiting a trial date that could be months away. Or, they may more readily decide to accept a plea bargain as a means of getting out of jail. These results have nothing to do with public safety. They have everything to do with wealth and poverty. People with money are able to buy their freedom while poor people cannot.

California's money-based bail system fails to accurately assess and manage risk among pretrial populations. There is no evidence that a defendant's ability to afford bail correlates to their risk of committing a new crime while out on bail, or even their likelihood of appearing in court. Pretrial risk assessment research over the past thirty years, however, has identified common factors that can more accurately predict court appearance and/or risk of a person committing a new crime prior to trial.[10] These factors include: current charge; whether the defendant had outstanding warrants at the time of arrest; whether the defendant had pending charges at the time of arrest; history of criminal convictions; history of failure to appear in court; and history of violence.[11] Some jurisdictions also look at residence stability; employment stability; community ties; and history of substance abuse in making risk determinations.

The money-based bail system, with bail amounts based on preset, one-size-fits-all schedules, fails to take any of these risk factors into account. Not only do many people who present no public safety or "failure to appear" danger remain unnecessarily behind bars pending trial, but sometimes people who *do* present a public safety risk are nonetheless released simply because they are able to afford to post the scheduled bail amount. As the International Association of Chiefs of Police aptly stated, "[a] suspect's release or detention pending trial currently is not based on an informed assessment of whether or not he or she is a danger to society [and/or] is likely to return to court for trial, but on whether the suspect has enough money to bail himself or herself out of jail."[12] Similarly, U.S. Attorney General Eric Holder noted in 2011, "[a]lmost all of these [non-sentenced, pretrial] individuals could be released and supervised in their communities—and allowed to pursue or

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that they may be able to come up with money for bail does not mitigate that risk. By setting bail for a defendant, a judge is indicating that releasing that defendant pending trial does not present an unreasonable public safety risk. A substantial and increasing number of defendants held in jail pending trial have had bail set but cannot afford to post it. They therefore remain in jail not because they pose a threat to public safety but rather because they cannot afford bail. CAL. PENAL CODE § 1275; *see* PRETRIAL JUSTICE INST., RATIONAL AND TRANSPARENT BAIL DECISION MAKING: MOVING FROM A CASH-BASED TO A RISK-BASED PROCESS 1, 3 (2012), *available at* http://www.pretrial.org/Featured%20Resources%20Documents/Rational%20and%20Transparent%20Bail%20Decision%20Making.pdf; *see also* JOHN CLARK, THE IMPACT OF MONEY BAIL ON JAIL BED USAGE, AMERICAN JAILS 47–48 (Jul./Aug., 2010), *available at* http://www.pretrial.org/wp-content/uploads/filebase/pji-reports/AJA%20Money%20Bail%20Impact%202010.pdf.

10. *See* MARIE VAN NOSTRAND, LEGAL AND EVIDENCE-BASED PRACTICES: APPLICATION OF LEGAL PRINCIPLES, LAWS, AND RESEARCH TO THE FIELD OF PRETRIAL SERVICES 5–9 (Apr. 2007), *available at* http://www.dcjs.virginia.gov/corrections/documents/legalAndEvidence.pdf.

11. *Id.*

12. INT'L ASS'N OF CHIEFS OF POLICE, *LAW ENFORCEMENT'S LEADERSHIP ROLE IN THE PRETRIAL RELEASE AND DETENTION PROCESS* (2011), *available at* http://www.theiacp.org/LinkClick.aspx?fileticket=32EOi2UojO4%3d&tabid=392.

maintain employment, and participate in educational opportunities and their normal family lives—without risk of endangering their fellow citizens or fleeing from justice."[13]

Each day in California, hundreds of bail determinations are made according to bail schedules and without the benefit of individualized assessments of risk to public safety or likelihood of returning to court.

Rather than simply expand jail capacity, counties should implement evidence-based practices to manage both pretrial and sentenced populations. At the state level, examples of sensible reforms include amending statewide pretrial detention laws to keep behind bars only those who truly pose a risk to public safety while increasing the number of people released on their own recognizance. Such reforms would require the use of evidence-based criminal justice practices and validated risk assessment tools.[14]

At the county level judges should take advantage of trainings on effective evidence-based pretrial release decision-making. The National Judicial College and the Pretrial Justice Institute (PJI) through funding from the Bureau of Justice Assistance have created a new four hour curriculum for judges on effective, legal, and evidence-based pretrial release decision making. As PJI's website explains, the curriculum focuses on three themes: (1) that some degree of risk is inherent in every pretrial release decision, and that some decisions, no matter how well informed, will have negative results; (2) that current approaches used in most courts in this country to identify and address risk are outdated and ineffective; and (3) that new approaches, based on empirically-derived evidence, are now available to help judges more successfully sort defendants into risk categories and fashion appropriate release conditions to address the identified risks. At least one county in California, Contra Costa, has undergone this training. The state and local jurisdictions should take advantage of this curriculum and incorporate it into trainings.

Additionally, counties must ensure that proper resources are devoted to effectively implementing pretrial release programs on all levels. This includes proper training and staffing for those entities administering risk assessments and making recommendations to the court, so that the court can be assured that they are receiving accurate and timely information about defendants. It also includes proper staffing for entities supervising pretrial releasees in the instances in which those conditions of

13. Attorney General Eric Holder, Remarks at the National Symposium on Pretrial Justice (Jun. 1, 2011), *available at* http://www2.americanbar.org/sections/criminaljustice/CR203800/Pages/pretrialjustice_holder.aspx.

14. Examples of successful pretrial programs include the Allegheny County bail agency and the D.C. Bail Project. *See Pretrial Justice Institute Guides Innovative Reforms, Helping Justice Trump Tradition: New Agency in Allegheny County, Pennsylvania Increases Pretrial Fairness And Safety*, CASE STUDIES (Pretrial Justice Institute), Fall 2008, at 3, *available at* http://pretrial.org/Success/Case%20Study%201%20Allegheny%20County.pdf ("With technical assistance from the Pretrial Justice Institute, the agency has established one of the nation's most innovative pretrial programs."); *The D.C. Pretrial Services Agency: Lessons from Five Decades of Innovation and Growth*, CASE STUDIES (Pretrial Justice Institute), Fall 2008, at 1, *available at* http://www.pretrial.org/Reports/PJI%20Reports/Case%20Study%202%20-%20DC%20Pretrial%20Services.pdf ("The agency is also a model nationally for demonstrating that the vision for pretrial justice outlined in the standards of the American Bar Association and the National Association of Pretrial Services
Agencies can be achieved.").

release are appropriate, so that judges are confident that the supervision will be followed-out as ordered. Any pretrial reform must include a coordinate effort on the part of all criminal justice stakeholders, including the judiciary.

**Sentencing Considerations after Realignment**

a) Excessively Long Jail Sentences for Low-Level Drug Offenses

There are serious discussions underway in Sacramento to roll back Realignment by creating new exemptions to send more people to state prison. Even those sent to jail instead of prison under Realignment are still subject to the same long sentences and enhancements as existed before Realignment, which can result in sentences of ten years or more served in jails. Governor Brown has suggested amending Realignment to allow persons with these long sentences to once again be sent to prison instead of jail.[15] However, no one appears to be asking the obvious question: Why are we incarcerating people for such lengthy periods for non-serious, non-violent drug offenses, especially people who have never committed a violent or serious offense? Only such persons can be sent jail instead of prison under current Realignment law, since anyone with any prior conviction for a serious or violent felony is not eligible for a jail sentence instead of state prison. We respectfully urge the Judicial Council not to support these proposed amendments to Realignment, and to seriously consider other options to reduce the length of jail sentences imposed for non-serious, non-violent drug offenses under Realignment.

b) Split Sentencing

Counties should also better utilize split sentencing for those with non-violent, non-serious, non-sex offenses. Currently, the use of this sentencing option varies widely, and somewhat inexplicably, around the state. On the high end, Contra Costa and Riverside Counties use split sentencing rate at about 90% and 80% respectively, and preliminary figures suggest positive outcomes through use of this option. On the other hand, Los Angeles County uses split sentences at a rate of about only 6 percent. As pointed out by proponents of the sentencing option use of the split not only reduces lengthy jail stays, but also creates the opportunity for a more structured reentry into society though the oversight and conditions placed on defendants participating in mandatory supervision. Counties in which split sentencing has been more widely adopted highlight the necessity of inter-agency coordination for success. Judges should work together with other criminal justice stakeholders to ensure that the each agency has the resources and information necessary to make the system

[15] Don Thompson, Associated Press, *Counties tell Gov. Brown They Need Money for Jail Realignment*, (April 19, 2014), available at: http://www.scpr.org/news/2014/04/19/43615/counties-tell-gov-brown-they-need-money-for-jail-r/: ("In Kern County, Sheriff Donny Youngblood worries that county jails built to hold criminals for no more than a year are now housing inmates for a decade or more. Brown has proposed modifying his realignment law so that inmates sentenced to more than 10 years would again serve their time in state prisons, but Youngblood thinks the sentence length should be shorter. 'Three years, from my standpoint, might be reasonable,' he said.")

function effectively as a whole. For instance, it is important that judges are confident in the ability of probation departments to safely and effectively manage those under supervision.

* * *

Understandably, the judiciary is not alone in being able to effectively implement these reforms. However, it can play an important leadership role in ensuring our criminal justice system is fair, efficient and getting us the best return on our criminal justice dollars while keeping the public safe.

Sincerely,

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