

SUBCOMMITTEE NO. 5

Agenda

Senator Loni Hancock, Chair
Senator Joel Anderson
Senator Lois Wolk



Tuesday, January 25, 2011
9:30 a.m.
Room 4203

Consultant: Brian Brown

Item Number and Title

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Criminal Justice Realignment Proposals - Background

Governor's Realignment Proposal Overview. The Governor's budget calls for realignment of various state programs to local governments. The programs proposed for realignment fall broadly into the category of public safety. This realignment is proposed to be funded through the continuation the 1 percent sales tax and 0.5 percent Vehicle License Fee increases set to expire at the end of the 2010-11 Fiscal Year. In total, the administration estimates that \$5.9 billion in revenue would be generated in 2011-12, growing to \$7.3 billion in 2014-15. The Governor's plan calls for a phased approach to realignment.

The administration's stated goals of realignment include (1) protection of California's essential public services, (2) improved efficiency and reduction of government duplication, (3) focus of state resources on oversight and technical assistance, (4) assigning program and fiscal responsibility at the level of government that can best provide the service, and (5) providing dedicated revenues to fund programs.

Criminal Justice Realignment Summary. Of the total realignment package, a large share is dedicated specifically to criminal justice programs. Specifically, the Governor proposes realignment of the following criminal justice programs:

1. Court security,
2. Local public safety grant programs,
3. Low level offenders,
4. Adult parole,
5. Division of Juvenile Justice.

The Governor's proposal dedicates \$2.6 billion of the revenues for these purposes when the realignment is fully implemented in 2014-15. In 2011-12, the proposal provides \$1.5 billion to local governments and assumes that \$2.3 billion would be sent to the state as reimbursement of state costs. This reimbursement would occur in the near term because much of the realignment would take a couple of years to be fully implemented.

The following figure from the Governor's Budget Summary summarizes the first phase of the proposed realignment plan.

Figure REA-01
Phase One Realignment Funding
(Dollars in Millions)

Program	2011-12	2014-15
Fire and Emergency Response Activities	\$250.0	\$250.0
Court Security	530.0	530.0
Vehicle License Fee Public Safety Programs	506.4	506.4
Local Jurisdiction for Lower-level Offenders and Parole Violators		
Local Costs	298.4	908.1 ^{1/}
Reimbursement of State Costs	1,503.6 ^{2/}	-
Realign Adult Parole to the Counties		
Local Costs	113.4	409.9 ^{1/}
Reimbursement of State Costs	627.7 ^{2/}	-
Realign Remaining Juvenile Justice Programs		
Local Costs	78.0	242.0 ^{1/}
Reimbursement of State Costs	179.6 ^{2/}	-
Mental Health Services		
The Early and Periodic Screening, Diagnosis and Treatment Program	-	579.0
Mental Health Managed Care	-	183.6
AB 3632 Services	-	104.0
Existing Community Mental Health Services	-	1,077.0
Substance Abuse Treatment	184.0	184.0
Foster Care and Child Welfare Services	1,604.9	1,604.9
Adult Protective Services	55.0	55.0
Unallocated Revenue Growth	-	621.1
Total	\$5,931.0	\$7,255.0
1% Sales Tax	4,549.0	5,567.0
0.5% VLF	1,382.0	1,688.0
Total Revenues	\$5,931.0	\$7,255.0

^{1/}The allocation in 2014-15 is different than the amount allocated in 2011-12 due to a phased-in implementation.

^{2/}During the transition, estimated state costs will be reimbursed from realignment revenues.

Key Questions for Legislative Consideration. In reviewing the Governor's realignment proposal, the Legislature may wish to consider the following over-arching questions.

- Are local governments the appropriate level of government to provide the program or serve the population recommended for realignment in a manner that is more efficient and effective than if delivered by the state?
- What is the appropriate level of resources to provide to local governments to provide the realigned program efficiently and effectively?
- What role, if any, should the state play following the realignment of each program, specifically with respect to oversight, coordination, transition, and/or technical assistance?
- What are the potential unintended consequences of realignment that need to be foreseen and mitigated?
- How can realignment be structured to incentivize or encourage the use of evidence-based practices designed to enhance public safety?

Issue 1 – Court Security

Background. Currently, court security is provided by county sheriffs in all but two small counties (which have their own marshals service for security). The staffing level of security in each of the 56 trial courts that utilize sheriffs are negotiated between the presiding judge and the county sheriff with the courts reimbursing the counties for their costs.

The state spends about \$3 billion annually on operation of the trial courts in all 58 counties. Of this total, about \$500 million is spent on court security. This amount has grown significantly in recent years, from \$385 million in 2005-06. According to the administration, the state has a role in court security standards, but has no control over what level (and cost) of deputy is assigned to the court. The table below shows the increase in court security costs since 2005-06.

Court Security Expenditures

Fiscal Year	Expenditures	Annual Growth
2005-06	\$385.4	
2006-07	\$450.3	18%
2007-08	\$501.7	12%
2008-09	\$521.0	4%
2009-10*	\$497.8	-4%

* Note: Statewide court closures were in effect during 2009-10.

Proposal. The administration proposes to transfer \$530 million in funding for court security to the counties. State General Fund support for court security costs would be reduced by an equivalent amount. According to the administration, this arrangement should allow the courts and counties to come to reasonable local agreements regarding the costs of court security.

Staff Comments. The LAO has raised some concerns with this aspect of the Governor's realignment proposal. They find that while control of funding for court security would be shifted to counties, the state judicial system would continue to be responsible for the overall operation of the courts. Absent financial control, the courts would have difficulty ensuring that the sheriffs provided sufficient security measures. The LAO believes that a more efficient approach would be to (1) clarify that the state is responsible for trial court security and (2) adopt a separate state law change authorizing the state to use competitive bidding by various private or public entities, including sheriffs, for the provision of court security services.

Should the Legislature approve realignment of court security, it may wish to give weight to the LAO's concerns and identify appropriate parameters around the realignment to ensure that it can be done in a way that does ensures provision of a sufficient level of court security at all courts.

Key Questions for Legislative Consideration. In reviewing this proposal, the committee may wish to consider the following questions.

- To what extent will realignment slow the growth of court security costs?
- How can the implementation of realignment be structured to ensure that counties continue to provide adequate security coverage?
- Will courts maintain flexibility to use in-house marshals services, if desired?
- What does the administration propose to do with the court security fee?

Staff Recommendations. Hold open pending further review.

Issue 2 – Local Public Safety Grant Programs

Background. Historically, the General Fund has supported various local public safety grant programs designed to enhance local criminal justice efforts. This includes programs such as Citizens Option for Public Safety (COPS), the Juvenile Justice Crime Prevention Act (JJCPA) program, booking fees, and juvenile probation funding. More recently, these programs have been funded from the temporary VLF increases that are currently set to expire at the end of the current fiscal year.

The table below lists each of grant programs, as well as the recipient agencies and purpose of the grant.

Local Public Safety Grant Programs

Program	Local Recipients	Purpose
Citizens Option for Public Safety	Counties and cities	Augment local public safety spending
Juvenile Justice Crime Prevention Act	Counties and cities	Lower juvenile crime rate
Booking fees	Counties	Reduce amount of booking fees counties charge cities
Small and Rural Sheriffs	37 sheriff departments	Augment local funding
Juvenile probation funding	Probation departments	At-risk youth, juvenile offenders, and their families
Juvenile camps funding	Probation departments	Operation of juvenile camps and ranches
CA Multi-Jurisdictional Methamphetamine Enforcement Team	Counties	Investigation and prosecution of methamphetamine production
Vertical prosecution grant	District attorneys	Prosecution activities
Evidentiary medical training	University of California	Forensic medical training in cases of sexual and other abuse
Public prosecutors and public defenders	CA District Attorneys Assoc. and CA Public Defenders Assoc.	Training, education, and research
CA Gang Violence Suppression Program	City and county applicants	Divert gang activity
CALGANG	Department of Justice	Database of statewide gang intelligence information
Multi-Agency Gang Enforcement Consortium	Fresno County	Reduce gang activity
Rural crime prevention	District attorneys	Investigation and prosecution of agricultural crimes

Sexual Assault Felony Enforcement	Counties	Monitor habitual sexual offenders
High tech theft apprehension and prosecution	High technology task forces	Investigation of high technology crimes

Proposal. The Governor proposes to fully fund these programs as part of the overall realignment package using largely the same funding formula as currently exists. The only difference would be that booking fees would be fixed at \$35 million. The table below lists the programs by estimated funding levels in the current year and budget year. The funding levels would increase between the current year and budget year due to projected inflationary growth of VLF revenues.

Proposed Funding Level for Local Public Safety Programs
(Dollars in millions)

Program	2010-11	2011-12
Citizens Option for Public Safety	\$94.2	\$107.1
Juvenile Justice Crime Prevention Act	94.2	107.1
Booking fees	27.7	35.0
Small and Rural Sheriffs	16.3	18.5
Juvenile probation funding	133.4	151.8
Juvenile camps funding	25.9	29.4
Cal-MMET	17.1	19.5
Vertical prosecution	12.8	14.6
Evidentiary medical training	0.5	0.6
Public prosecutors and public defenders*	0.0	0.0
CA Gang Violence Suppression Program	1.4	1.6
CALGANG	0.2	0.3
Multi-Agency Gang Enforcement Consortium	0.1	0.1
Rural crime prevention	3.3	3.7
Sexual Assault Felony Enforcement	4.5	5.1
High tech theft apprehension and prosecution	10.5	12.0
Totals	\$442.0	\$506.4

*Note: This program is funded at less than \$10,000 annually.

Staff Comments. These programs are funded through the temporary 0.15 VLF increase that is set to expire at the end of the current fiscal year. The Governor's realignment proposal would ensure these programs continue to be funded at a level closer to historic levels for at least several more years. Absent extension of these tax revenues, the program costs would likely have to be shifted to the General Fund or the programs eliminated.

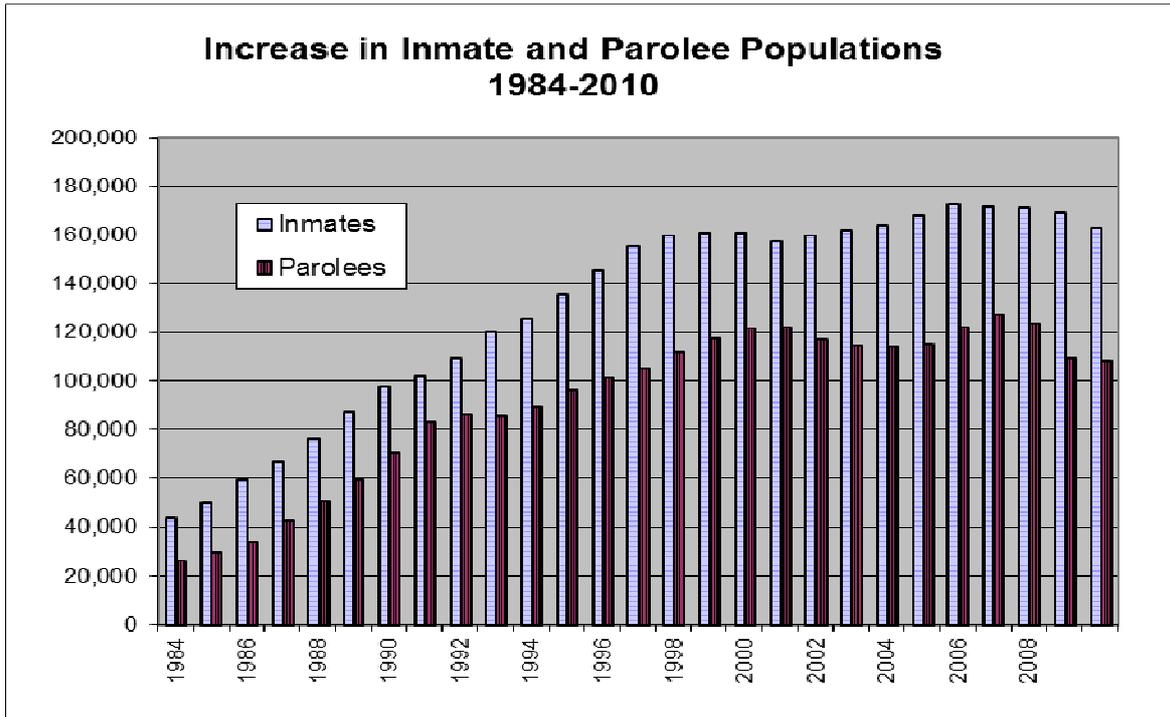
Key Questions for Legislative Consideration. In reviewing this proposal, the committee may wish to consider the following question.

- What would be the impact to local public safety if VLF funding for these grant programs was to expire?

Staff Recommendations. Hold open pending further review.

Issue 3 – Low Level Offenders

Background. There are currently about 162,000 inmates housed in California state prisons (including contracted facilities). The state's inmate population has been relatively stable over the past several years following a period of rapid growth during the 1980s and 1990s, as shown in the figure below.



The LAO has analyzed the growth in the prison population and found that the growth does not appear to be driven by increases in crime rates which have actually decreased over the past two decades. Instead, it appears that the trend is more closely associated with higher rates of prosecutions and prison sentences, as shown in the table below. Consequently, a felony arrest is almost twice as likely to result in a prison term as twenty years ago.

Proportion of Arrests Resulting in A Prison Term Has Increased

Adult Felony Outcomes	1987	2007	Percentage Change In Factor
Arrests	423,000	457,000	+8%
Charges filed	197,000	280,000	+42
Convictions	154,000	231,000	+50
Prison sentences ^a	33,000	68,000	+106
Percent of Arrests Resulting in Prison	8%	15%	+91%

^a Includes both new admissions and parole violators returned by the courts.

Under current law, the vast majority of inmates serve determinate sentences. This means that inmates are generally released at the conclusion of a prison term, defined by the sentencing court, and as adjusted by credits earned for good behavior. On average, inmates serve about two years in state prison, though many serve for much shorter periods. For example, in 2009, over 35,000 inmates first released to parole and an additional 66,000 parole violators re-released to parole served 12 months or less in state prison.

Current law defines some crimes as serious (e.g. first degree burglary) or violent (e.g. robbery and rape). Approximately 25 percent of the inmate population has never been sent to state prison for a serious or violent offense. Approximately, 14 percent of the prison population is currently in prison for a sex offense.

In 2008-09, it cost about \$47,000 to house an inmate in state prison for one year. As shown in the figure below, about two-thirds of this cost is for security and health care costs.

California's Annual Costs to Incarcerate an Inmate in Prison

2008-09

Type of Expenditure	Per Inmate Costs
Security	\$19,663
Inmate Health Care	\$12,442
Medical care	\$8,768
Psychiatric services	1,928
Pharmaceuticals	998
Dental care	748

Operations	\$7,214
Facility operations (maintenance, utilities, etc.)	\$4,503
Classification services	1,773
Maintenance of inmate records	660
Reception, testing, assignment	261
Transportation	18
Administration	\$3,493
Inmate Support	\$2,562
Food	\$1,475
Inmate activities	439
Inmate employment and canteen	407
Clothing	171
Religious activities	70
Rehabilitation Programs	\$1,612
Academic education	\$944
Vocational training	354
Substance abuse programs	313
Miscellaneous	\$116
Total	\$47,102

Counties operate jails to house lower level offenders, specifically those sentenced to less than a year of incarceration, as well as offenders awaiting trial. There are currently about 85,000 inmates in county jails. Currently, many counties have some or all of their jails under population caps, either court- or self-imposed due to overcrowding or budgetary constraints. In 2005-06, it cost counties an average of about \$28,000 to house an inmate in jail per year.

Proposal. The administration proposes to require that all inmates not currently or previously convicted of a serious, violent, or sex offense be housed in county jails or otherwise managed at the local level, rather than being sent to state prison. The administration estimates that this policy would reduce the prison population by about 44,000 inmates when fully implemented. The administration proposes for this change to be made on a prospective basis only. So, no inmates currently in prison would be transferred to the counties.

Under the Governor's realignment plan, counties would receive an estimated \$298 million in 2011-12 to begin managing these offenders locally. Because most felon non-serious, non-violent, non-sex inmates would remain in state prison in the budget year, a share of realignment funding - \$1.5 billion – would be sent to the state to reimburse CDCR for the costs of housing those offenders. When fully implemented, counties would receive an estimated \$908 million annually to manage these offenders.

According to the administration, realignment of these offenders can be both more efficient and achieve better outcomes. With more resources at the local level, these short-term, lower-level offenders can be better managed and can become more successful through a combination of probation services and jail time.

Staff Comments. The Governor's proposal merits consideration. Removing lower-level, short-term offenders from state prisons will have the benefit of reducing the existing overcrowding problems that contribute to operational problems and lawsuits. Moreover, it would ensure that expensive state prison beds are reserved for the state's most serious and violent offenders. In addition, removing short-term offenders has the advantage of reducing the state's need for very expensive reception center beds. Reception centers are the state prison facilities that accept new inmates from county jails, as well as parole violators. They tend to be more expensive than the average prison bed due to the battery of evaluations conducted and higher security staffing necessary.

The Governor's proposal recognizes that counties can potentially manage low-level offenders more efficiently and effectively than the state. County agencies already provide services such as mental health treatment, substance abuse programs, and education and employment services that can be targeted to the offender population and enhance the likelihood of success in the community. Historically, short-term prison inmates, especially those in reception centers, do not receive such services before being released to the community. In addition, the flexibility that counties would have under the Governor's proposal would mean that they could choose the combination and intensity of incarceration, probation supervision, sanctions, and services to manage each offender in a way that will improve the likelihood of success in their local community. The state does not currently have this level of flexibility under state law.

The Governor's proposal shares similarities with other recent Senate proposals. As part of last year's budget process, Senate leadership proposed a realignment plan which included a proposal to shift responsibility for wobbler offenders – those charged with crimes that can be prosecuted as felonies or misdemeanors – to counties. Also, in 2009, the Legislature passed, and Governor Schwarzenegger signed, the California Community Corrections Performance Incentives Act of 2009 [SB 678 (Leno)]. This bill provides counties with a share of state prison savings when counties are able to demonstrate a reduction in felony probation failures that would otherwise result in offenders being sent to state prison. Importantly, this bill requires that counties use the state resources provided to develop evidence-based supervision and intervention strategies.

Key Questions for Legislative Consideration. In reviewing this proposal, the committee may wish to consider the following questions.

- What are the jail capacity needs of counties under this proposal?
- How can realignment be implemented in such a way as to incentivize or otherwise ensure the use of evidence-based practices designed to reduce reoffending and enhance public safety?
- To what extent does the administration's state savings estimate include ancillary savings such as state administration or the additional costs to run more expensive reception center beds?
- To what extent are the proposed level of new resources provided to counties sufficient to provide a more appropriate mix of incarceration, supervision, sanctions, and services?
- How will this proposal affect the department's long-term bed plan, including the use of existing aging facilities and the need for future construction?
- Will SB 678 have to be modified if realignment is implemented?

Staff Recommendations. Hold open pending further review.

Issue 4 – Adult Parole

Background. Under current law, inmates released from state prison are placed onto state parole generally for three years. There are currently about 108,000 parolees statewide. Parolees who commit new crimes or violations of the terms of parole can be returned to state prison administratively for up to one year. (Parolees can be returned for a longer period if convicted of a new crime.) More than 60,000 parolees are returned to state prison through the administrative process run by the Board of Parole Hearings each year.

County probation departments also supervise offenders in the community. There are about 350,000 probationers statewide. This includes offenders sentenced for misdemeanors and felonies. Judges grant felony probation as a sentence in lieu of state prison, though jail time frequently is also part of the sentence.

According to CDCR data, about half of all inmates are returned to state prison within one year of release, and two-thirds are returned to prison within three years.

Proposal. The Governor proposes to realign all of state parole to county probation departments. This would be done on a prospective basis only. So, no offenders currently on parole would be shifted to county responsibility. About 60,000 inmates are first released to parole each year.

Under the Governor's realignment plan, counties would receive an estimated \$113 million in 2011-12 to begin supervising parolees locally. Because most parolees would remain on state caseloads in the budget year, a share of realignment funding - \$628 million - would be sent to the state to reimburse CDCR for the costs of managing those existing caseloads. When fully implemented, counties would receive an estimated \$410 million annually to manage these offenders.

Since these offenders typically live in the community from which they were sentenced to prison, the administration argues that local law enforcement and probation are usually more knowledgeable about the offender, suggesting local supervision of parolees is a better policy and public safety option.

Staff Comments. The LAO has been on record for several years recommending realignment of all or part of parole to probation, both as a budget savings option, as well as to achieve better policy outcomes. The LAO has written that parole realignment (specifically, of lower-level offenders) could result in better public safety outcomes because the realignment of resources and responsibilities provides an incentive for local governments to have a greater stake in the outcomes of these offenders, develop innovative approaches to supervision, and reduce crime. Moreover, the LAO has argued that realignment would enable local governments to better meet their public safety priorities, as well as reduce the current duplication of

effort that occurs by the state and counties supervising similar offenders in the community.

While parole realignment has the potential to enhance public safety outcomes, there are important implementation issues that would need to be addressed to implement realignment effectively. There would need to be greater coordination between the state and counties as inmates are released from state prison to local supervision. There would also need to be decisions made about the most appropriate process to hear parole revocation cases. Currently, parole revocation hearings are conducted by the state Board of Parole Hearings, but probation revocation proceedings are held in the local trial courts. There would also need to be consideration of how to incentivize or otherwise encourage the use of evidence-based supervision practices statewide to better ensure good public safety outcomes.

Key Questions for Legislative Consideration. In reviewing this proposal, the committee may wish to consider the following questions.

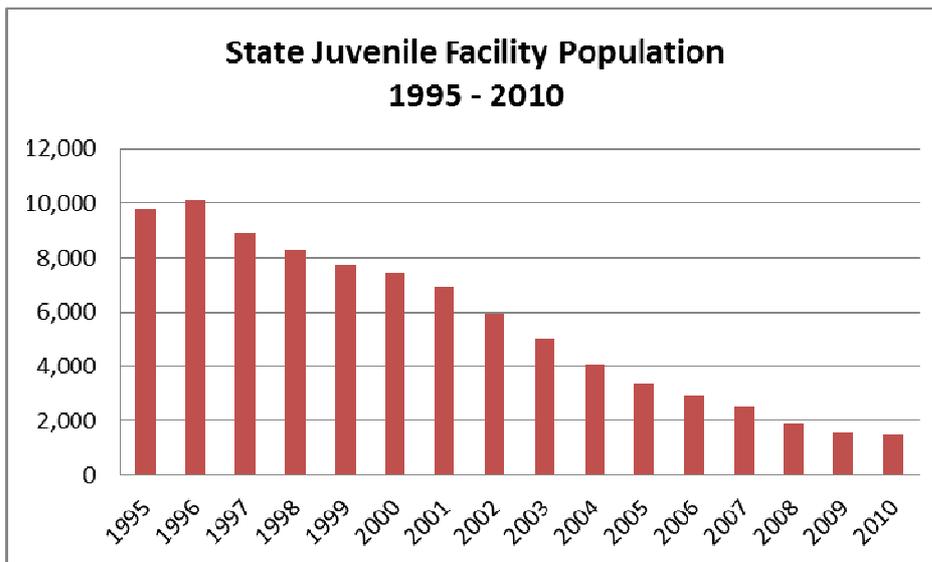
- What steps can the state and local partners take to ensure successful transition of parolees to local probation?
- What should be done to ensure the use of evidence-based supervision strategies by counties in supervising these parolees?
- What role, if any, should the state play in providing long-term oversight and/or providing locals with assistance in implementing best practices?
- What is the most appropriate and efficient way to manage revocations by parolees supervised by locals?

Staff Recommendations. Hold open pending further review.

Issue 5 – Division of Juvenile Justice

Background. The Division of Juvenile Justice (DJJ) within CDCR (formerly the California Youth Authority) houses about 1,300 wards in four facilities (and one fire camp) statewide. Most of these wards were adjudicated in juvenile court for felonies, while about 230 were prosecuted as adults and are housed in DJJ facilities until old enough to transfer to adult prison. Under California law, wards can be housed in DJJ facilities until the age of 25.

The DJJ population has declined significantly over the past 15 years, as shown in the figure below. Factors that have contributed to the reduction in DJJ's population have included greater investment in front-end prevention and intervention programs, declining juvenile crime rates, and legal changes designed to reduce the number of lower-level wards sent to DJJ. Consequently, local governments – typically, probation departments – manage 99 percent of all offenders on juvenile justice caseloads.



The DJJ spent about \$248 million on facility operations in 2009-10. It currently costs an average of about \$192,000 to house a ward in DJJ for one year. On average, wards spend 3 years in DJJ (not including recommitment time), costing the state a total of more than a half million dollars for each DJJ commitment. The average cost per ward has increased in recent years due largely to the increased staffing ratios and requirements of the *Farrell* lawsuit (described below). More recently, these costs have been somewhat offset by the department's efforts to consolidate and close facilities.

The DJJ facilities are currently operating under a state court consent decree in the *Farrell v Brown* case. *Farrell* requires the state to bring its general operations, as well as operation of its mental health, education, and other programs up to standards

established by court-appointed experts. The consent decree was signed in 2004. It is likely that it will take at least a few more years for the department to reach compliance with all *Farrell* requirements and for the lawsuit to terminate.

Three-quarters of wards released from DJJ facilities are rearrested within two years.

Proposal. The administration proposes to realign the remaining 1,300 wards to county responsibility. This would be done on a prospective basis. So, no wards currently in DJJ facilities would be released to county supervision. Under the Governor's proposal, counties would receive about \$78 million in 2011-12, growing to \$242 million at full implementation. The state would receive \$180 million in 2011-12 as reimbursement for the costs to continue to house existing DJJ wards.

The administration also indicates it would consider the option of allowing counties to contract back with the state in the future to house wards. Counties might choose this option if they lack sufficient local capacity or do not feel as though they have the local resources to manage particularly difficult cases, such as wards with severe mental health problems.

Staff Comments. The proposal to realign DJJ has merit and, ultimately, could result in better juvenile justice outcomes. Research suggests that housing offenders close to home can better position the ward for a successful transition back into the community after release. This is particularly true if that transition process incorporates the ward's family, as well as local community-based services that the ward may need to draw upon after release, such as community substance abuse and mental health treatment and employment training and assistance services.

As part of the 2010-11 Budget Act, the Legislature and Governor approved a proposal to realign DJJ parole operations to county probation departments. So, counties have begun to take responsibility for these offenders already, once they are released from DJJ. As recently as 2009-10, the LAO recommended realignment of DJJ to locals as a viable budget solution option. Specifically, the LAO found that realignment of juvenile offenders would create greater governmental accountability by making a single level of government responsible for all outcomes in the system. The LAO also argued that juvenile realignment would promote flexibility and innovation by allowing counties to use resources provided to meet the unique challenges and needs of their local offender populations.

While the proposal to realign of DJJ merits consideration, there are important implementation issues that would need to be considered and addressed. For example, those wards currently housed in DJJ represent some of the toughest juvenile cases, including violent offenders and those with significant mental health problems. About three-quarters of DJJ wards were adjudicated or prosecuted for assault, robbery, or murder, and nearly all wards have a significant mental health

and/or substance abuse problems. Ensuring that counties have the appropriate resources to effectively manage these offenders is critical. Moreover, if such resources were not available, there is a high likelihood that some of these wards would be prosecuted in adult court and sent to state prison as an unintended consequence of this proposal.

There is also the issue of local capacity, particularly given that under existing law, wards can be housed in DJJ until the age of 25. It is unlikely that counties will want to house wards that old with their existing, younger population. Therefore, counties will have to ensure that they have appropriate capacity for some of the realigned capacity that is generally separate from their existing juvenile populations.

Key Questions for Legislative Consideration. In reviewing this proposal, the committee may wish to consider the following questions.

- Is the funding level proposed sufficient for locals to be more effective than has historically been the case in DJJ?
- To what extent is additional juvenile capacity going to need to be created to ensure that counties have appropriate placement options for these juvenile offenders?
- Given appropriate resources, would counties have the ability to manage higher-acuity juvenile offenders, those with more severe mental health or substance abuse problems, for example?
- How can DJJ realignment be structured to promote the use of evidence-based best practices in the supervision and treatment of juvenile offenders?
- If DJJ realignment were to occur, what would be the appropriate role of the state, if any, in providing oversight, technical assistance, or coordination?
- Can realignment be structured in such a way as to mitigate the unintended consequence of increased convictions of juveniles in adult courts?

Staff Recommendations. Hold open pending further review.