

STATE/COUNTY CRIMINAL JUSTICE PARTNERSHIPS IN CALIFORNIA:
AN ABBREVIATED HISTORY

For a variety of reasons, the state of California has a somewhat tense relationship with its 58 counties. The California Legislative Analyst's Office (LAO) attributes this tension to a "poor 'sorting out' of many program duties."¹ The tension is particularly marked in the public safety arena, where well-intentioned policy-makers at all levels of government attempt to construct and administer sound policies and programs that will keep the public safe without breaking the bank.

What follows is a somewhat chronological list of California criminal justice programs and policies in which the state and its counties (and frequently its cities) have struggled to balance public safety needs with budgetary constraints, and to allocate administrative and fiscal burdens responsibly. This list is not intended to be exhaustive; it is intended only to highlight some of the areas in which the tension between the state and the counties – as well as the LAO and other interested parties – has been most evident. Most importantly, it is intended to inform the discussion regarding the current state of California's state and local corrections policies in the hope that California's policy-makers can work creatively to construct more effective policies in the future.

A. *The California Probation Subsidy and County Justice System Subvention Programs*

In 1903, the state of California enacted a probation system, delegating the administrative responsibilities to county government and directing county courts to appoint the state's first probation officers. *See* California Penal Code § 1203. Until 1945, the counties administered and funded their probation programs in isolation, independent of each other and of the California state government. In 1945, the state government began providing counties with a 50 percent match subsidy to maintain and operate components of their probation systems.² Even with these subsidies in place, however, there were no statewide standards governing probation programs; counties operated largely independently.

In 1965, the legislature enacted the California Probation Subsidy Act, a law "firmly based on the proposition that correctional rehabilitation cannot be effectively carried out in conditions

¹ Legislative Analyst's Office, *The 2003-04 Budget Bill: Perspectives and Issues* ("Typically, the state controls a program's rules, but counties administer the program, paying for it with a mixture of state and county funds. Frequently, state and county governments disagree over the efficacy and efficiency of state program requirements, the extent of county administrative discretion, and the allocation of program costs.") Available online at http://www.lao.ca.gov/analysis_2003/2003_pandi/pi_part_5b_realignment_anl03.html.

² Marcus Nieto, "The Changing Role of Probation in California's Criminal Justice System," p. 8. *California Research Bureau, California State Library: CRB-96-006* (May 1996). Available online at: <http://www.library.ca.gov/crb/96/06/96006.pdf>.

of captivity.”³ The Act provided counties up to \$4,000 for each adult or juvenile offender not committed to state prison.

Administrators of the probation subsidy program were both ambitious and optimistic, perhaps not unduly. Richard McGee, the Administrator of the then-existing California Youth and Adult Corrections Agency, announced at the 1966 Institute on Sentencing for the Eighth and Tenth Federal Judicial Circuits, that:

The probation subsidy program we established pays the cost the state would have incurred for commitments the counties keep on probation instead. Because of the differences in cost-effectiveness, the state payment is sufficient to provide excellent supervisory and ancillary programs for three or four times as many persons as were not committed. This way the program benefits both the state and the county. We have aimed at a goal of cutting commitments to state institutions by 25 percent, at a savings in a decade or so of over one hundred million dollars without compromise of public safety. In fact, the program should increase public protection through prevention of delinquency and reduction of repeated criminality.⁴

The probation subsidy program was ultimately responsible for the diversion of more than 45,000 adult and juvenile offenders from state institutions to local probation and rehabilitation-oriented programs.⁵ Between 1965 and 1978, when the program ended, California spent \$145 million in probation subsidies.⁶

There are differing views on why the Probation Subsidy Program came to an end. Some argue that determinate sentencing and tough on crime policies increased offender numbers to the point that the state could no longer afford to subsidize county probation services, and that certain county level services that were expected to comprise the subsidized probation programs never materialized.⁷ Others argue that because the state never, in the thirteen years that the program existed, increased the \$4000 per offender figure, the subsidy simply became less attractive to counties.⁸

In any case, in 1978 the state replaced the Probation Subsidy Program with the County Justice System Subvention Program, which provided counties with grants to cover a variety of local justice programs. By 1982, the County Justice System Subvention Program had served 35,200 adults and juveniles who were at risk of being committed to state facilities.⁹ However, the program later became a block grant with no strings attached, and had little impact on state commitments. By 1992, the state was providing \$34.2 million to counties for probation through

³ John P. Conrad, “Corrections and Simple Justice,” p. 211. *The Journal of Criminal Law and Criminology*. Vol. 64, No. 2 (June 1973), pp. 208-217.

⁴ Richard McGee, “Objectivity in Predicting Criminal Behavior,” p. 192. *Papers Delivered at the Institute on Sentencing*, 42 F.R.D. 1975 (June 1966).

⁵ Nieto, “The Changing Role of Probation in California’s Criminal Justice System,” p. 8.

⁶ The Little Hoover Commission, *The Juvenile Crime Challenge: Making Prevention a Priority*,” Report 127 (September 1994). The \$145 million cost savings covers the years 1966 through 1975. The Probation Subsidy Program was not dismantled until 1978.

⁷ Nieto, “The Changing Role of Probation in California’s Criminal Justice System,” p. 9.

⁸ The Little Hoover Commission, *The Juvenile Crime Challenge: Making Prevention a Priority*,” Report 127 (September 1994).

⁹ The Little Hoover Commission, *The Juvenile Crime Challenge: Making Prevention a Priority*,” Report 127 (September 1994).

the subvention program, representing only 7.5 percent of county probation expenditures statewide.¹⁰

The County Justice System Subvention Program still exists, *see* Cal. Welf. & Inst. Code § 1805 *et seq.*, but deals only with probation services for juveniles. The state of California does not currently fund probation services for adults. However, Governor Schwarzenegger's 2007-08 budget would provide \$50 million in local assistance grants to support adult supervision services for offenders between the ages of 18 and 25. Funding for this initiative is expected to grow to \$100 million in 2008-09.¹¹

B. *Booking Fees*

Before 1978, California's counties paid the costs of booking and processing arrestees booked into county jails out of general funds generated from property taxes. In 1978, Proposition 13 was enacted, limiting counties' ability to provide many kinds of services, including booking services. In 1990, the legislature enacted Senate Bill 2557, which authorized counties to impose a fee upon a city, special district, school district, community college district, college, or university for reimbursement of actual costs associated with the booking or other processing of persons arrested by an employee of that city, special district, school district, community college district, college, or university, when arrested persons were brought to the county jail for booking or detention.¹² A primary purpose of SB 2557 was to mitigate the effects of the \$708 million in budget cuts to county programs enacted the same year.¹³

To make up for the effects of this policy on cities' budgets, the state legislature enacted Assembly Bill 1662 in 1999. This bill established a continuous funding stream of \$38.2 million annually to reimburse cities and qualified special districts for the costs associated with paying county booking fees. The statute contained no provision, however, for the adjustment of this amount to reflect changes in booking fee rates or the numbers of people being booked into county jails. Therefore, the state paid \$38.2 million annually to cities and qualified special districts for the three consecutive years beginning with fiscal year 2000.

Cities, however, objected to this policy requiring them to recoup from the state monies that they had paid to counties in the form of booking fees. Because the state was facing budgetary constraints of its own, the Governor's 2004-05 budget proposed both the elimination of the \$38.2 appropriation to local detention facility revenue accounts and the abolition of county booking fee authority. What resulted was a compromise in the form of Senate Bill 1102. The new legislation preserved county authority to charge booking fees through the 2004-05 fiscal year but limited booking fee rates to those in place on January 1, 2004. It also, beginning July 1, 2005, eliminated reimbursements to cities and special districts of the costs incurred in paying

¹⁰ Nieto, "The Changing Role of Probation in California's Criminal Justice System," p. 9.

¹¹ *Building a Better California: 2007-08 California State Budget*. Available online at: <http://gov.ca.gov/issue/specifics/2007-budget-public-safety>.

¹² Cal. Gov. Code § 29550.

¹³ Legislative Analyst's Office, *Analysis of the 2004-05 Budget Bill*, p. 1 (February 2004).

county booking fees. Finally, beginning July 1, 2006, it limited county booking fees to one-half of the actual costs associated with booking and processing arrestees.

Booking fees have been a continual point of contention between cities (in particular California's Chiefs of Police) and counties since the legislature granted counties the authority to collect them in 1990. California's cities have taken the position that counties have historically provided booking services and that booking fees are merely a way for the state to shift its fiscal burdens to cities via the counties.¹⁴ The Chiefs' position has generally been that booking fees have resulted in the bleeding of local police resources.¹⁵ Counties have consistently maintained not only that booking fee collection is an important source of county revenue, but also that booking fees have resulted in the avoidance or reduction of unnecessary arrests, mitigated the pressure on local facilities operating under population caps, and fostered the development of local alternatives to deal with nonviolent offenders.¹⁶

The LAO has twice taken a position most consistent with that of the county association. In 2004, the LAO argued that:

Since creation of the booking fee, cities and other local agencies have taken steps to minimize their booking fee costs, including (1) creating programs such as "sobering centers" to treat people detained for public drunkenness and (2) expanding city jails. Because city jails typically house nonviolent detainees for short periods of time, they cost much less to operate than county jails. . . . By eliminating the fiscal incentive to operate these city jails and alternative programs, local agencies may discontinue them and book their arrestees into county jail. County detention costs would increase accordingly.¹⁷

The LAO recommended that the legislature maintain county booking fee collection authority on the ground that such authority gives local agencies incentives to use booking and detention services wisely and efficiently and that eliminating the incentive would result in increasing costs with no identifiable gain to public safety.¹⁸

By fiscal year 2006-07, the California Police Chiefs' Association and the California State Sheriffs' Association had reached a compromise, which eventually resulted in the enactment of

¹⁴ California City Finance, *Local Detention Facility Booking Fees*, p. 2 (Aug. 21, 2006). Available online at <http://www.californiacityfinance.com/BkgFees060821.pdf>.

¹⁵ *Legislative Objectives: California Police Chiefs Association*, p. 1 (March 17, 2006). Available online at http://www.californiapolicechiefs.org/nav_files/pdfs/legislative-objectives.pdf. In a January 2006 speech before the California Police Chiefs Association, Governor Schwarzenegger joked, "[A]nother thing that I know is very important to all of you is dealing with the booking fees. . . . That's all I've been hearing is booking fees, booking fees, booking fees for the last two years." *Governor Schwarzenegger Highlights Public Safety Budget and Strategic Growth Plan to Protect California's Communities*, Jan. 31, 2006. Available online at <http://gov.ca.gov/index.php?/speech/420/>.

¹⁶ California State Association of Counties, *Booking Fees: A Historical Perspective*, p. 4 (March 2005). Available online at http://www.csac.counties.org/images/public/Advocacy/aoj/booking%20fees_Mar05.pdf.

¹⁷ Legislative Analyst's Office, *Analysis of the 2004-05 Budget Bill: Local Government Financing (9210)*, p. 2 (February 2004). Available online at http://www.lao.ca.gov/analysis_2004/general_govt/gen_25_9210_anl04.htm.

¹⁸ *Id.* The LAO approximated in 2006 that booking fees state-wide represent less than one-half of 1 percent of total city law enforcement expenditures and that the magnitude of booking fees on any particular city's municipal budget is extremely low. Legislative Analyst's Office, *Analysis of the 2006-07 Budget Bill: Local Government Financing (9210)*, p. 2 (February 2006). Available online at http://www.lao.ca.gov/analysis_2006/general_govt/gen_21_9210_anl06.html.

Assembly Bill 1805. This legislation preserved existing county authority to charge booking fees through the 2006-07 fiscal year and appropriated \$35 million to reimburse cities for 2005-06 booking fees. However, effective July 1, 2007, the law does the following:

- provides for \$35 million, subject to state appropriation, to be paid directly to newly-established local detention facility revenue accounts;
- repeals county authority to charge booking fees in any year in which the state appropriates the entire \$35 million;
- preserves county authority to charge booking fees, at the rate established in June 2006, in any year in which the state fails to appropriate the entire \$35 million, in proportion to the level of under-appropriation; and
- provides county authority to charge jail access fees for low-level offense arrests (i.e., municipal code violations and misdemeanors other than DUI and domestic violence), where a jurisdiction's arrests for such violations exceeds its prior three-year average.

The agreement between the police chiefs and the sheriffs had called for a \$40 million appropriation. Notably, the Governor had originally called for a \$40 million appropriation in his January 2006 budget.

The 2006 legislation did not resolve all of the disagreements, however, and a key component of the legislation was a working group designed to resolve some of the outstanding issues related to booking fees. In signing the legislation, the Governor included a signing message directing the working group to discuss "the roles and responsibilities of local entities, appropriate overall funding totals, and multi-year contracting issues," to "consider and make recommendations regarding the detail, scope and timeline for a study of booking and arrest patterns by California law enforcement agencies"¹⁹ and to report back by December 15, 2006.

The working group was comprised of county, sheriff, city, and police chief representatives, and met several times throughout the fall of 2006. It successfully compiled an estimated allocation of the \$35 million appropriation into local detention facility revenue accounts, devised proposed procedures for charging booking fees in years in which the state appropriates less than the \$35 million currently prescribed by statute, and devised proposed procedures for counties to use in charging jail access. It has not, to date, provided formal recommendations to the Governor's office.

Governor Schwarzenegger's 2007-08 budget provides \$35 million to be paid directly to local detention facility revenue accounts.

¹⁹ See California Association of Counties, *Booking Fees: A Shift in Paradigm*, p. 2 (October 2006). Available online at http://www.csac.counties.org/images/public/Advocacy/aoj/BF%20fact%20sheet%20-%20Oct%2006_FINAL.pdf.

C. *Citizens Option for Public Safety (COPS)*²⁰

In 1996, the California legislature found that there was a compelling need for additional resources to be applied at the local level for the purpose of ensuring public safety. In response, it created the Citizen's Option for Public Safety (COPS) Program.²¹ The law appropriated \$100,000,000 to counties and cities²² to be allocated as follows: \$75 million for "front-line" law enforcement,²³ \$12.5 million for sheriffs and jail operations, and \$12.5 million for district attorneys.²⁴

The law established Supplemental Law Enforcement Services Funds (SLESF) in each county to receive COPS funds and required local agencies to use the funds primarily for frontline law enforcement, but also for criminal prosecutions and jail construction. The law also established Supplemental Law Enforcement Oversight Committees (SLEOCs) in each county, charged with summarizing and reporting to the State Controller the funding decisions made by their local agencies and reporting those. The law provided no penalties for failure to comply with these reporting requirements. Subsequently, Chapter 289, Statutes of 1997 (AB 1584, Prenter) required the State Controller to compile a summary report on the allocation and expenditure of the COPS funds. The statute contained a sunset provision, rendering the program inoperative on July 1, 2000.

Almost from the program's inception, the LAO has questioned its efficacy and efficiency. In its 1997-98 budget analysis, the LAO found that the program did not compare favorably with other public safety programs in that it: contained no ongoing mechanism for evaluating the effectiveness of its expenditures or for sharing information with local government; allocated funding to local governments on a per capita basis rather than on the program's merits; and was not oriented towards achieving any specific statewide objective.²⁵ The LAO recommended that if the purpose of COPS was to augment local public safety policies, the legislature should spend the \$100 million on an existing program with demonstrated effectiveness and that if the purpose was simply to provide fiscal relief to counties, the legislature should do so in a way that gave counties flexibility in how to use the money.²⁶ The LAO further recommended that receipt of COPS funding be conditioned on compliance with the law's reporting requirements.²⁷ It seemed to take the position that the COPS program was both too lenient in that it lacked any quality-control mechanisms and too strict in that it constrained counties' ability to spend the money effectively.

In his 2000-01 budget, as the program was about to sunset, the Governor proposed to increase the General Fund COPS allocation to \$121.3 million and to extend it for five years.

²⁰ This program should not be confused with the Community-Oriented Policing Services (COPS) Program, established in October 1994 by then Attorney General Janet Reno. The COPS Reauthorization Act of 2007 passed in the U.S. House of Representatives on May 15, 2007, and is awaiting action in the U.S. Senate.

²¹ AB 3229 (Chapter 134, Statutes 1996).

²² Funding allocations are based solely on county and city population.

²³ The statute did not define the term "front-line," other than to distinguish it from sheriffs offices.

²⁴ Legislative Analyst's Office, *1997-98 Budget Analysis: Perspectives and Issues*. (February 1997).

²⁵ *See id.*

²⁶ *See id.*

²⁷ *See id.*

Under the Governor's proposal, \$100 million would continue to be allocated, as it had been for the previous four years, and an additional \$21.3 million would be distributed to those local law enforcement agencies that would otherwise have received an allocation less than \$100,000. The LAO concluded that under this proposal, all police and sheriff's departments would have received a COPS disbursement of at least \$100,000, whereas funding for jails, local correctional departments, and district attorneys would not increase.²⁸

The LAO sharply criticized both the existing COPS program and the Governor's proposed funding increase in its 2000-01 Budget Analysis. The LAO criticized the existing COPS program for not targeting the monies toward those cities and counties whose receipt of law enforcement funds was likely to enhance public safety (i.e., urban areas with high crime rates); for lacking any accountability mechanisms; for lacking state oversight requirements; and for lacking any evaluation requirements.²⁹ It criticized the Governor's proposal on the grounds that the proposal would not necessarily result in the hiring of any additional officers, since the local law enforcement jurisdictions most likely to receive the additional funding would have been permitted to use the monies to purchase equipment or other services; that funding decisions were to be made without regard to a particular jurisdiction's size, crime problem, or fiscal condition³⁰; and that even for jurisdictions that did intend to use the monies to hire additional officers, the proposal failed to account for the hidden costs of hiring these officers, such as additional equipment needs and the costs of increased arrests.³¹ It recommended that the legislature reject the Governor's proposal and take the opportunity of the original program's sunset provision to implement significant improvements in the areas of targeting, accountability, and oversight.

Senate Bill 1936, introduced in 2000, was intended as a direct response to the LAO's 2000-01 budget analysis. SB 1936 would have extended the COPS program through July 1, 2005, declared the intent of the legislature to appropriate at least \$100 million annually through fiscal year 2004-05 to fund the COPS program, required local agencies to either spend COPS funds received in any given year by June 30 of the following fiscal year or remit the unspent monies to the state Controller, and required counties and cities to forfeit their COPS allocations for the subsequent fiscal year if they fail to submit required data on program expenditures. SB 1936 passed in the Senate but died in the Assembly. The final 2000 Budget Act appropriated the \$121.3 million contained in the Governor's budget and extended the COPS program to continue

²⁸ Legislative Analyst's Office, *2000-01 Budget Analysis: General Government*, p. F-182 (2000). Available online at: http://www.lao.ca.gov/analysis_2000/general_govt/gengov_anl00.pdf.

²⁹ *See id.* at F-184-185.

³⁰ Some of the funding in the Governor's proposal would have gone to the jurisdictions most able to fund their own law enforcement activities, such as Atherton, Beverly Hills, Carmel-by-the Sea, Mill Valley, and San Marino. *See id.* at F-183.

³¹ *See id.* at F-183-184.

through July 1, 2002.³² The 2001 budget appropriated \$116.3 million, a decrease of \$5 million from the amount allocated the previous year.³³

Facing an enormous budgetary shortfall, in 2003 the Governor proposed a major funding realignment. According to his proposal, the state would increase taxes by \$8.2 billion and would then shift both the funding and the corresponding administrative responsibilities to the counties. The administration's realignment proposal did not include a shift in public safety administration or funding; the LAO, nonetheless, recommended that the state expand its realignment proposal by eliminating the COPS program and shifting the funding that would have been appropriated for the COPS program to the counties for the development of new community-based criminal justice programs.³⁴ The legislature disregarded this recommendation. Instead, the legislature enacted, and the Governor signed, a budget bill that included \$100 million for the COPS program (\$16.3 million less than had been appropriated in 2002).

The LAO reiterated its criticism of the COPS program the following year. Noting that the program "lacks a specific measurable statewide objective," that the relatively small amount of funding for it raises questions "about the potential impact of the program on public safety," and that "a significant amount of COPS expenditures is not used for direct services," the LAO recommended eliminating the program entirely.³⁵ The state again disregarded this recommendation. The state appropriated \$100 million dollars for the COPS program in 2004, 2005, and 2006.

The Governor's original and revised 2007-08 budget proposals include a \$119 million appropriation to continue the COPS program.

D. The Substance Abuse and Crime Prevention Act of 2000 (Prop 36)

Proposition 36, or the "Substance Abuse and Crime Prevention Act of 2000,"³⁶ was an initiative that changed California state law to allow qualifying first- and second-time defendants of nonviolent, simple drug possession charges to receive probationary substance abuse treatment at licensed and/or certified drug treatment programs instead of incarceration. Proposition 36, sometimes referred to as the state's "treatment-instead-of-jail program," was passed by 61% of California voters on November 7, 2000, and went into effect on July 1, 2001. The proposition added sections 1210 and 3063.1 to the California Penal Code, and Division 10.8 (beginning with

³² In addition, the Schiff-Cardenas Crime Prevention Act, enacted the same year, allocated an additional \$121.3 million to implement a comprehensive multi-agency juvenile justice plan for each county. See Legislative Analyst's Office, *Analysis of the 2001-02 Budget Bill: Local Government Financing (9210)*. Available online at http://www.lao.ca.gov/analysis_2001/general_govt/gen_37_9210_Local_Govt_Financing_anl01.htm#_1_4. A completely analysis of the 2000 Act's provisions affecting the juvenile justice component of the COPS program is beyond the scope of this study.

³³ See Legislative Analyst's Office, *California Spending Plan 2001-02*, Ch. 3, Part 2 (Sept. 2001). Available online at http://www.lao.ca.gov/2001/spend_plan/0901_spend_plan_chap_3b.html.

³⁴ See Legislative Analyst's Office, *The 2003-04 Budget Bill: Perspectives and Issues*. Available online at http://www.lao.ca.gov/analysis_2003/2003_pandi/pi_part_5b_realignment_anl03.html.

³⁵ Legislative Analyst's Office, *Analysis of the 2004-05 Budget Bill* (February 2004). Available online at http://www.lao.ca.gov/analysis_2004/crim_justice/cj_04_cc_tanf_anl04.htm.

³⁶ Full text available online at http://www.adp.cahwnet.gov/SACPA/Proposition_36_text.shtml.

Section 11999.4) to the California Health and Safety Code. More than 35,000 Californians enter drug treatment annually through Proposition 36, and more than 12,000 have successfully completed substance treatment during each year of the program's existence. The proposition was allocated \$60 million in startup funds (FY 2000-01) and guaranteed \$120 million per year for five years (FY 2001-02 through FY 2005-06) from the state General Fund, with funding scheduled to expire on June 30, 2006.

Appropriations from the General Fund initially went to a newly created fund within the State Treasury, called the Substance Abuse Treatment Trust Fund (SATTF), and were allocated to counties for the local operation of programs associated with Proposition 36. Approximately \$116 million annually has gone to counties through this fund. Prop 36 funds repaid to the state are made available for redistribution among counties.³⁷ Prop 36 allows counties to carry over unspent allocations annually – only about \$7 million of the \$60 million in start-up funding was spent in FY 2000-01 – although the amount of carryover funds available to counties has been decreasing. County expenditures of Prop 36 funds are audited annually.³⁸

The legislature may appropriate additional funding to the SATTF beyond the funding it appropriates under its own terms, though this has not occurred. The legislature has, however, provided additional funding outside of the trust fund, earmarking approximately \$8.6 million per year in federal substance abuse treatment grant funds for drug testing of Proposition 36 participants and other treatment programs. The Drug Medi-Cal Program provides the budget for some Proposition 36 programs as well, though its contribution is relatively small.³⁹

On January 10, 2007, Governor Schwarzenegger released his budget proposal in which funding for Proposition 36 would be cut from \$145 million (FY 2006-07) to \$120 million (FY 2007-08), and half of those funds would be diverted to the Substance Abuse Offender Treatment Program (OTP), a program established in FY 2006-07 to aid and further the aims of Proposition 36 programs.⁴⁰

The California State Association of Counties (CSAC) has opposed Governor Schwarzenegger's budget proposal to reduce funding for Proposition 36 programs. "The budget proposed [would] reduce [SATTF] funding by \$60 million (from \$120 million in 2006-07 to \$60 million in 2007-08), and increase funding for Offender Treatment Program (OTP) by \$35 million (from \$25 million in 2006-07 to \$60 million in 2007-08), for a total of \$120 million overall, down from \$145 million in 2006-07."⁴¹ County advocates have argued that the proposed funding "does not adjust for inflation, for increased caseloads, or for increases in costs to provide services mandated by new state regulations."⁴² They contend that \$209.3 million is needed to adequately fund the ongoing operation of Proposition 36.

³⁷ *Id.*, p. 2.

³⁸ Legislative Analyst's Office, *The Future of Proposition 36 Funding*, p. 2 (November 2005). Available online at http://www.prop36.org/pdf/LAO_Prop36Funding0607.pdf.

³⁹ *Id.*

⁴⁰ See Health and Safety Code Division 10.10, Chapter 75, Statutes of 2006 (AB 1808).

⁴¹ California State Association of Counties, *Letter to the Honorable Elaine Alquist* (March 2007).

⁴² *Id.*

Counties also express concern about the consequences of transferring funds to the OTP. The OTP program requires counties to match state funding before receiving any state monies. It also contains a provision requiring counties to use a drug court model, which not all counties can accommodate. (“The OTP statute authorize[s] the Department of Alcohol and Drug Programs [ADP] to distribute appropriated state general funds to counties that demonstrate a commitment of county matching funds at a ratio of \$9 OTP for every \$1 county match. Counties [are] required to use county general funds from a source other than state provided funds.”⁴³) Consequently, counties do not yet view OTP as a completely inclusive or effective program.

The LAO takes the position that Proposition 36 investments result in savings in prison spending—roughly \$2 for every dollar invested—and that a reduction in Proposition 36 funding would likely result in increased prison costs proportional to the amount of the reduction.⁴⁴ Since the inception of Proposition 36 in 2000, the number of Californians incarcerated for drug possession has dropped by 32%. The LAO has estimated that the state’s \$120 million annual investment in Proposition 36 resulted in net savings of \$205 million in 2002-03 and \$297 million in 2004-05. Furthermore, the Justice Policy Institute has conducted a study showing that Proposition 36 may be successful in reducing imprisonment of drug offenders and diverting drug users to treatment centers.

In 2006, Senator Denise Ducheny (D-San Diego) introduced SB 1137, which sought to toughen Proposition 36 by allowing judges to sentence offenders who relapse into drug use to up to five days of “flash incarceration.” The bill passed the Senate and State Assembly on June 27, 2006. Opponents immediately filed suit, claiming that the bill violated the state constitution in that it was inconsistent with Prop 36’s terms. The plaintiffs in that suit moved for a preliminary injunction, which the court granted in September 2006.⁴⁵

A long-term study carried out by the University of California at Los Angeles shows that Proposition 36 saves the state \$2.50 for every \$1 spent on the program. For those who complete the drug treatment programs, every \$1 invested leads to \$4 in savings. UCLA researchers have found that 78% of offenders who completed treatment through Proposition 36 remained drug-free a year afterwards, and 59% had then been employed. In its first year, Proposition 36 saved the state government \$173.3 million. In its first five years, Proposition 36 has saved California taxpayers approximately \$1.3 billion. Roughly 93% of the savings from Proposition 36 go to the state, while counties receive the remaining 7%. The study found no indication that Proposition 36 has resulted in any increase or decrease in crime rates in California.

In their most recent report, released on April 13, 2007, UCLA researchers found that the program needs at least \$228.6—\$109 million more than the sum proposed by the Governor in his proposal—to provide adequate services, improve treatment results, and increase the investment to taxpayers and taxpayer savings.⁴⁶ The County Alcohol and Drug Program Administrators’

⁴³ “Fact Sheet: Offender Treatment Program,” California Department of Alcohol & Drug Programs (March 2007). Available online at <http://www.adp.ca.gov/FactSheets/OffenderTreatmentProgram.pdf>.

⁴⁴ *Id.*

⁴⁵ See *Gardner et al. v. Schwarzenegger et al.*, CA RG06-278911.

⁴⁶ Full text available at <http://www.adp.ca.gov/pdf/SACPAEvaluationReport.pdf>.

Association of California arrived at a similar conclusion, finding that Proposition 36 needs at least \$230 million to “adequately address the treatment needs [sic].”⁴⁷

A June 2004 study conducted by the Field Research Corporation showed that a larger proportion of Californians (73%) supported Prop 36 four years after its inception than did so when it was first enacted. Many drug court judges and police groups, however, have opposed Proposition 36. Nearly one third of offenders fail to complete their court-ordered treatment under Proposition 36, and police say they are spending more time arresting drug offenders. Furthermore, nearly one third of offenders receiving treatment under Proposition 36 are arrested for drug charges within a year of treatment. Many judges contend that the drug-court model is more successful and more appropriate than the options offered under Proposition 36.

The Governor's 2007-08 budget proposes to fund \$60 million into Prop 36 and \$60 million into the OTP.

E. Fees for placement of youth offenders in the California Youth Authority

Until 1941, delinquent and criminal youth in California were sent either to prison, one of several state reform schools, or county juvenile halls. The legislature enacted the Youth Corrections Authority Act in 1941. The Act mandated acceptance of all commitments under 23 years of age and appropriated \$100,000 to run the Authority for two years. Its first ward was committed in 1942. In 1943 the word “corrections” was dropped, resulting in the creation of the California Youth Authority, which became a state department in 1953. In 1945 the state legislature appropriated a subsidy to counties for the establishment of several juvenile homes, ranches, and camps for juvenile court wards, and directed the Youth Authority to administer the subsidy.⁴⁸

In 1961 the legislature substantially revised its juvenile court law,⁴⁹ placed the Youth Authority under the newly formed Youth and Adult Corrections Agency, and enacted a provision requiring counties to pay \$25 per month per youth commitment. The \$25 fee remained in place for thirty-five years.

In 1996, the legislature enacted Senate Bill 681, which established new fee schedules for youth committed to CYA. Under SB 681 counties are charged \$150 per month per commitment to account for thirty-five years worth of inflation. The legislation also created a sliding fee scale. Under the sliding fee system, wards sent to the Youth Authority are assigned a category number between one and seven, with one being the most serious offenders. The legislation required counties to pay 100 percent of the cost of wards in category seven, 75 percent of the costs for wards and category 6, 50 percent of the costs for wards in category 5, and \$150 per month per

⁴⁷ Margaret Dooley, “UCLA Finds Gov’s Prop. 36 Proposal \$109 Million Short,” Drug Policy Alliance (April 2007). Available online at http://www.californiaprogessreport.com/2007/04/ucla_finds_govs.html.

⁴⁸ California Department of Corrections and Rehabilitation, Department of Juvenile Justice, *Our History*. Available online at <http://www.cdcr.ca.gov/DivisionsBoards/DJJ/about/history.html>.

⁴⁹ For a detailed description of the changes brought pursuant this enactment, see Joel Goldfarb and Paul M. Little, “1961 California Juvenile Court Law: Effective Uniform Standards for Juvenile Court Procedure?” *California Law Review*, Vol. 51, No. 2 (May 1963).

ward for all other commitments.⁵⁰ The purpose of the sliding scale was to discourage counties from sending low-level offenders to the CYA, while encouraging the development of locally based placement alternatives.⁵¹

The same year, the legislature enacted Assembly Bill 2312. In that bill, the legislature noted that SB 681 would cost counties \$31,000 per year to refer moderate risk offenders to the Youth Authority, and explicitly recognized that SB 681 would have major financial and public safety consequences for the counties.⁵² The purpose of the bill was to mitigate the negative impacts of SB 681, while continuing to require counties to assume more financial responsibility for juvenile offenders, by requiring an appropriation of \$33 million in financial support for local juvenile camps and ranches, revising the payment schedule based on county population, and specifying that the payment requirements would not apply with respect to parolees.⁵³ Subsequent legislation (Chapter 632, Statutes of 1998) capped the sliding scale structure for fees in categories V through VI to the levels in effect on January 1, 1997.⁵⁴

The fees counties pay to CYA do not reflect – and, indeed, have never reflected – the actual costs incurred for treatment, training, and supervision of lower level wards.⁵⁵ Counties pay \$36,500 per year per ward committed for the lowest level offenses,⁵⁶ and less for wards committed for more serious or violent offenses.⁵⁷ In 2004, the actual per capita costs ranged between \$66,000 and \$80,000.⁵⁸ That year the California Performance Review’s Independent Review Panel recommended that the legislature adjust the sliding fee scale by 24%, increasing the amount counties pay for low level offenders to \$50,000.⁵⁹ To date, rates remain what they were in 2003, with adjustments made to allow for changes in the Consumer Price Index.

⁵⁰ Legislative Analyst’s Office, *Analysis of the 1996-97 Budget Bill :Department of Youth Authority (5460)*. Available online at http://www.lao.ca.gov/analysis_1996/a96d2.html#A17.

⁵¹ See California State Association of Counties, *Memorandum to Assemblymember George Nakano, Chair, Budget Subcommittee No. 4 on State Administration* (March 22, 2002). See also California Performance Review Corrections Independent Review Panel, *Reforming California’s Youth and Adult Correctional System*, p. 182 (June 30, 2004). Available online at <http://cpr.ca.gov/report/indrpt/corr/>.

⁵² See Senate Bill 2312 (Statutes of 1996), Assembly Committee Analysis, April 16, 1996. Available online at http://www.leginfo.ca.gov/pub/95-96/bill/asm/ab_2301-2350/ab_2312_cfa_960415_093623_asm_comm.html.

⁵³ See *id.*

⁵⁴ California State Association of Counties, *Memorandum to Assemblymember George Nakano, Chair, Budget Subcommittee No. 4 on State Administration* (March 22, 2002).

⁵⁵ California Performance Review Corrections Independent Review Panel, *Reforming California’s Youth and Adult Correctional System*, p. 182.

⁵⁶ This amount was set in 2003 and is adjusted annually to reflect increases in the Consumer Price Index. Welf. & Inst. Code § 912.1.

⁵⁷ Welf. & Inst. Code § 912.5.

⁵⁸ California Performance Review Corrections Independent Review Panel, *Reforming California’s Youth and Adult Correctional System*, p. 182 n. 38, 39,

⁵⁹ California Performance Review Corrections Independent Review Panel, *Reforming California’s Youth and Adult Correctional System*, p. 182.

F. *State Trial Court Funding*

In the mid 1990's, California's counties faced a fiscal and planning crisis in running their trial courts: under long-standing practice, the counties were responsible for two-thirds of the funding for their courts. Reliant on the vagaries of local finances, they lacked a stable predictable funding basis to deal with and anticipate litigation, and they often were forced to return to the Legislature for emergency funding merely to keep their courthouses open. The State responded with the Lockyer-Isenberg Trial Court Funding Act of 1997 (AB 233).

Lockyer-Isenberg restructured the funding of operations of California's trial courts, ending a bifurcated system of county and state funding and calling for the State to assume full responsibility for funding trial court operations, beginning with FY 1997-98. The law established the Trial Court Trust Fund as the main source of funding for trial court operations. In consolidating all court funding at the state level, Lockyer-Isenberg provided long-term fiscal relief to counties and a stable, consistent source of funding for trial courts.

The core component of Lockyer-Isenberg was to cap the financial responsibility of counties at the FY 1994-95 level and to require the state to fund all future growth in court operations costs. Under the new law, counties paid the total amount of funding they paid to support courts in FY 1994-95 (\$890 million statewide) and also remitted to the state the 1994-95 amount of their criminal fine revenue (then \$292 million) plus half of the growth in these revenues over the 1994-95 level.⁶⁰ This money became part of the Trial Court Trust Fund, to be administered by the state's Judicial Council.

The legislation further required the state Judicial Council to submit an annual trial court budget to the Governor for inclusion in the state budget that meets the needs of all trial courts "in a manner that promotes equal access to the courts statewide."⁶¹ The legislation also called for the creation of new judgeships and the increase of a number of civil court fees to generate greater annual revenue for trial court operations. The clear goal of the legislation was to remove disparities resulting from the varying ability of individual counties to address the operating needs of the courts and to provide basic and constitutionally mandated services.⁶²

Over half of the money that flows into the Trial Court Trust Fund comes directly from the annual appropriation of the State General Fund. Second, the counties' commitment to contribute the equivalent of their 1994-95 levels in the form of Maintenance of Effort (MOE) payments to the state, though very small counties are exempt from MOEs. In addition, all counties make Revenue MOE payments based on fine, fee and forfeiture collections in fiscal year 1994-1995. Third, civil filing fees collected by trial courts are remitted to the Fund.

The trial courts receive annual allocations from the Judicial Council based on appropriations in the state budget for statewide trial court operations. The trial court operates on the state fiscal year and according to the state budget cycle, with an annual adjustment to the trial

⁶⁰ Judicial Council of California, Administrative Office of the Courts, *Special Report: Trial Court Funding*, (September 1997). Available online at <http://www.courtinfo.ca.gov/reference/documents/tcfnews.pdf>.

⁶¹ *Id.*, p. 5.

⁶² *Id.*, p. 6.

court budget calculated based upon the year to-year change in the State Appropriations Limit; this adjustment is intended to provide adequate base funding for the courts and fiscal independence for the judicial branch in managing trial courts' budgets. As a matter of principle, Lockyer-Isenberg should be viewed as a tax and redistribution program—that is, the actual annual budget of a particular court is not tied to the amount the home county remits to the state in that year.

Although the trial courts' primary source of state funding is the Trial Court Trust Fund, they may also receive state funding for specific purposes from such other sources as the Judicial Administration Efficiency and Modernization Fund (a separate budget allocation aimed as an incentive for enhancing management and technological efficiency in court operations), the Trial Court Improvement Fund (drawn from a small portion of the Trial Court Trust Fund and allocated to special projects that benefit the statewide system or individual trial courts), and various grants received by and then transferred by the Judicial Council. The trial courts may also receive direct local revenues as well as revenues from counties depending on the terms of its Memorandum of Understanding with their home counties.

Lockyer-Isenberg was mainly aimed at requiring the state to fund court operations. The approach to funding the physical facilities of the court system involved more of shared responsibility. The 1997 law created the Task Force on Court Facilities to review and report on the status of court facilities, and to make recommendations for specific funding responsibilities regarding court facilities maintenance and construction. The Task Force

identified common problems of inadequate security, safety, and access for the disabled in the courts, and further found that a significant number of court buildings need repair, renovation, or maintenance. Additionally, the Task Force found that many counties were not able financially to provide for the needed maintenance or repair of existing structures. In order to achieve uniformity and full public access to the courts across the state, the Task Force recommended that the state assume full responsibility for all of the court facilities over a three-year period, with counties retaining responsibility for facility maintenance costs through Maintenance of Effort (MOE) obligations to the state and payment on existing court facility debt.⁶³

Lockyer-Isenberg also required counties to “continue funding court facilities and those court-related costs that are outside the definition of court operations as defined in statute and the California Rules of Court, including indigent defense, pretrial release, and probation costs.”⁶⁴

A few years later, the Trial Court Facilities Act of 2002 established the governance structure and procedures for the transfer of responsibility for trial court facilities from counties to the state and established the State Court Facilities Construction Fund. The implementation of the Trial Court Facilities Act was led by the Office of Court Construction and Management (OCCM), which was established in August 2003 as a division of the Administrative Office of the Courts (AOC), the staff agency to the Judicial Council of California. “OCCM’s work includes long-term facilities master planning for the trial courts; strategic planning for capital outlay and

⁶³ Senator Martha Escutia, SB 655, *California Court Facilities Construction and Renovation Bond Act of 2004*, Senate Judiciary Committee, p. 2 (April 2003). Available online at http://info.sen.ca.gov/pub/03-04/bill/sen/sb_0651-0700/sb_655_cfa_20030619_133523_sen_comm.html.

⁶⁴ Judicial Council of California, Administrative Office of the Courts, *Special Report: Trial Court Funding*, p. 5 (September 1997).

funding to support new courthouse design and construction; and facility and real estate management for California’s trial and appellate courts.”⁶⁵

The California State Association of Counties (CSAC) has supported trial court reform efforts that transfer responsibility to the state. According to CSAC, “[c]ontrolling both operations and facilities ensures that all costs are considered when decisions are made, and ensures economical, efficient, and effective court operations.”⁶⁶

As part of the overall goal to bring greater state-wide coherence to the funding and operations of the state trial courts, Locker-Isenberg also mandated the state Judicial Council to “adopt appropriate rules for budget submission, budget management, and reporting of revenues and expenditures by each court” and to “maintain appropriate regulations for recordkeeping and accounting by the courts, in order to determine all moneys collected by the courts, including filing fees, fines, forfeitures, and penalties, and all revenues and expenditures relating to court operations.” The Council therefore created the Trial Court Financial Policies and Procedures Manual to guide the local courts in complying with statutory requirements and administrative policies and procedures for trial court fiscal management. The manual does not prescribe highly detailed procedures, but rather defines the guidelines and boundaries within which the courts will conduct their fiscal operations. The manual covers such topics as accounting practices, procurement, contracts, accounts payable, and record retention.

G. The Public Safety and Offender Rehabilitation Services Act of 2007 (AB 900)

The Public Safety and Offender Rehabilitation Services Act (AB 900), signed on May 3, 2007, has been the State’s most concrete and comprehensive response to its current prison overcrowding crisis. A major motivation for the law was the prospect of further federal court intervention in the state correctional system and even a federal judicial cap on the prison population and consequent injunctions to release prisoners.

The overall goal of the AB 900 is to expand prison beds by 53,000 and to expand and enrich rehabilitation programs for prisoners on the verge of reentry.

Its key components include:

- An expenditure of \$7.7 billion – mostly in new state bonds, with a small portion from general funds.
- Construction of 16,000 new so-called “in-fill” beds in current prisons, to reverse the trend of placing prisoners in classrooms, program rooms, hallways and other public areas not suitable for inmate beds.

⁶⁵ The Office of Court Construction and Management, California Courts. Available online at <http://www.courtinfo.ca.gov/programs/occm/>.

⁶⁶ California State Association of Counties, *A Background and Summary of SB 1732: Historic Legislation on Court Facilities*, p. 2 (November 2002). Available online at http://www.csac.counties.org/legislation/trial_court_funding/trial_court_facility_report.pdf.

- Dedication of at least 6,000 beds specifically for prisoners requiring medical or psychiatric treatment (thereby seeking to comply with the current federal injunction that has placed the prison system's health care structure under receivership).
- Creation of 16,000 beds in new Secure Reentry Facilities. These are state, not county facilities, but they will be geographically distributed around the state to enable soon-to-be-paroled inmates to be closer to their ultimate release destinations, and to have access to rehabilitation programs directly addressing imminent reentry.
- Creation of 13,000 beds in county jails to accept prisoners from over-crowded state prisons. Counties may compete for these building funds by demonstrating that new jail space will be located in close proximity to reentry and rehabilitation services.
- Removal statutory obstacles to the Governor's power to effect involuntary transfers of inmates to out-of-state prisons.
- A general mandate to enhance rehabilitation programs, especially including substance abuse treatment programs, throughout the state system, including development of a comprehensive Inmate Treatment and Prison-to-Employment Plan, to be implemented and monitored by a newly-established California Rehabilitation Oversight Board in the Office of the Inspector General.
- A mandate to CDCR to develop, within one year, a plan to address administrative deficiencies within the Department, including directives to fill vacancies in key management positions, enhance internal management systems, and improve communications with state parole officers as well as with local licensing and educational agencies that can assist in prisoner reentry.

California's lawmakers are currently developing strategies for implementing these provisions.