



CHIEF PROBATION OFFICERS
OF CALIFORNIA

Understanding AB 109:
**A Comprehensive Review of
Public Safety Realignment**

DISCLAIMER

This resource was prepared by the Chief Probation Officers of California (CPOC) to support understanding of California’s Public Safety Realignment and Assembly Bill 109. It is intended as an informational reference for policymakers, justice system stakeholders, and counties.

This document does not constitute legal advice and should not be interpreted as an official policy position on any specific legislation. Readers are encouraged to consult county counsel or appropriate legal resources for guidance on implementation or compliance questions.

CPOC makes every effort to ensure the accuracy of the information provided, but does not guarantee its completeness or applicability to all jurisdictions. The views expressed herein may not reflect those of every county or individual probation department.



Table of Contents

Acknowledgments from Diane Cummins	
Former Special Advisor to Governor Jerry Brown on State and Local Realignment	5
Introduction from Chief Esa Ehmen-Krause	
2026 President, Chief Probation Officers of California	6
Section 1: Realignment – What Is It?	7
How the Concept of Realignment Came About.	7
The Components of Realignment	8
Section 2: Prison Population and Lawsuits Lead to AB 109.	9
The Department of Corrections – Prison Population	9
The Little Hoover Commission Report	10
Lawsuits Filed Against the Department of Corrections	10
A State of Emergency Declared	10
Prison Overcrowding	11
Federal Three-Judge Panel	11
Other Potential Strategies to Reduce Population	11
The Larger Fiscal Context and An Upcoming Election.	12
Section 3: A New Governor with A Plan for The Budget and Prison Overcrowding:	
2011 Public Safety Realignment.	13
The January Budget Proposal	13
January Realignment Proposal	14
Some Categories Were a Replacement of General Fund	15
Community Corrections Proposed Changes	15
March Revisions and A Final Budget in June	16
The March Vote	17
The Final Budget	17
Final Realignment Budget	18
Preparation for January 2012	19

Section 4: January 2012 Governor’s Budget and the Final Action	20
Funding Processes	20
Funding Superstructure	21
Support Services Account	21
Law Enforcement Services Account	22
Legislative Change	23
Growth Funding	23
Implementation	24
Section 5:	
AB 109: The Intent, The Estimates, The Allocation and Implementation at the Local Level	25
The Intent	25
Development of the Estimate.	26
The County-By-County Allocation and Establishment of a County’s Base.	28
AB 109 Allocation.	28
The Intent Behind the Allocations	29
What Was Written About Use of the Community Corrections Subaccount	30
Implementation At the Local Level.	31
Uses of The Community Corrections Subaccount	32
Reporting the CCP Plans	33
Section 6: Proposition 30 – The Constitutional Amendment.	34
Components of the Constitutional Amendment	34
Examples of where the state has funded a “Proposition 30 cost increase”	36
Section 7: The Enhancing Law Enforcement Activities Subaccount	37
Section 8: Tools and Mitigation Provided to Enhance Implementation of AB.	38
Managing the Realigned Population in Jails	38
Other Mitigations	39
Local Jail Construction	39
Understanding AB 109:	
A Comprehensive View of Public Safety Realignment Summary Briefs.	40
The Rationale Behind AB 109.	42
How 2011 Public Safety Realignment Is Funded	44
2011 Public Safety Realignment and Supplantation	47
Health and Human Services Within 2011 Public Safety Realignment	48
AB 109: Frequently Asked Questions.	50

Acknowledgments



I've always believed it is important to understand the history and context of major public policy changes. This understanding gives practitioners the why and the intent of the change which helps them maximize its positive impact.

I'd like to thank CPOC for asking me to put together this history - the what, the why and the intent - of AB 109 which was the major policy change embodied in 2011 Public Safety Realignment. In any Realignment class we are often asked by local government practitioners, "why did the State do this to us?" I hope after reading this you will understand we didn't do it to you but *with* you. And we did it together because the circumstances and the alternative solution compelled a better solution.

Fifteen years after the enactment and implementation of AB 109, there are many new practitioners involved in the ongoing activities associated with this policy change. This documentation is especially for you, with the hope that understanding the why will help you in your day-to-day work that is so important for the well-being and safety of our communities.

A special thanks to CPOC's Executive Director, Karen Pank, for her encouragement and review of the document. She lived this change with us in 2011, advocated, and continues to advocate for Probation's important role in the system.

And, of course, a thank you to Governor Brown for asking me to join his team to create and help implement 2011 Public Safety Realignment at a critical juncture in the State's circumstances.

Any mistakes in the documentation are mine and mine alone.

We would like this document to be as useful and helpful as possible. If you have other areas of Realignment that might be of interest and assistance in your work, please let Karen Pank know so we can evaluate the feasibility of future additions.



Diane Cummins

*Former Special Advisor to Governor Jerry Brown
on State and Local Realignment*

President's Introduction



In 2011, California faced a public safety, legal, and fiscal reckoning, and responded not with reform, but with realignment. Public Safety Realignment (AB 109) was a governing decision made in the face of court mandates, prison overcrowding, and strained budgets. It was not about idealism; it was about solving a problem. And it demanded that State and local governments work together to deliver a new model of accountability.

The value of this report lies in that perspective. It explains not only what changed under AB 109, but why those choices were made, how trade-offs were navigated, and what lessons remain relevant today. As California continues to confront evolving public safety challenges, funding pressures, and policy debates, understanding the origins and intent of realignment is essential.

Realignment has lasted not because it was perfect policy, but because of how it was implemented. Governor Jerry Brown's leadership was instrumental. He brought counties, law enforcement, and fiscal leaders to the table not just to carry out a mandate, but to co-design it. That collaborative foundation - messy, urgent, and practical - shaped a structure that could function in the real world, not just on paper.

This report was commissioned by the Chief Probation Officers of California (CPOC) not to glorify the policy, but to preserve its history and share its implementation story. When we sought to document this pivotal moment, there was no question who to ask. Diane Cummins served at the center of California's fiscal policy decisions for decades, including as the Administration's lead fiscal architect for AB 109. Her account offers a rare behind-the-scenes look at how one of the most complex policy handoffs in state history was designed - under pressure, in partnership, and with permanence in mind.

Capturing the full story matters - for those implementing the system today, and for those who may one day be asked to do the same under different circumstances.



Chief Esa Ehmen-Krause
*President, Chief Probation Officers of California and
Chief Probation Officer of Contra Costa County Probation*

Realignment – What Is It?

To fully understand 2011 Public Safety Realignment and AB 109's place in it, it is important to first understand the concept of realignment.

In general, realignment means the idea of reorganizing or making new groupings of things that are connected in some way.

In California, realignment is associated with the extent to which each level of government performs which activities. It is a concept originally associated with programs in the areas of health and human services (HHS).

In most states, the State administers and operates HHS programs such as foster care, child welfare services, behavioral health services, and programs associated with indigent health care. California is somewhat unique among states in that counties, acting as agents of the State, have been the provider of many federal/state HHS services in the community and have historically had a share of cost in many of these programs. If the program is federally required, the federal government's share of cost is 50-percent. The State and counties then each could have a share of the remaining non-federal costs. State-only programs often have a State and county share of cost.

How the Concept of Realignment Came About

In the aftermath of the passage of Proposition 13 in 1978 and a significant loss of local property tax, the State "bailed out" all of local government for a majority of the losses with State General Fund money. Concerned that the General Fund could not sustain the bail out, a "deflator" was put into AB 8, the 1979 bill that allocated the property tax on a long-term basis. The deflator was a calculation to determine if the bail out should be reduced or reversed depending on the condition of the General Fund.

Due to revenue shortfalls, the deflator would have been activated in the early 1980's, it ultimately was not because the reductions to local government would have been too severe. Instead, the State captured a portion of the Vehicle License Fee (VLF) revenue which, at the time, was collected by the State and remitted half to cities and half to counties on a per capita basis.

When Governor Deukmejian was elected in 1982, he inherited a budget deficit. In response, he called a special session in January, 1983 to make mid-year cuts to help balance the budget. Among the cuts proposed was a mid-year reduction to VLF revenue. Cities and counties reacted with strong opposition and asked the Governor to address their ongoing fiscal issues post-Proposition 13.

As a result, the Governor created the New Partnership Task Force to examine the State/local (cities, counties and special districts) relationship given the loss of revenue and changes brought about by Proposition 13.

This Task Force issued a report in 1984, in which an HHS section contained a recommendation to help stabilize county revenue for the delivery of services. **The recommendation was "a realignment of programs" between the State and counties. The State would assume funding for entitlement programs with the counties responsible for discretionary programs, which are only available to the extent money is appropriated for that program or service. The recommendation indicated counties should receive a portion of the State's tax base to fund these discretionary programs.** Two significant discretionary programs at the time were indigent/public health and mental health.

The first major realignment was enacted in 1991 and was a critical component of solving the State's \$14.3 billion budget shortfall that year. Funding for the two programs referenced above, along with adjustments to certain cost-sharing ratios, would shift from the State General Fund to a new revenue structure consisting of a half-cent sales tax and a change to the VLF depreciation schedule. **If realignment had not been enacted, State funding for indigent/public health and mental health programs could have been eliminated.**



The Components of Realignment

The idea of realignment has come to be defined by three components:

- 1 Governance:** What level of government (State or county) provides which programs?
- 2 Services:** Realignment is intended to be a more efficient and effective way for the State and counties to provide services to the people who need them.
- 3 Money:** Money provided to counties to operate programs on behalf of the State, including growth in the revenue source and protection of the funding.

When Thinking About Realignment

It is important to remember:

- ◆ The circumstances at the time, what was the context?
- ◆ The alternative - if not realignment, what?
- ◆ Leadership, relationships, and trust are crucial to a good partnership and achieving a workable solution.
- ◆ Counties are key partners because the service delivery system has to work on the ground. Counties can meld funding streams together to best operate programs.
- ◆ Everything is a compromise among many players, including 58 counties.
- ◆ Any realignment is not perfect.
- ◆ Every policy has consequences and unintended consequences.
- ◆ The protections are important for fiscal predictability and stability.
- ◆ Program and fiscal staff should work together for the best results for the program clients.

AB 109 (plus AB 117 and AB x1 17 that made changes to it) are part of a much larger 2011 Public Safety Realignment. The rest of 2011 Realignment is about replacing State General Fund dollars for programs with a new source of revenue and providing counties with as much flexibility as possible in delivering those programs. The piece of 2011 Public Safety Realignment that is AB 109 is about both helping to solve a State problem of prison overcrowding and changing the local community corrections system to one that is more focused on the reduction of recidivism and alternatives to incarceration when appropriate, combined with more robust treatment and services.



Prison Population and Lawsuits Lead to AB 109

With any major public policy change, the question of why the change is necessary arises. Could there have been other policies enacted that could have helped mitigate the problem so such a massive change didn't have to happen? The answer is yes, of course, but they weren't enacted for a variety of reasons. Thus, at a critical juncture, some significant change is required. This is true of AB 109. Looking back at some of the history of the changes in the criminal justice system helps explain how the State reached the breaking point.

The Department of Corrections – Prison Population

Almost as soon as California became a State, its first prison was constructed San Quentin in 1852. Almost 100 years later, in 1950, the prison population was 11,598.

In 1976, California enacted a determinate sentencing model. It was reasoned that a known sentence was a fairer approach to sentencing particularly for persons who were poor or people of color. In 1980, the prison population was 27,916.

By the time George Deukmejian was elected Governor in 1982, the Legislature had become more “tough on crime,” passing several sentencing enhancement statutes which allowed a determinate sentence to become a much longer sentence. If sentences are longer and people continue to commit crimes, more prisons become necessary. Governor Deukmejian was a tough on crime governor and wanted to build more prisons because getting criminals off the street made communities safer. During his term, he oversaw the building of ten new prisons and four more were under construction as he left office. He thought it was no coincidence that the violent crime rate dropped during his governorship - more criminals were locked up.

In 1990, when Governor Pete Wilson was elected, the prison population was 99,145, more than triple the number it was a decade earlier.

In 1994, Governor Wilson signed the “three strikes and you're out” bill which imposed a 25-year to life prison sentence on people convicted of a third strike. The bill also doubled the sentences of felons who committed a second serious or violent felony and reduced the percentage of good time credits serious or violent prisoners could earn from 50 to 20 percent of their time. At the time, the Governor called it “the toughest and most sweeping crime bill in California history.” He backed the measure despite the estimate of the costs involved - the California Department of Corrections, now known as California Department of Corrections and Rehabilitation (CDCR), estimated it would require 20 new prisons to house the estimated 81,000 extra inmates who would be incarcerated.

While the original estimates did not materialize to the extent forecasted, the bill certainly increased the number of people in prison and led to an increase in the average length of stay for prisoners and an aging inmate population. Additionally, the Legislature continued to pass sentencing enhancements but stopped authorizing the construction of new prisons. Only one new prison was authorized in the 1990's - in 1999 Governor Gray Davis proposed and the Legislature agreed to its construction in recognition of the crowded conditions in CDCR.



The Little Hoover Commission Report

In 2007, the Little Hoover Commission issued a report, *Solving California's Corrections Crisis: Time Is Running Out*, and identified 80 substantive increases in sentencing that had been enacted since the advent of determinate sentencing in 1976.

The report also indicated that research showed 70-percent of all offenders released on parole returned to prison within 3 years, many on a technical violation. Parole violators returned to prison for short stays of six months or less. Reception centers processed between 250,000 to 300,000 individual parole violators annually. Violators often sat in reception centers with no programming and minimal services for most of their stay. This churning of short-term stays was at the highest cost center in the criminal justice system.

All of these actions created an overcrowded prison system where inmates were housed not just in cells but double-and triple-bunked in gyms and day rooms. There was virtually little time or space for rehabilitation.

Lawsuits Filed Against the Department of Corrections

There are two lawsuits that stand out as being interconnected with the dramatic increase in population in California's prisons.

The first is the *Coleman v. Wilson* case (later renamed *Coleman v. Brown*) filed in 1990. This was a federal class action civil rights lawsuit alleging unconstitutional mental health care provided by CDCR. The case was tried before a U.S. magistrate judge who, in 1994, found that the defendants' delivery of mental health services violated the Eighth Amendment to the U. S. Constitution.

In 1995, the court upheld the magistrate judge's factual findings regarding mental health care screening, insufficient number of staff, delays in care, and medication management among other deficiencies. The court issued a permanent injunction and ordered that a special master be appointed to monitor compliance with the injunctive relief ordered by the court.

The second case is *Plata v. Brown* (originally *Plata v. Davis*) filed in April 2001. Again, this was a federal class action civil rights lawsuit alleging that the CDCR medical services were inadequate and did not provide a constitutional level of care.

The case was refiled with an amended complaint in August of 2001. In the amended complaint, the plaintiffs claimed a number of deficiencies that had resulted in the deaths of 34 inmates. A stipulation for injunctive relief was negotiated and approved by the court in June 2002. The stipulation required the defendants to provide "only the minimum level of medical care" required under the Eighth Amendment of the Constitution. That level of care was undefined.

In 2005, the court conducted an evidentiary hearing which identified continuing inadequate medical services for inmates. By October of 2005, the court issued an order putting the CDCR's medical health delivery system in receivership which became effective in April 2006.

A State of Emergency Declared

Given these lawsuits, in October 2006, Governor Arnold Schwarzenegger declared a state of emergency on the basis that the level of overcrowding in the State prison system posed a substantial health and safety risk to both inmates and staff. The proclamation waived certain State laws which allowed the State to contract with and involuntarily transfer inmates to out-of-state correctional facilities. By 2011, about 10,000 inmates were still housed in these facilities. In addition, about 4,000 inmates were housed in contract facilities in California, plus there were around 4,000 inmates housed in fire camps throughout the State.

Also, Governor Schwarzenegger proposed and the Legislature passed AB 900 (Chapter 7, Statutes of 2007) which, among other provisions, authorized about \$6.5 billion for the construction of additional inmate housing in the form of infill projects and mental health facilities at two existing prisons as well as the California Health Care Facility in Stockton.

These two actions (transferring inmates out-of-state and infill projects) were put forth to help ease the overcrowding situation and provide space for better mental health and medical care. However, building facilities takes time even if rules are waived and there was concern about sending too many inmates out of state. These actions were clearly insufficient to solve the problem.



Prison Overcrowding

To help put the following chronology in perspective, it is important to note that, at its peak, the prison population in California's 33 State prisons reached a little more than 174,000 inmates. At one point, the population had even been projected to exceed 190,000. To meet the benchmark of 137.5 percent of design capacity, the population needed to be 110,000. It is also relevant to consider when the court ruled in January 2010, the State was ten months away from electing a new governor.

Federal Three-Judge Panel

In November 2006, the plaintiffs in the two lawsuits filed motions for the court to convene a three-judge panel pursuant to the U.S. Prison Litigation Reform Act. The argument presented was that the persistent overcrowding in the State's prison system was keeping CDCR from delivering a constitutional level of health and mental health care to inmates.

In August 2009, the three-judge panel declared that overcrowding in the State's prison system was the primary reason CDCR was unable to provide a constitutional level of health or mental health care.

The court ruled that in order to provide that level of care, CDCR would have to reduce overcrowding to no more than 137.5 percent of design capacity (110,000 inmates) within two years. Design capacity in general refers to the number of beds that CDCR would operate if only one inmate were housed in each cell and did not allow double bunking in dormitories. The court asked for updates every 6 months during the two-year period and also required the State to submit a plan identifying what measures it would use to reduce the population. The order did not apply to the out-of-state or in-state populations in contract facilities nor to inmates in State fire camps.

In response to the court's ruling, the Schwarzenegger administration submitted a plan outlining a variety of compliance measures such as expanded use of contract facilities, changes in parole practices, and the construction of new prisons. The plan was rejected by the court because it would only have reduced overcrowding to 151 percent of design capacity within two years. A revised plan was submitted to the court in November 2009 which incorporated sentencing changes into the prior plan to meet the court order.

In January 2010, the three-judge panel issued a final ruling that the plan met its requirements but left it up to the State to decide which measures to implement as long as the State would meet the 137.5 percent target within the two years. Implementation of the order was stayed while the State appealed the decision to the U.S. Supreme Court.

Other Potential Strategies to Reduce Population

In an effort to pursue other avenues to reduce the prison population, Governor Schwarzenegger held discussions with local law enforcement about how they might assist the State in reducing the overcrowding in State prisons. Various concepts were discussed such as paying a per diem to Sheriffs for keeping those inmates with three years or less on their sentences in jail even though they had been sentenced to State prison. Ultimately any solutions involving locals did not materialize as many Sheriffs had overcrowded jails and counties were experiencing their own significant budget problems.

The Legislature also passed two bills signed by the Governor that would somewhat ease the overcrowding. The first was Chapter 28, Statutes of 2009 (SBx3 18) which amended State law to:

- ◆ Make ineligible for revocation to prison violations by certain parolees with no serious, violent, or sex crimes (non-revocable parole);
- ◆ Increase the credits inmates could earn thereby reducing their stay in prison;
- ◆ Increase the dollar threshold for specified property crimes to be considered a felony so fewer offenders would be eligible for prison;
- ◆ And the establishment of parolee reentry courts to help prevent certain parolees from returning to prison.



The second bill was Chapter 608, Statutes of 2009 (SB 678) which established performance measures for county probation to reduce the number of adult felony offenders on probation sent to State prison. Probation departments would receive payments from the State, based on the formula, to help pay for the costs of keeping these probationers in the community. This legislation has been particularly successful with probation being able to keep more offenders from going to State prison with appropriate supervision and services. It was estimated that SB 678 reduced the prison population by 3,000 to 4,000 offenders in the first years.

The Larger Fiscal Context and An Upcoming Election

At this juncture, it is important to contextualize the fiscal circumstances facing the State beginning around 2007.

The State's revenue structure is very volatile. The State has a progressive income tax structure which means it is heavily dependent on the personal income tax. The personal income tax is significantly impacted by changes in the stock market (capital gains) which means it is impacted by not only the national and State economy but also the economy of the world. Minor changes can have a big impact on the State's revenues.

State budgets beginning in 2007 were extremely tight and significant cuts were required to balance the budget. There was a budget deficit of \$24.3 billion identified in the 2008-09 budget which was resolved with budget reductions. In 2009-10, there was an unprecedented \$60 billion deficit. Governor Schwarzenegger and the legislative leaders agreed to a two-year temporary tax increase as part of the budget solution. Along with the tax increase there were again major budget reductions, borrowing, and fund swaps. The 2010-11 budget represented the third year in a row when it would require extraordinary measures to balance the budget. A \$19.3 billion deficit was identified in that year's May Revision. In retrospect, this time period became known as the "great recession" - the worst recession since the Great Depression. This recession also significantly impacted county budgets both because their own budgets had shortfalls and because they received less money from the State for certain programs.

In November 2010, a new governor would be elected. Also on the ballot was a measure to make the vote for a State budget a majority vote instead on a two-thirds vote, which was increasingly difficult to achieve. That meant a majority vote budget and all associated statutory changes (also a majority vote) would take effect immediately. Any tax and many fee increases would still require a two-thirds vote. Also, the Legislature had to pass a budget by June 15; if not, they would lose their pay until a budget was passed.

By the end of the Schwarzenegger administration, it was clear that the temporary taxes and the other budget solutions were insufficient to balance the budget. The Governor's term ended with a \$26.6 billion budget deficit.

The incoming governor would face two major issues - a very large and seemingly intractable budget deficit and the need to reduce the prison population in a reasonable and safe manner. The court had taken the action to appoint a compliance officer who, if the State was unable to make the necessary population reductions, would begin to release people from State prison. Anyone released by the compliance officer would not be supervised by State parole.

It is difficult to convey the very real concerns facing the incoming governor: expiring tax increases, a daunting budget deficit, and the very real possibility the court would begin to release thousands of people from State prison. But the incoming governor had a plan.



A New Governor with A Plan for The Budget and Prison Overcrowding: 2011 Public Safety Realignment

Jerry Brown was elected Governor in November 2010. He had been the State's Attorney General during the previous four years and, as such, defended the State against the Coleman and Plata cases. He was knowledgeable about the State and local criminal justice system. He had ideas about how the system could change if counties were given the opportunity to offer adult lower-level offenders alternatives to incarceration along with mental health treatment and other needed services.

During his campaign for governor, he had the opportunity to talk to a variety of people, including many law enforcement officials, about how to change the system and how to reduce the prison population in a way that took public safety into account. He was also aware of the fiscal challenges the State still faced as a result of the great recession. As part of his campaign, he pledged that he would not raise taxes without asking the people for their opinion on such an important matter.

As he spoke with people around the State and read about effective budget solutions from past budgets, he formulated an approach to help solve both problems. The concept was straightforward – extend some of the expiring taxes to fund a second major realignment of programs between the State and counties. This time there would be a law enforcement component in addition to HHS programs. And there would be a constitutional amendment to extend some of the taxes for a limited time, guarantee ongoing funding for 2011 Realignment, and provide protections for both the State and the counties.

After winning the election and with a budget due in two months, negotiations began in earnest with law enforcement and HHS interests. These negotiations were not completed in time to have an agreed upon proposal in the January Budget. However, the January Budget did include a proposal from which the discussions and negotiations could continue.

The January Budget Proposal

Governor Brown believed strongly in the principle of subsidiarity. This is a principle that the central authority, in this case, the State, should have a subsidiary function and only perform tasks which cannot be performed at a more local level. That local government governs best primarily because it is closer to the people was a fundamental view of his. Subsidiarity was a hallmark of 2011 Public Safety Realignment.

The Governor's Budget Summary for 2011-12 stated:

"The Budget calls for a vast and historic realignment of government services in California, reversing a 30-year trend that has seen decision-making and budget authority move from local government to the State Capitol...The Governor's realignment proposal recognizes that many of the transfers to and from State and local governments over the past three decades have created confusion, duplication of services, and inefficiencies...The Governor's transformation proposal begins to untangle this knot and reduce duplication by providing services at one level of government, to the extent possible. The long-term goal is not to reduce services, but rather to provide services more efficiently and at less cost.

"In addition to providing services at the most appropriate level of government, it is critical that these services be funded with a dedicated statewide source of funding."



Public safety is the primary responsibility of local government. A section of Proposition 172 added Section 35 (a)(2) of Article XIII A to the Constitution. It states: "The protection of the public safety is the first responsibility of local government and local officials have an obligation to give priority to the provision of adequate public safety services." In the context of 2011 Realignment, public safety was determined to be a community effort which involved the safety of children in the county child welfare system, the safety of adults in the Adult Protective Services program, as well as supportive services such as mental health and substance abuse treatment, in addition to traditional law enforcement activities.

The goals of realignment were clearly stated:

- ◆ Protect essential public services
- ◆ Create a government structure that would meet public needs in an effective and efficient manner
- ◆ Focus government’s resources on core functions
- ◆ Assign program and fiscal responsibility to the level of government that can best provide the service
- ◆ Have interconnected services provided at a single level of government
- ◆ Provide dedicated revenue to fund the programs/services
- ◆ Provide as much flexibility as possible for operating the programs

In addition, this Realignment would help solve the State’s budget problem and help meet the requirement of the federal court to reduce prison overcrowding.

January Realignment Proposal

Figure REA-01 from the 2011-12 January Governor’s Budget Summary identifies the programs that were part of the January Budget realignment proposal.

2011 Public Safety Realignment covered a broad array of programs and assumed the extension of the 1 percent sales tax increase and a 0.5 percent increase in the VLF rate for a total realignment of \$5.9 billion in 2011-12. As can be seen in Figure REA - 01, these two revenue sources were estimated to grow which is one of the benefits of 2011 Realignment - a dedicated revenue source with constitutional protection and growth to cover increasing program costs.

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.



Some Categories Were a Replacement of General Fund

The HHS programs had been funded with a combination of federal, State, and county funds. 2011 Realignment meant counties would be responsible for 100 percent of the non-federal share of cost for the programs identified. This increase in the share of cost would be funded by the new revenues. For law enforcement, this was also true of court security which had been funded through the State trial court budget; for the VLF public safety programs which had been General Fund allocations (these programs will be identified and discussed in Section 7); and for the local juvenile justice programs that had been receiving allocations from the State General Fund.

Community Corrections Proposed Changes

Tackling prison overcrowding necessitated bolder action. The first three changes identified below would be instrumental in helping to reduce the overcrowding in prison in a way that took public safety into account. This was not the only reason for the proposed changes - the Governor believed a robust community public safety system with alternatives to incarceration and robust treatment with the aim of reducing recidivism was better for public safety.

Adult Lower-Level Offenders

The January Budget proposed shifting all non-serious, non-violent and non-sex offenders (without any previous convictions for such offenses) from state to county jurisdiction. This change was prospective so no offenders would be released early from prison. The rationale for this change in jurisdiction was that lower-level offenders represented about half of the prison population – a dramatic increase since the implementation of determinate sentencing. With more resources at the local level, these short-term, lower-level offenders could be better managed and become more successful through a combination of appropriate jail time, probation supervision, and necessary treatment and services.

Adult Parole

The January Budget proposed shifting **all** of parole from the State to county probation. This change was also prospective so, as people were released from State prison, they would become the responsibility of local probation. The rationale was these offenders typically live in the community from which they left, so county law enforcement was usually more knowledgeable about them. This suggested local supervision of parolees would be a better policy and public safety option. Additionally, given the HHS programs to be realigned, these lower-level offenders could be offered more services, such as mental health and substance abuse, thereby increasing the opportunity for success in rehabilitation.

Parole Revocations

The January Budget proposed transferring the responsibility for **all** parole revocations from the State Board of Parole Hearings to the trial courts. Time served for a revocation would be in the county jail versus State prison. With a 70 percent recidivism rate and an already overcrowded prison system, parolees sent back to prison generally sat in a reception center with little or no programming and at a very high cost. It was reasoned that being in the community, whether in jail if necessary, or under supervision, was a better option. Alternative sanctions could be used that would allow violators to keep family and work ties as well as receive necessary services.

Division of Juvenile Justice (DJJ)

The January Budget proposed closing intake into DJJ and transferring the responsibility for all juvenile offenders to the county. The rationale was that the vast majority of youthful offenders were already housed and served at the local level with the offenders in DJJ representing less than 1 percent of the 195,000 youth arrests at the time.

As shown in Figure REA - 1, funding for these programs also assumed an amount for reimbursing the State for its costs in the first year. This was necessary because these changes would be implemented on a prospective basis and the State would continue to incur costs in the first year.



The Constitutional Amendment

There were no specifics about the proposed constitutional amendment outlined in the January Budget. The concepts of a 5-year tax extension with guaranteed ongoing funding were mentioned, as was the idea that there would be protections for both the State and counties. However, at the time of the budget release, negotiations were continuing about details of the amendment.

Timing of the constitutional amendment was critical. It was assumed the proposed amendment would be on the June ballot. That timing necessitated a March vote by the Legislature. Putting a constitutional amendment on the ballot required a two-thirds vote. Having the constitutional amendment and a guaranteed revenue stream were crucial for locals' support for 2011 Realignment.

Negotiations on all issues continued and by March were completed and agreement, albeit somewhat reluctantly, had been reached between the Governor's administration, counties, local law enforcement, and advocates. This included the constitutional amendment. The thought of thousands of people being released from State prison by the court **with no supervision** was considered far worse.

However, March didn't turn out the way the Governor thought it would.

March Revisions and a Final Budget in June

Revisions for a March Vote

As indicated previously, timing of a vote for the constitutional amendment was critical, necessitating a March vote. The Governor had also proposed a series of budget issues to be taken up in an effort to begin balancing the budget earlier than the June budget. One of the proposals to be taken up was the transfer of jurisdiction changes that would become AB 109. (See Section 5 for a complete description of AB 109)

On February 25, 2012, the Department of Finance sent a letter to the Budget Chairs outlining changes to the Governor's realignment proposal. The letter stated in part: "Since January, the Administration has been engaged in a series of discussions with interested parties regarding the programs that would be moved closer to the people. These discussions have primarily been with county officials because they are directly affected and will assume direct responsibility for these realigned programs."

There were several changes to the HHS portion of realignment mostly adjusting fiscal estimates or when a program would be realigned. The updated proposal would also allow counties to contract with the State for housing their youth offenders who would otherwise have come to DJJ, as well as scale back the realignment of fire services.

However, the most significant changes were proposed for the community corrections policies that would become AB 109.

Based on discussions with local law enforcement, including Sheriffs, probation, police chiefs, district attorneys and public defenders, and counties, the following major changes were made to the "AB 109" proposal:

Local Jurisdiction of Adult Lower-Level Offenders

To address concerns raised by various law enforcement groups, the updated proposal excluded a list of 40 crimes from those that would be realigned. Also based on concerns expressed by counties and Sheriffs, the proposed funding model was changed to provide more resources for offenders who might be sentenced to local jail for more than three years, and allow local jurisdictions to contract with the State for the full cost of housing any such offenders in a State facility.

Realign Adult Parole

The parole proposal was updated to only realign parolees convicted of a non-serious or non-violent crime, regardless of prior convictions. Parolees who were Lifers, 3rd strikers, High Risk Sex Offenders, or had a current conviction for a serious or violent crime would remain on State parole. A person coming out of prison going to the local level would go onto Post Release Community Supervision (PRCS). Section 3450 (a) of the Penal Code titles this change as The Post Release Community Supervision Act of 2011.



The March Vote

The day of the vote, it was intended that the budget reduction items, the constitutional amendment, and AB 109 would be considered. The budget amendments and AB 109 required a majority vote; the constitutional amendment a two-thirds vote. By then the Governor realized there were insufficient votes to pass the constitutional amendment so it was not brought up for a vote. However, the budget amendments and AB 109, which was considered a trailer bill to the budget, did pass.

The reaction of counties and local law enforcement was quick and negative. The concern was that AB 109 would go into effect immediately but there was no constitutional amendment that contained the ongoing funding for AB 109 or the protections that had been negotiated. In fact, there was no funding at all available for implementation, though it did require a grant program for implementation.

Governor Brown took these concerns seriously. He ultimately signed AB 109 with a powerful signing message.

A portion of the signing measure read:

“By its terms, Assembly Bill 109 will not go into effect until the creation of a community corrections grant program and an appropriation of funding.

“I will not sign any legislation that would seek to implement this measure without the necessary funding. In this regard, I intend to work closely with, and consult, police chiefs, Sheriffs, chief probation officers, district attorneys and representatives of the counties and courts to ensure that any funding bill which makes Assembly Bill 109 operative is sufficient to protect public safety.

“Regrettably, the measure that would provide stable and constitutionally protected funding for public safety has not yet passed the Legislature. In the coming weeks, and for as long as it takes, I will vigorously pursue my plan to balance the State’s budget and prevent reductions to public safety through a constitutional guarantee. I will also continue to partner with counties and law enforcement on this important effort.”

The Final Budget

U.S. Supreme Court Upholds 3-Judge Panel Ruling

Soon after the May Revision was released, The U.S. Supreme Court upheld the three-judge panel ruling, declaring that “without a reduction in overcrowding, there will be no efficacious remedy for the unconstitutional care of the sick and mentally ill” inmates in California’s prisons. The high court did say the State could request the three-judge panel to modify certain aspects of the ruling such as an extension to the timeline for meeting the order. The passage and implementation of 2011 Realignment became even more urgent.

May Revisions

The May Revision made some changes to the realignment proposal. Estimates were updated, the fire services portion was dropped entirely as was the DJJ proposal. Mental health services for youth in schools was transferred to schools rather than counties. However, the basic outline remained the same as did the constitutional amendment. (See Section 6 for a complete description of the constitutional measure)

It was assumed by June the Governor would be able to get enough votes for the constitutional amendment to be placed on the November ballot. That meant the realignment proposal would have to be fully outlined with a structure and funding proposal in the January 2012 Governor’s Budget for implementation in July 2012. However, June came and there were still insufficient votes for the constitutional amendment. And, in fact, June came and there were many of the Governor’s proposed reductions and changes that his fellow Democrats did not agree with.



A Budget Vetoed

With a June 15th deadline in front of them and the possibility of no pay, the Senate and the Assembly passed a legislative budget that did not contain realignment, the elimination of redevelopment agencies, or many of the other cost saving measures the Governor had proposed.

The Governor's reaction was swift and decisive - he vetoed the budget bill; the first time any Governor had done that. He was essentially saying that balancing the budget was a top priority as was enacting 2011 Public Safety Realignment, which was estimated to reduce the prison population by 20,000 to 25,000 inmates. Otherwise, those inmates could be released by the court.

The Governor's veto shocked the Legislature and it was a tense situation. However, this was the first time the budget could be passed by a majority vote. The Governor was a Democrat and Democrats held a majority in both the Assembly and Senate; it was incumbent on them to reach agreement.

The Administration worked on various ways some of the major proposals could be implemented. The striking thing about realignment was that a pathway had been articulated in the 1984 Deukmejian report - transfer a portion of the State tax base to the counties to fund realignment. And when budget negotiations resumed, that is what the Governor proposed.

Final Realignment Budget

The newly negotiated budget included the May Revision realignment proposal in total with the following funding sources and other agreements:

- ◆ A reduction in the State General Fund sales tax of 1.0625 cents
- ◆ An increase of a State special fund sales tax of 1.0625 cents to fund the non-VLF programs in realignment (\$5.1 billion)
- ◆ VLF of \$462.1 million to fund various law enforcement programs that had been receiving an allocation of State General Fund
- ◆ An agreement to delay the implementation of AB 109 until October 1, 2011 to allow counties time to prepare for the change
- ◆ An agreement to do a one-year statute that would provide the allocation method for programs in realignment
- ◆ A commitment from the Governor to collect signatures and campaign for the agreed upon constitutional amendment
- ◆ The January 2012 Governor's Budget would delineate the funding structure, updated revenues and expenditures, growth allocations, and any remaining policy bills necessary to implement realignment

		2011 Realignment Funding (Dollars in Millions)			
		<u>2011-12</u>	<u>2012-13</u>	<u>2013-14</u>	<u>2014-15</u>
2011 Final Budget Act Realignment	Program				
	Court Security	\$496.4	\$496.4	\$496.4	\$496.4
	Local Public Safety Programs	489.9	489.9	489.9	489.9
	Local Jurisdiction for Lower-level Offenders and Parole Violators				
	Local Costs	239.9	581.1	759.0	762.2
	Reimbursement of State Costs	957.0	-	-	-
	Realign Adult Parole				
	Local Costs	127.1	276.4	257.0	187.7
	Reimbursement of State Costs	262.6	-	-	-
	Mental Health Services				
	Early and Periodic Screening Diagnosis and Treatment	-	544.0	544.0	544.0
	Mental Health Managed Care	-	188.8	188.8	188.8
	Existing Community Mental Health Programs	1,104.8	1,164.4	1,164.4	1,164.4
	Substance Abuse Treatment	179.7	179.7	179.7	179.7
	Foster Care and Child Welfare Services	1,562.1	1,562.1	1,562.1	1,562.1
	Adult Protective Services	54.6	54.6	54.6	54.6
	Existing Juvenile Justice Realignment	95.0	98.8	100.4	101.3
	Program Cost Growth	-	180.1	443.6	988.8
	Total	<u>\$5,569.1</u>	<u>\$5,816.3</u>	<u>\$6,239.9</u>	<u>\$6,719.9</u>
	Vehicle License Fee Funds	462.1	496.3	491.9	491.9
1.0625% Sales Tax	5,107.0	5,320.0	5,748.0	6,228.0	
Total Revenues	<u>\$5,569.1</u>	<u>\$5,816.3</u>	<u>\$6,239.9</u>	<u>\$6,719.9</u>	

The figure above shows the final 2011 Budget Act estimates for 2011 Realignment.



Year One Funding Structure

The one-year funding structure was contained in Chapter 40, Statutes of 2011 (AB 118). AB 118 took each of the programs or categories of activities that were realigned and made it an account, and appropriated an amount for the year. For AB 109, the estimate was the one developed by the Department of Finance. The bill authorized payment to the State where necessary since AB 109 would not take effect until October 1 and the changes in AB 109 were all prospective.

As can be seen in the above chart, funding for Mental Health Managed Care and Early Periodic Screening Diagnosis and Treatment was not added to realignment until 2012-13. This was because the State borrowed Proposition 63 funds to cover those costs in 2011-12 to save General Fund dollars.

Preparation for January 2012

Work began in earnest on those things necessary for the January 2012 Governor's Budget – a superstructure for accounts and subaccounts for the programs/categories in realignment; the formula for the allocation of any growth funds; and any additional policy bills necessary to implement 2011 Public Safety Realignment. Each of the HHS program areas would require a bill outlining exactly what had been realigned as well as language to increase counties' flexibility in operating the programs where possible. The same was true for some of the law enforcement programs. These trailer bills would be essential for a common understanding of what had been included in 2011 Realignment.

The Governor began the collection of signatures to put the proposed constitutional amendment on the ballot. There needed to be a couple important changes made to the amendment. First, it had to identify the 1.0625 State special fund sales tax as the funding source for 2011 Realignment rather than the extension of the two taxes. The amendment also had to specify that if the sales or VLF tax was changed in any way in the future, funding for realignment would remain as if no change had been made.

Second, the amendment had to reflect a tax increase for education. Because the General Fund sales tax had been reduced by an estimated \$5.1 billion, the Proposition 98 Guarantee for K-14 schools was reduced by about \$2.5 billion. This loss and other program needs necessitated the tax increase in the amendment be for education.



January 2012 Governor's Budget and the Final Action

In the months leading up to release of the January Budget, the Administration worked closely with the California State Association of Counties (CSAC) and its affiliates to develop a superstructure for the programs/activities within 2011 Realignment, as well as a funding model, including the distribution of growth funds. Counties were also involved in the drafting of the statutory changes needed for any of the realigned programs.

Funding Processes

Some of the funding processes for 2011 Realignment had precedents in 1991 Realignment or had already been decided in the negotiations on the constitutional amendment. They were:

- ◆ Revenue from the 1.0625 cents special fund sales tax and the VLF must be deposited into the State level Local Revenue Fund 2011 and are only available for the purposes of 2011 Realignment
- ◆ The funds in the Local Revenue Fund 2011 would be continuously appropriated and allocated monthly to counties
- ◆ **The fiscal year for realignment is different because of the way sales tax and VLF are collected.** For sales tax it is September through August and for VLF it is August through July. Any growth is distributed in October or November
- ◆ **The first year of funding is generally a replacement for what the program would otherwise have received from the General Fund.** There were a few exceptions in HHS for program components that had started to be funded from General Fund and needed additional funding to complete implementation. **The major exception was AB 109, which was a totally new allocation of funds to counties for their community corrections system.** (See Section 5 for a complete description of the funding model for AB 109)
- ◆ **The base year can vary among programs.** For instance, the base for AB 109 was not set until counties were satisfied with the data used for the allocation
- ◆ **The base is a rolling base which means this year's base plus growth equals next year's base for both the statewide numbers (accounts and subaccounts) and each county's allocation. The two exceptions are: the 1991 Mental Health Responsibilities Account and the Community Corrections Subaccount.** The 1991 Mental Health Responsibilities Account receives growth each year but the growth does not add to the base. The rolling base concept works at the statewide level for the Community Corrections Subaccount. Each county receives a set percentage of the statewide base (prior year's base plus prior year's growth) each year. **However, the county-by-county allocation of new growth in any year can vary because each county's growth is based on factors for which the values change each year. See Section 5 for more information.**
- ◆ **If revenues in any year do not meet the statewide base level, funds are disbursed proportionately between the two Accounts.** The base will be restored when revenues again increase. This provides more predictability and stability of the revenue available for programs. This same process applies to each county's base within each subaccount



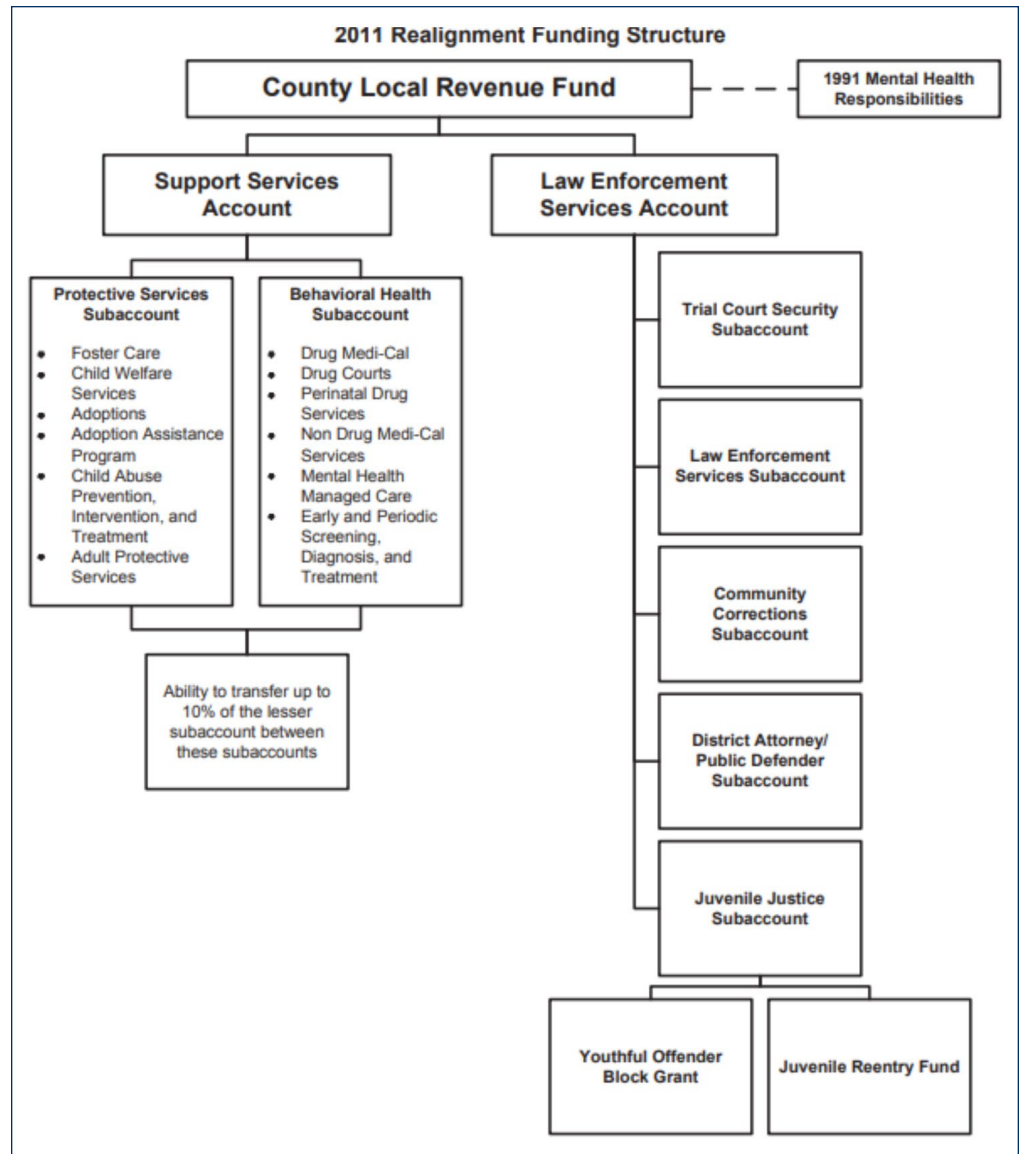
Funding Superstructure

As a result of these discussions, the Administration proposed a permanent funding structure for 2011 Realignment in the January 2012 Governor's Budget Summary.

The figure to the right displays the proposed superstructure.

The box titled 1991 Mental Health Responsibilities reflects the transfer of \$1.12 billion in mental health funding from 1991 Realignment to 2011 Realignment. The \$1.12 billion that was "freed up" in 1991 Realignment was deposited into a new account in 1991 Realignment, the CalWORKs MOE Account, which was used to offset State General Fund costs for CalWORKs. This was part of the budget balancing strategy.

Aside from the 1991 Mental Health Responsibilities, the decision was made to create two accounts, the Support Services Account for the HHS programs and the Law Enforcement Services Account for programs/activities in the law enforcement area. Agreement was reached to maintain a strict line between the two accounts; no funds can be transferred between them.



While not displayed on the super structure, 2011 Realignment also includes a County Intervention Support Services Subaccount. This subaccount allows the State Department of Health Care Services (DHCS) to notify the State Controller's Office (SCO), the Department of Finance, and any county that is failing to perform a federal Medicaid program (generally applies to Drug Medi-Cal and Specialty Mental Health) to the extent federal funds are in jeopardy. The SCO would then deposit the county's funds in question into this subaccount where DHCS would have access to them to administer the program.

Support Services Account

Within the Support Services Account, there are two subaccounts: 1) Protective Services which contains human services programs and 2) the Behavioral Health Subaccount for the health and behavioral health programs. The dollar amount in each program in the first year was what each realigned program would otherwise have received from the General Fund, with a few exceptions. For instance, the Foster Care base was increased to reflect expanding Foster Care to age 21 and the latest estimate for transitional housing costs. Both changes would have been a General Fund cost absent realignment. The county may spend the money within each subaccount for any of the programs within the subaccount. However, federal funding for entitlement programs cannot be jeopardized so federal requirements must be met first. With the flexibility given, it was assumed that counties could fund more robust intervention and prevention programs which could lower entitlement costs.



Modeled after 1991 Realignment, the county has authority to transfer an amount equal to 10 percent of the lesser subaccount between these two subaccounts. This action can only be done one year at a time with a vote of the Board of Supervisors (BOS) and does not add to the base. If a county takes this action, it must be reported to the SCO.

Also in the Support Services Account, there is a local option to create a Support Services Reserve Subaccount subject to the direction of the BOS. The reserve can be up to 5 percent of the total allocated to the subaccount for the preceding year. The ability to create a reserve was something counties asked for in order to clarify that a reserve could be part of 2011 Realignment as reserves were not explicitly authorized in 1991 Realignment.

Law Enforcement Services Account

In discussions with law enforcement about the super structure, it was determined the best approach would be to have a separate subaccount for each individual area. These are:

Trial Court Security Subaccount

In 56 counties, Sheriffs provide court security which had been funded by the State through funding for the trial courts. Funding for court security was switched to 2011 Realignment funding at the request of the Sheriffs. The money in this subaccount goes directly to the Sheriffs in each of the 56 counties and county administration may not charge an overhead fee from the funds. Those counties are 100 percent fiscally responsible for the costs of security for the trial courts.

Law Enforcement Services Subaccount

This is the subaccount funded by VLF. These allocations were local public safety subventions originally paid for by the General Fund. Not all counties received funding from every subvention. These subventions totaled \$489.9 million when realigned and that amount is guaranteed for this subaccount. If the VLF does not generate \$489.9 million, the difference between the guarantee and the revenue received will be backfilled with 2011 Realignment sales tax. See Section 7 for a complete listing of the subventions included in this Subaccount.

Community Corrections Subaccount

This is the subaccount that funds AB 109. A statewide estimate was developed by the California Department of Finance and the schedule for distribution to counties, as well as the growth allocation, was determined by CSAC. See Section 5 for a complete description of AB 109, the funding mechanism, and how the allocations of base and growth were developed.

District Attorney/Public Defender Subaccount

The funds going into this subaccount are split 50/50 between the District Attorney and Public Defender in each county. This money is to be used exclusively for the increased workload at the county level for the transfer of revocations involving persons subject to State parole and the Post Release Community Supervision Act of 2011 (the transfer of part of parole to county probation supervision). The funds can also be used for planning, implementation, and training costs for those proceedings.

Juvenile Justice Subaccount

The Juvenile Justice Subaccount replaces General Fund money with 2011 Realignment funds. It has two subaccounts:

The Youthful Offender Block Grant is used to fund grants to enhance the capacity of county probation, mental health, drug and alcohol, and other county departments to provide appropriate rehabilitative, housing, and supervision services to youthful offenders, subject to Sections 731.1, 733, 1766, and 1767.35 of the Welfare and Institutions Code. In expending these funds, the county shall provide all necessary services related to the custody and parole of the offenders.

The Juvenile Reentry Grant is to be used to fund grants exclusively to address local program needs for persons discharged from the DJJ.



Legislative Change

The only change the Legislature made to the superstructure was to add a box below the Behavioral Health Subaccount for a small program for women's neonatal substance use disorder funding. Only 7 counties received these funds and the concern was these small allocations might be absorbed into other programs if not separately identified.

Growth Funding

Once the base for all programs has been met, any funds above that level are deposited into growth accounts to be allocated among counties. Growth is generally distributed in October.

The January 2012 Governor's Budget Summary indicated that program growth should be distributed on a roughly proportional basis, first among Accounts, and then by Subaccounts. There was agreement on this point. The Support Service Account contained several federal entitlement programs and counties wanted to make sure they would receive sufficient funds to meet those requirements. In addition, the percentage of funds included in the Support Services Account was 65 percent of the total state-level dollar amount for 2011 Realignment. Therefore, 65 percent of sales tax growth is deposited into the Support Services Growth Account while the Law Enforcement Growth Account receives 35 percent. All VLF growth is deposited into the Enhancing Law Enforcement Services Subaccount and its distribution is discussed in Section 7.

Support Services Account Growth

Various adjustments were made to the base level of specified programs; the largest was Child Welfare Services which received an additional \$200 million from growth funds to make up for a prior Governor's base veto in the program.

Once adjustments were final, 45 percent of the growth went to Protective Services, 50 percent to Behavioral Health and 5 percent to the Mental Health Subaccount. Growth for the Mental Health Subaccount does not add to the base.

Growth distribution among counties was generally proportional as well unless CSAC and its affiliates determined that an adjustment needed to be made due to historical anomalies in base allocations. However, once a base is established as final, growth is distributed on a proportional basis.

Law Enforcement Growth Account

Of Law Enforcement's 35 percent share of statewide growth, 10 percent is allocated to the Trial Court Security Subaccount; 10 percent to the Juvenile Justice Subaccount; 5 percent to the DA/PD Subaccount and 75 percent to the Community Corrections Subaccount. The distribution of growth among counties was generally proportional. The exception is the Community Corrections Subaccount which is discussed in Section 5. The DA/PD Subaccount mirrors the Community Corrections Subaccount.

Local Innovation Subaccount

Beginning in 2015-16, each county is required to transfer 10 percent of the growth funds from each subaccount funded by sales tax into a Local Innovation Subaccount. This subaccount was established to further encourage innovation and change at the local level in the law enforcement programs. Counties decide what their highest priorities are for use of the funds.



Implementation

The superstructure, the statutes for the distribution of funds, including growth funds, and the policy bills were enacted largely as proposed by the Administration.

Once the mechanics of 2011 Realignment were established, the hard work of implementation continued in counties. For most programs, this meant getting used to being 100 percent responsible for program costs, ascertaining how the new program flexibilities could be taken advantage of, as well as understanding the mechanics themselves.

The most challenging implementation would be the AB 109 changes which were totally new. CSAC, CPOC, and the State Sheriffs Association (CSSA) produced training materials on the superstructure, funding allocations for the first year, and what AB 109 would mean "on the ground." At the same time, they had to analyze data from CDCR to determine potential allocation changes and determine how growth would be allocated.

The Administration believed implementation was as important, if not more so, than putting the proposal together. Bi-weekly meetings were held with CSAC, CPOC and CSSA to discuss issues, problems, and unforeseen concerns in implementation. AB 109 was certainly a critical piece of meeting the 3-Judge Panel population reductions. However, the Governor strongly believed that lower-level offenders could have greater success at the local level if counties were given the resources and the tools to change the community corrections system. As issues and concerns arose, some changes were made to give counties more flexibility or additional tools were added to ease and enhance implementation.

The next section (Section 5) contains more details of AB 109 and its implementation and Section 8 has a listing of the changes/additions made to assist counties and law enforcement in the implementation of AB 109.



AB 109: The Intent, The Estimates, The Allocation and Implementation at the Local Level

Some of the information in this Section may be repetitive of previous sections.

The Intent

There were several contributing factors that led to the enactment of AB 109 – a prison overpopulation crisis that could have resulted in inmates being released from State prison with no supervision; a \$26.6 billion budget deficit that would be helped by extending certain taxes to be used to fund specified programs that had been funded by the State General Fund; and a recognition that county probation had been very successful working with felony probationers deploying evidence based practices funded under SB 678. Those were important factors. Equally important was Governor Brown’s firm beliefs that public safety is one of the highest priorities for government. The theory of subsidiarity held that the community and county government, being closest to the people, was best suited to figuring out how this shift of jurisdiction should be implemented. The new funding that came with the shift would allow each county to refashion its local public safety system to be more effective and beneficial for both offenders and the community.

The 2011-12 Governor’s Budget Summary stated:

“When the State assumed the costs of operating the trial courts, it became the source of funds for the two highest levels of programs within the criminal justice system – courts and prisons. State efforts should focus on courts and the most serious and violent offenders. Low-level offenders and parolees are better served in the community where they are known to local law enforcement and where community support systems exist. With early intervention, local government can better address the service needs that can stop the revolving door of the corrections system. Local government is in a better position to determine who needs incarceration, who needs monitoring, and who would benefit from treatment or job training.”

This was the policy framework for AB 109. The concept behind AB 109 recognized criminal justice policies that rely solely on building and operating more prisons to address community safety concerns are not fiscally sustainable in the long run and may not result in improved public safety. The Governor believed the establishment of comprehensive community-based corrections programs that involved evidence-based correctional sanctions and programming other than jail incarceration alone or routine probation supervision needed to be put into place. Alternative custody and intermediate sanctions were lower cost alternatives to increased prison and jail usage. At the same time, such a system should achieve better outcomes. Counties would best know what would be most acceptable to their communities and produce better public safety outcomes.

Counties also were 100 percent responsible for behavioral health programs that were realigned as part of 2011 Realignment. The bringing together of the two sides – law enforcement and supportive services was intentional. If offenders were being supervised in the community, they could be treated in the community so long as they met the eligibility criteria for the realigned behavioral health programs.



Rather than specifying how each county should implement AB 109, flexibility was an integral part of its design. The 58 counties operate quite differently from each other, but counties, though they vary in available resources, infrastructure, and culture, are all good at braiding funding together to achieve the best outcomes for clients. The language in AB 109 identified several examples of community-based punishment available to law enforcement including flash incarceration, home detention, mandatory community supervision, day reporting, work release programs, restorative justice programs, and community-based residential programs that offer structure, supervision, and drug treatment among other services. One proposed change was authorizing judges to give offenders a split sentence, serving part of their time in jail and part on probation. Again, the justification for this change was that being in the community offered offenders a better chance of strengthening ties to family, work, and the community, including needed services in a more sustainable way. In the first years following implementation of AB 109, there were far fewer split sentences than had been anticipated. Therefore, the law was changed to make a split sentence for these offenders a presumption with the judge having to write on the record why the sentence was not split. This change maintained the judge's discretion but assured that those offenders who would benefit from being supervised in the community would serve a shorter time in jail.

It would be up to each county to determine how to best implement the change from State to county jurisdiction and prioritize the use of the new funding for betterment of the low-level offenders and the community at large. AB 109 is not a program. It is a shift of a certain adult offender population with a funding source for counties to use to improve their community public safety system.

Development of the Estimate

Since AB 109 was not a defined program with a known caseload, such as with the behavioral health programs realigned, the Administration had to determine how to develop a reasonable cost estimate for county implementation. The only information available was from CDCR along with some local estimates for supervision and incarceration costs. CDCR had data of how many offenders met the criteria that would be used to define the population. It also had the data of who would be defined as a Post Release Community Supervision (PRCS) offender who would now be supervised by local probation.

The assumptions are outlined here not because they reflect every county's experience nor must they be followed in any way. These assumptions are what was used as a proxy to develop the estimate by trying to take into account the potential costs counties would confront. These assumptions were done on a macro level using as proxies the number of offenders in prison who fit the criteria, the number of parolees who fit the criteria for a person on PRCS, plus program, treatment, and administrative costs. These assumptions helped build the total amount of 2011 Realignment funding needed on a statewide basis. A separate process was used to develop the county-by-county estimates.

General Assumptions That Framed the Numbers

- ◆ Reduction to the CDCR population was on a prospective basis. No current offenders would be transferred to county jurisdiction.
- ◆ The average length of stay for all low-level offenders was 24 months which included time on parole.
- ◆ The average length of stay for all return-to-custody parole violators was four months, with three months served in CDCR and one month in county jail.



Local Jurisdiction for Parole Violators

- ◆ All parole violations were shifted to local jurisdiction with the courts making all revocation decisions.
- ◆ Rather than incarceration for the total revocation time, it was assumed that these offenders would be handled differently by utilizing various lengths of flash incarceration and alternative/diversion programs which would lower the average length of stay in jail.
- ◆ Incarceration cost of \$25,000 per ADP was assumed and rather than 4 months in custody, a 30-day period was assumed.
- ◆ Treatment, alternative custody and/or other programming costs were assumed to be \$2,275 per ADP.
- ◆ Local administrative costs of 10 percent of total incarceration and program costs were assumed.

Local Jurisdiction for Specified Parolees (Post Release Community Supervision)

- ◆ Parolees convicted of a non-serious or non-violent crime, regardless of prior convictions were realigned to local jurisdiction.
- ◆ Assumed community supervision costs of \$3,500 per ADP. This level of funding was equivalent to the cost to supervise and monitor a parolee at the state level.
- ◆ Assumed treatment, alternative custody and/or other programming costs of \$2,275 per ADP
- ◆ Assumed local administrative overhead costs at 10 percent of total incarceration/program costs

Local Jurisdiction for Specified Offenders

- ◆ Offenders convicted of non-serious, non-violent, and non-sex offenses, and who had no prior convictions for such offenses, were realigned to local jurisdiction on a prospective basis. The final estimate was adjusted to provide increased resources for an estimated number of offenders who might be sentenced to jail for more than three years. Local jurisdictions would be allowed to contract with the State for the cost of housing for these long-term offenders.
- ◆ Assumed this offender population would be handled differently with locals utilizing a hybrid of incarceration time, community supervision and treatment, and/or alternative custody and diversion programs during an offender's sentence length
- ◆ Assumed a 24-month average length of stay, including community supervision for these offenders
- ◆ Assumed incarceration costs of \$25,000 per short-term low-level offender ADP for 6 months
- ◆ Assumed incarceration costs of \$25,000 per long-term offender ADP for 20 months
- ◆ Assumed community supervision of \$3,500 per short-term offender for 18 months. The funding level was equivalent to the cost to supervise and monitor a parolee at the state level
- ◆ Assumed treatment and/or programming costs of \$2,275 per short-term and long-term offender
- ◆ Assumed local administrative overhead costs at 10 percent of total incarceration, community supervision, and program costs

The estimate turned out to be about 73 percent of an estimated ADP cost in State prison. It was important as part of the partnership developed around the development of all of Realignment that the estimate be reviewed with county law enforcement officials, CSAC, and the appropriate CSAC affiliates. There was general agreement that it was sufficient to fund the proposed changes on a statewide basis. **Again, the alternative the State faced was release with no supervision and no funding for counties to deal with court ordered releases.**



The County-By-County Allocation and Establishment of a County's Base

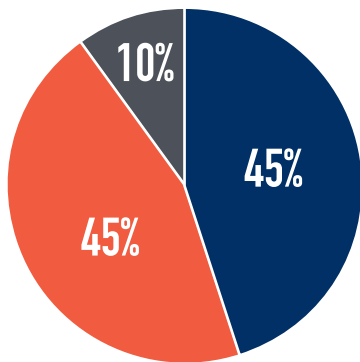
As had been done with prior county allocations, the Administration asked CSAC to develop the county-by-county allocation for the Community Corrections Subaccount (the AB 109 allocation) as well as the allocation for the DA/PD Subaccount since it was associated with the same population. These were the only new allocations to be developed in 2011 Realignment; the other subaccounts were a replacement for State General Fund dollars in the first year with some program adjustments.

AB 109 Allocation

In 2011-12, the Community Corrections Subaccount received 8 months of funding. The decision was made to allocate the funds to counties based on the only actual data available at the time – the number of like offenders historically sent to State prison from each county. This was a controversial recommendation because many believed it penalized those counties that had focused on alternative strategies and sent fewer offenders to State prison. However, the Legislature ultimately agreed with the recommendation given that it was a one-year allocation. As more data became available, other factors could be added to the formula.

The Community Corrections Subaccount would receive growth in each year which would be distributed to counties. Each county would receive a base amount as well as a growth amount if there was growth. However, a county's final base amount would not be defined until a final recommendation by CSAC. This did not mean counties didn't receive a base amount plus growth – it just meant the formula for the base would change but no county would receive less than it had in the prior year plus additional growth funds, if available. Ultimately, CSAC asked the County Administrative Officers Association to develop recommendations on behalf of the counties for a long-term allocation of AB 109 funds, including how growth would be allocated. The Realignment Allocation Committee (RAC) was made up of 9 representatives of urban, suburban, and rural counties. The RAC took its charge seriously and wanted to ensure that the formulas for both the base program and growth would fairly distribute funds among large, medium, and small counties.

Each county's share of the base funding was established in 2015-16 with a new formula. The new formula contained factors in three categories:



Caseload accounted for 45 percent of the base. Caseload took into account the 1170(h) jail inmates, the post release community supervision population, and the felony probation caseload

Crime and population accounted for 45 percent of the base. These factors recognized general county costs and the costs of diversion programs not otherwise captured in caseload data. Included were the adult population ages 18-64 and the number of serious crimes committed in the county

Special factors accounted for 10 percent of the base. This category included poverty, small county minimums, and impacts of State prisons on host counties

Each year, a county will receive a specified percentage of the statewide base funding from the Community Corrections Subaccount. The statewide base funding for the Subaccount is the prior year's base plus the prior year's growth (the rolling base). Therefore, each county's "base" will increase if revenues increased and there was growth distributed to the Subaccount.



Growth in 2014–15 and Beyond

Growth in 2014-15 was considered a one-time transition payment because there was a population drop in the formula which the RAC smoothed out with growth funds.

By 2015-16, growth became a more stable formula. Each county's growth would be based on two primary overall factors: 80 percent on SB 678 success and 20 percent for incarceration rates.

These factors were further broken down:

- ◆ The SB 678 success rate accounting for 60 percent of that total which would go to all counties and SB 678 year-over-year implementation with 20 percent going to only those counties showing success.
- ◆ The incarceration rate had three sub factors:
 1. year-over-year reduction in second strike admissions (a fixed dollar amount per number reduced)
 2. county's reduction in year-over-year overall new prison admissions (10 percent)
 3. county's success measured by per-capita rate of prison admissions (10 percent)

Because growth for each county is based on a formula, each county's share of growth can vary year-to-year. If there is growth money available, it is not distributed until October or early November because the fiscal year for realignment has been adjusted due to timing of tax receipts.

The Intent Behind the Allocations

The recommendation of the RAC (and CSAC) embodied three overarching goals. These were stated in their letter to the Administration:

"First to faithfully implement the Governor's vision of funding levels that allow counties the flexibility to implement realignment consistently with local needs and values while rewarding effective use of the allotted funds. Second, to do so in a way that avoids the likelihood of disrupting services in communities that have already been living with realignment for three years. Third, to fairly and accurately approximate the workload each county has to deal with, so that every county has an opportunity to succeed, and in succeeding, to improve the lives of all of our residents."

It is evident from the way the estimate was developed, plus the factors used for the establishment of the base, and the allocation of growth, that there were two primary considerations for the Community Corrections Subaccount. There was an understanding of the need for a reasonable amount of funding for workload, including incarceration and supervision, associated with the realigned population. **But change was the word most associated with this funding; change the community corrections system to stop the cycling of people through the prison system and, more importantly, change the lives of the people in the system by keeping them in the community where there could be alternative sanctions allowing them to live with their families, receive treatment, and keep a job they might have.**

The Governor would say realignment was not intended to trade a prison bed for a jail bed and there probably wasn't sufficient funding to do things the more traditional way. However, a county could choose to maintain a more traditional model of incarceration but it probably would have to use some of its own money to do so.



What Was Written About Use of the Community Corrections Subaccount?

Questions often arise about the appropriate use of funds in the Community Corrections Subaccount. There were no specifics stated about how this new money should be spent. The funds were meant to be flexible and their expenditure would be a decision for each CCP based on its county needs for this realigned population.

One very clear delineation was that no funds could be transferred between the Law Enforcement Services and Support Services Accounts.

The following excerpts help elucidate the usage of the funds:

Statutory Intent (AB 109 amended by AB 117)

"Fiscal policy and correctional practices should align to promote a justice reinvestment strategy for each county. 'Justice reinvestment' is a data-driven approach to reduce corrections and related criminal justice spending and reinvest savings in strategies designed to increase public safety. The purpose of justice reinvestment is to manage and allocate criminal justice populations more cost-effectively, generating savings that can be reinvested in evidence-based strategies that increase public safety while holding offender accountable."

Reader's Guide to the 2011 Realignment Superstructure Trailer Bill (SB 1020) June 27, 2012

Gov't Code Section 30026: Clarifies that the newly created Community Corrections Subaccount and the Community Corrections Special Growth Account shall be used to fund AB 109.

Section 30026 reads as follows:

"Consistent with Section 636 of Chapter 15 of the Statutes of 2011, as of October 1, 2011, there is hereby established the Community Corrections Grant Program for the purpose of funding various changes to the criminal justice system as required by Chapter 15 of the Statutes of 2011. The grant program shall provide grants to all counties that are affected by the provisions of Chapter 15 of the Statutes of 2011.

"The moneys in the Local Community Corrections Account within the Local Revenue Fund 2011, and the moneys in its successor subaccount or special account, the moneys

in the Community Corrections Subaccount within the Law Enforcement Services Account within the Local Revenue Fund 2011, and the moneys in the Community Corrections Growth Special Account within the Law Enforcement Services Growth Subaccount shall be used to fund the grant program as established in subdivision (a), and the appropriation out of that account on October 1, 2011...."

Joint document developed by CSAC, CPOC and the California State Sheriffs' Association (7-22-2011)

"AB 109 adult population shifts - ...These funds are intended to cover all aspects of the adult population shifts: the transfer of the low-level offender population, counties' new supervision responsibilities for state prison inmates released to post-release community supervision (PRCS), and sanctions - to include incarceration - for those on PRCS who are revoked."

Description Developed by the Administration

"The funding provided through the Local Community Corrections Account and the District Attorney and Public Defender Account is to support increased local public safety costs resulting from realignment and the establishment/implementation of each county's corrections program. These costs can include, but are not limited to, jail costs, community supervision costs, treatment and programming costs, administrative costs, one-time start-up costs, and District Attorney and Public Defender costs associated with the revocation process."



CPOC Training PowerPoint from July 2012

“AB 109 allocations are intended to cover the non, non, nons sentenced to local custody, post release community supervision and parole violators in county jail.”

The quotes from historical documents clearly demonstrate that the Community Corrections Subaccount was intended to be used to transform the local corrections system. How would this be accomplished at the local level?

Implementation At the Local Level

The Community Corrections Partnership (CCP) and The Executive Steering Committee

SB 678 had already established the CCP, chaired by the Chief Probation Officer, to advise on the use of funds received by the county with implementation of the incentives to keep felony probationers in the community.

AB 109 added Section 1230.1 to the Penal Code which requires the CCP to recommend a local plan to the county board of supervisors for the implementation of the 2011 Public Safety Realignment. The language also established the executive committee of each county's CCP consisting of the chief probation officer of the county, a chief of police, the Sheriff, a county supervisor or the chief administrative officer for the county, and the head of the county department of social services. This was later amended to authorize either the director of social services, the director of mental health, or the director of alcohol and drug programs to sit on the steering committee. The language further stated that:

“Consistent with local need and resources, the plan may include recommendations to maximize the effective investment of criminal justice resources in evidence-based correctional sanctions and programs, including, but not limited to, day reporting centers, drug courts, residential multiservice centers, mental health treatment programs, electronic and GPS monitoring programs, victim restitution programs, counseling programs, community service programs, educational programs, and work training programs.”

The plan for implementation of realignment, though developed by the CCP, is voted on by the executive committee. The plan is deemed accepted by the board of supervisors unless the board rejects it by a 4/5 vote. If the board rejects the plan, it goes back to the CCP for further consideration. Nothing in the law changes the appropriation authority of the Board of Supervisors.

Not much was written about the CCP at the time. In the January 2012 Governor's Budget Summary, the only statement was that

“most counties had completed their plans which offered a wide range of intermediate sanctions, supervision, and treatment options in addition to appropriate jail time. For example, counties can utilize Pre-Trial Release Programs with enhanced supervision, Day Reporting Centers, and flash incarceration in addition to providing behavioral health assessments and treatment, housing, and employment services. These intermediate sanctions and treatment services and help prevent the revolving door of the corrections system.”

It is useful to note that at the time of the passage of realignment, people who were single, childless adults were not eligible for Medi-Cal. However, if offenders had severe mental health issues or substance abuse issues, services for this population could be paid for with this funding. With implementation of the Affordable Care Act (ACA), single childless adults became the “expansion population” and were eligible for Medi-Cal services. The services for the expansion population are funded by the federal government (90 percent) and the State (10 percent). Thus, if an offender is eligible for Medi-Cal and is part of the expansion population and needs services that are offered as part of Medi-Cal, the county does not have to pay for those services.

In the document sent out to counties from CSAC, CPOC, and CSSA, it states “The CCP planning process is intended as a tool to assist counties in the monumental task of preparing for the impact to the county system, but it preserves the true spirit of realignment, which is local flexibility.”



There were no set rules for the CCP in developing the 2011 Realignment plan. Each county had to determine what path was best for them given the new population being shifted and the new tools and flexibilities embodied in the transfer. See Section 8 for a listing of the tools and changes made to give locals more flexibility. The CCP can determine how often to meet, what data it wants to use to track changes or improvements in its community corrections system, and the priority usage of the funds.

Uses of The Community Corrections Subaccount

The Constitution defines “Public Safety Services” to include all the activities that might be included in those programs or population shifted to counties. The ones that seem most relevant to the community corrections population are employing and training public safety official, including law enforcement personnel; managing local jails and providing housing, treatment, and services for, and supervision of, juvenile and adult offenders; providing mental health services to children and adults to reduce failure in school, harm to self or others, homelessness, and preventable incarceration or institutionalization; and preventing, treating, and providing recovery services for substance abuse.

Because this definition is so broad it has led to some to believe that any of the money can be used for any of the program elements in 2011 Realignment. However, the Constitution also says the method for allocating the funds would be specified in the 2011 Realignment Legislation.

Implementing Legislation

The implementing legislation is clear about the separation of funds both between the Law Enforcement and Support Services Accounts and between the subaccounts in the Law Enforcement Account. There is no transferability between the two Accounts and no transferability between the Law Enforcement subaccounts. The statutes for the HHS programs use the term funds are to be used “exclusively for” services/programs that are within the two subaccounts. That is to protect the State and counties from losing federal funds if the realignment money was used in an inappropriate way. The term “exclusively” was in AB 109 but removed because the State did not want there to be confusion that the funds could be used to purchase services from other areas. This has, at times, caused confusion about the use of funds in the Community Corrections Subaccount.

Supplantation

A major stipulation written into the Constitutional amendment and statute was that the 2011 Realignment funds shall not be used to supplant other funding for Public Safety Services. Non supplantation language is important because the State did not want to merely substitute realignment dollars for what was already being provided. This was particularly important for the Community Corrections Subaccount because these funds were intended both for a new population, which meant new workload, and for change in the local corrections system. Changing the way of doing business, adding more services and treatment and alternative sanctions requires new resources.

Funds Are Not Just For an AB 109 Person

Because AB 109 was not a program but a shift in responsibilities, the use of the funds for AB 109 has been subject to varying interpretations. Some thought that AB 109 funds could only be used for an AB 109 person; that is only for those lower-level offenders shifted to county jurisdiction. That approach is not practical. For instance, if a Sheriff were to start a literacy program in jail, it would not make sense to limit the program to AB 109 offenders. A Sheriff could split the costs or use AB 109 funds for the entire program. Likewise, if probation built a day reporting center, it would not limit the center to only AB 109 offenders. Treatment programs should be offered to all offenders if needed, not just AB 109 offenders. This shift was about changing the system and if these programs do that, then the Community Corrections Subaccount is a legitimate source of funding.



Of course, each county's CCP must weigh what it wants to accomplish in its plan with appropriate jail time, supervision, alternative sanctions, treatment, and services, and fund the highest priorities of the plan that are necessary, evidence-based and result in change in the system and improvement in people's lives. Counties, and in particular, probation departments have a lot of experience with what works to effect positive change in the system. The flexibility offered allowed each county to tailor use of the funds to maximize positive change in their community.

The benefit of having support services included in 2011 Realignment and having an HHS program person on the CCP and Executive Steering Committee was to bridge the gap that can exist between the law enforcement and HHS program areas in the county. If the Executive Committee is discussing treatment options, the HHS member knows what is available in the county for which offenders might be eligible. If necessary, buying services for treatment for offenders would be a beneficial use of AB 109 funds.

Confusion Over the Term Public Safety Realignment

Another difference in interpretation might be use of the term 2011 Public Safety Realignment itself. It was used by the Governor for the entire shift of responsibilities because he wanted to encompass a broad array of programs that are actual public safety programs (including foster care, child welfare, and adult protective services plus law enforcement programs) and services that are attendant to the people who are clients in the public safety program. However, the term Public Safety Realignment is sometimes used only in the context of AB 109. This can create confusion about what components of realignment are being discussed and acted on. The Constitution defines "public safety services" to include all the activities involved in administering any of the components of realignment. It does not mean there is a direct link for use of the money between the subaccounts. There is a line between Law Enforcement Services and Support Services with no transferability between the two. As stated previously, the CCP can have as an element of its plan, the purchase of services from any of the support services either in 2011 Realignment or that the county may offer and fund.

What is clear from the intent language and the various written descriptions at the time was that the intended use of the funds in the Community Corrections Account was for the justice-involved population.

Reporting the CCP Plans

Just because there were no "rules" for use of the money, didn't mean there was no interest in knowing how counties were implementing the shift in responsibility. This was a controversial change that some thought would lead to increased crime and jail overcrowding.

The Board of State and Community Corrections originally conducted an annual survey that was the mechanism to collect information about each plan. This is information that can be used by researchers, elected officials, the press and others interested in how counties implemented and revised their plans. It was also a resource for counties to understand what other counties had done that was successful in changing their system. The State used to provide funding for completion of the survey but that was eliminated in the 2024-25 final budget. As part of the 2025-26 final budget, a statutory change eliminated the requirement for the Board of State and Community Corrections to annually collect and analyze survey results and prepare a report for the Governor and Legislature on the uses of AB 109 funds. AB 134 eliminated this requirement.

In the years immediately following the enacted of AB 109, Governor Brown, along with staff from the Administration, traveled to a number of counties to discuss implementation. These meetings gave the Governor valuable information about how AB 109 was working on the ground and reinforced the idea that continuing to meet and discuss implementation was critical to the success of this part of 2011 Public Safety Realignment.



Proposition 30 – The Constitutional Amendment

As indicated previously, as part of the budget agreement on 2011 Realignment, Governor Brown agreed to gather signatures to put the proposed constitutional amendment on the ballot.

Enough signatures were gathered and Proposition 30 was on the November 2012 ballot. Its successful passage gave counties the guarantee they wanted to proceed with full implementation of the changes embodied in 2011 Realignment.

Proposition 30 added Section 36 to Article XIII of the State Constitution.

Within Section 36, the amendment also extended certain taxes for 5 years for the benefit of education. 2011 Realignment was funded by reducing the State General Fund sales tax by 1.0625 cents and increasing a State special fund sales tax by 1.0625 cents for the purpose of 2011 Public Safety Realignment. Because of the reduction in General Fund revenue due to this transaction, the Proposition 98 K-14 school funding guarantee was reduced by about \$2.5 billion. To ensure that public education was not harmed by providing critical protection to local public safety services, the extension of taxes in Proposition 30 was switched to fund public education. A later amendment, Proposition 55, extended these taxes through 2030.

Components of the Constitutional Amendment

Section 36 (a) (1): Defines “Public Safety Services” broadly to cover the activities of programs included in 2011 Realignment. This was necessary to ensure that use of funds in each subaccount is consistent with any federal or State requirements and covers the activities within the programs realigned. (AB 109 is not considered a program but is a funding source for activities that counties choose to implement in the shift of certain offenders to county jurisdiction.) These activities generally include employment, training, treatment, housing, supervision, prevention, and other services including adult protective services, mental health, and substance abuse prevention, treatment, and recovery.

Section 36 (a) (2): Defines “2011 Realignment Legislation” to mean legislation passed on or before September 30, 2012 that was necessary to implement 2011 Realignment and assigned public safety responsibilities to local agencies. Specified that no new programs could be added to 2011 Realignment after that date except for mental health managed care and the early periodic screening, diagnosis, and treatment program both of which had been identified to be added in the 2012-13 fiscal year. The legislation was to give local agencies maximum flexibility and control over the design, administration, and delivery

of these services consistent with federal and funding requirements.

Section 36 (b): Defines the 1.0625 cents of the State special fund sales tax and certain Vehicle License Fee funds to be deposited in the Local Revenue Fund 2011. Specifies that these revenues are not General Fund revenues or proceeds of taxes for purposes of the Proposition 98 K-14 school funding guarantee.

Section 36 (c) (1): Specifies that the funds deposited in the Local Revenue Fund 2011 are continuously appropriated exclusively to fund the provision of Public Safety Services (as defined previously) by local agencies. The methodology for allocating funds was to be specified in 2011 Realignment Legislation. Pending full implementation, allowed the State to receive reimbursement for its program costs of providing these services on behalf of local agencies. This applied only to the AB 109 program which was prospective with the State continuing to incur costs in the first year of realignment.

Section 36 (c) (2): Requires a county or city and county official to create a County Local Revenue Fund 2011 in each county or city and county. The money in each local fund is to be used exclusively to fund the provision of



Public Safety Services by local agencies as specified by the 2011 Realignment Legislation.

Section 36 (c) (3): Specifies that 2011 Realignment programs or costs are not a reimbursable mandate under any constitutional provision. This means that counties cannot submit mandate reimbursement claims to the Commission on State Mandates for any of the 2011 realigned programs.

Section 36 (c) (4) (A): Specifies that legislation enacted after September 30, 2012, that has an overall effect of increasing the costs already borne by a local agency for programs or levels of services mandated by 2011 Realignment only applies to local agencies to the extent that the State provides annual funding for the increased cost. Local agencies are not obligated to provide the increased level of service if no funding is provided. Note: though not specified in the Constitution, if such legislation is passed, the counties can appeal to the Department of Finance to provide funding due to a Proposition 30 requirement. The policy bills enacted as part of 2011 Realignment specify the base of activities included and are crucial for making a determination if there are costs above the program activity level when realigned.

Section 36 (c) (4) (B): Specifies that regulations, executive orders, or administrative directives implemented after October 9, 2011, that are not necessary to implement the 2011 Realignment Legislation, and that have the overall effect of increasing costs already borne by a local agency for programs or levels of service mandated in 2011 realignment, apply only to the extent the State provides funding. Similar to the prior paragraph on legislation, local agencies are not obligated to provide the additional level of service if the State does not pay for the costs. And likewise, local agencies can appeal to the Department of Finance to request funding for any increased costs.

Section 36 (c) (4) (C): Specifies that any increased costs incurred for new legislation, regulations, executive orders, or administrative directives are not eligible for reimbursement through the State mandate claims process.

Section 36 (c) (4) (D): Specifies that the State shall not submit any plans or waivers, or amendments to plans or waivers, that have an overall effect of increasing the cost

borne by a local agency for programs mandated by 2011 Realignment Legislation, except if the plans or waivers are required by the federal government, or the State provides annual funding for the cost increase.

Section 36 (c) (4) (E): Specifies that the State is not required to provide reimbursement for mandates imposed by the State at the request of a local agency or to comply with federal law. If State funds are required to pay for an overall increase in cost, the reimbursement cannot be funded by property taxes or the Social Services Subaccount of the Sales Tax Account of the Local Revenue Fund (1991 Realignment).

Section 36 (c) (5) (A): Specifies that if there are subsequent changes in federal statutes or regulations for the programs included in the Support Services Account in 2011 Realignment (and included in the 2011 Realignment legislation) that alter the conditions under which federal matching funds are obtained, and have the overall effect of increasing the costs incurred by a local agency, the State shall annually provide at least 50 percent of the nonfederal share of those costs as determined by the State.

Section 36 (c) (5) (B): Specifies that when the State is a party to a complaint brought in a federal judicial or administrative proceeding that involves any of the programs included in the Support Services Account in 2011 Realignment (and included in the 2011 Realignment Legislation) and there is a settlement or judicial or administrative order that imposes a cost in the form of a monetary penalty or has the overall effect of increasing the costs borne by a local agency for programs or levels of service mandated by 2011 Realignment, the State shall pay 50 percent of the nonfederal costs as determined by the State. The State is not required to pay if the State determines that the settlement or order relates to one or more local agencies failing to perform a ministerial duty, failing to perform a legal obligation in good faith, or acting in a negligent or reckless manner. (This could mean failing to meet federal requirements in a program thereby jeopardizing federal funds).

Section 36 (c) (5) (C): Specifies that if the State provides funding for the two requirements noted above, it cannot be from property taxes or from the Social Services Subaccount of the Sales Tax Account of the Local Revenue Fund (1991 Realignment).



Section 36 (c) (6): Specifies that if the State or a local agency fails to perform a duty or obligation under the constitution or 2011 Realignment Legislation, an appropriate party may seek injunctive relief. Any such proceeding would have priority over all other civil matters.

Section 36 (c) (7): Specifies that the funds deposited into a County Local Revenue Fund 2011 shall be spent in a manner designed to maintain the State's eligibility for federal matching funds, and to ensure compliance by the State with applicable federal standards governing the State's provision of Public Safety Services.

Section 36 (c) (8): Specifies the funds deposited into a County Local Revenue Fund 2011 shall not be used to supplant other funding for Public Safety Services.

Section 36 (d): Requires that if the taxes used to fund 2011 Realignment (the 1.0625 cent State special fund sales tax and the VLF) are reduced or eliminated, the State

must annually provide money to the Local Revenue Fund 2011 in an amount equal to or greater than the aggregate amount that would otherwise have been provided by the taxes. The method for determining the amount is described in 2011 Realignment Legislation and the State is obligated to provide that amount for as long as local agencies are required to perform the Public Safety Services responsibilities assigned by the 2011 Realignment legislation. If the State were to fail to deposit that amount, the SCO is to transfer that amount from the General Fund in pro rata monthly shares to the Local Revenue Fund 2011. The SCO would then disburse the funds in a manner described by the 2011 Realignment Legislation. The State's obligation for this allocation would be lower than the State's obligation for Proposition 98 or the payment for voter-approved debts and liabilities.

The remaining provisions in Section 36 pertain to the Proposition 30 taxes for education.

Examples of Where the State Has Funded a "Proposition 30 Cost Increase"

Court Security Costs

Sheriffs raised the issue that new court houses could increase security costs above the base that was realigned. For example, a new courthouse could have two entrances rather than one necessitating an additional screening station which increases costs. This is a state responsibility because the plans for the courthouse with the second entrance are approved and funded by the state.

Funding for this payment is found in the annual Budget Act in Item 9285-101-0001. According to the language in the Item, funding is provided for an increase in trial court security costs as a result of court construction projects occupied on or after October 9, 2011. The language lays out a process Sheriffs can use to apply for this funding.

Continuum of Care in Foster Care

Legislation passed after 2011 Realignment was implemented changed several factors/processes in the foster care program. The increased costs, above the requirements in place when foster care was realigned, have been paid for by the state. In this case, the Administration and CWDA agree upon the estimated costs for budgetary purposes plus there is a "true up" process when actual costs are known.

Backfill For Lost Revenue

Legislation has been passed that exempts certain products from the sales tax. The state has backfilled this loss of revenue to make sure counties are receiving the 1.0625 cents as it read when 2011 Realignment was enacted. This shows up in the 2011 Realignment budget charts and documents as "backfill".



The Enhancing Law Enforcement Activities Subaccount

The grants to local law enforcement that are in this subaccount had been funded by State General Fund. When the Governor and legislative leaders increased taxes to help bridge the budget gap in 2009-10, the State increased the Vehicle License Fee (VLF) by 0.15 percent to fund these important programs thereby saving General Fund.

As part of 2011 Realignment, sufficient VLF in programs other than 1991 Realignment was freed up to continue these grants. The allocations had been budgeted in various State departments and were consolidated into this subaccount. Each allocation already had a formula for distribution and no changes were made to the formulas in 2011 Realignment.

Grants in the Subaccount are:

Citizens' Option for Public Safety (COPS)	\$107.1 million
Juvenile Justice Crime Prevention Grants (JJCPA)	\$107.1 million
Booking Fees	\$35 million
Small and Rural Sheriff Grants	\$18.5 million
Juvenile Probation Funding	\$151.840 million
Juvenile Camp Funding	\$29.430 million
Cal-MMET	\$19.450 million
Ca Gang Violence Suppression	\$1.6 million
Multi-Agency Gang Enforcement Consortium	\$80 thousand
Rural Crime Prevention	\$3.710 million
Sexual Assault Felony Enforcement	\$5.110 million
High Tech Theft Apprehension and Prosecution Program	\$10.980 million
TOTAL	\$489.9 million

The Subaccount is guaranteed the \$489.9 million annually. If VLF revenues are less than this amount, the 2011 Realignment sales tax must make up the difference.

If VLF revenues exceed this amount, the COPS and JJCPA grants each receive 27.08 percent of the total above the \$489.9 million. Juvenile Probation receives 38.40 percent and Juvenile Camps and Ranches receives the remaining 7.44 percent.



Tools and Mitigation Provided to Enhance Implementation of AB 109

The Brown Administration spent a significant amount of time throughout the Governor's 8-year term meeting with representatives of CSAC, CPOC, and CSSA. This was essential to understanding any issues that arose resulting from the enactment of AB 109 and working toward mutually agreed upon solutions. The most important mitigation offered to counties was the constitutional protection of the ongoing funding.

The following is a list of tools/mitigations provided to assist in implementation of AB 109.

Managing the Realigned Population in Jails

- ◆ Day-for-day credits for 1170(h) offenders, including presentence
- ◆ Day-for-day credits for PRCS and Parole violators
- ◆ Authorized milestone credits for presentence program completion
- ◆ Enhanced credit earnings for inmates participating in a work release, educational, vocational, substance use disorder, life skills, or parenting program
- ◆ Authorized persons sentenced to county jail for a felony to participate in a work furlough program
- ◆ Authorized Sheriffs to place inmates with current non-violent, non-serious felonies or a misdemeanor in an alternative custody program. An alternative custody program may include confinement in a home, residential drug program, transitional care facility, mental health clinic, or hospital.
- ◆ Authorized individuals serving time in a work release or home detention program to receive prospective day-for-day credit for time served in these programs. Additionally authorized local offenders to obtain prospective credits, regardless of whether they are in a jail facility or an alternative custody program.
- ◆ Ability to contract with the State for fire camp beds at a very low rate
- ◆ Placed a cap on contract rates for health care providers
- ◆ Medical parole
- ◆ Ability to seek involuntary medication orders for inmates with mental illness
- ◆ Ability to contract with other counties to house offenders (not just neighboring counties)
- ◆ Ability for the State to contract with jails to house offenders within 60 days of release to support reentry into the community



Other Mitigations

- ◆ Authorized the use of flash incarceration in city jails, in addition to county jails, for offenders on PRCS or State parole supervision
- ◆ Made a split sentence a presumption with a judge having to put on the record why a sentence could not be split

The tools and mitigation were intended not just to assist in reducing the population in jail but to expand the ways in which an offender could be out of a facility and be supervised. This means more ties to family and the community, including treatment, housing, and work.

Local Jail Construction

In recognition that some counties needed additional jail space and some would need better space for programs and treatment, the State invested \$2.47 billion in bond funding for local jails.

\$1.2 billion in AB 900 (\$445.8 million in Phase 1, \$774.2 million in Phase 2)

\$500 million in SB 1022 with a 10% match; focus on upgrading and renovating program and treatment space to enhance capacity

\$500 million in SB 863 with 10% match; focus on upgrading and renovating treatment space

\$270 million in SB 844 with 10% match; focus on upgrading and renovating programming and treatment space. Included a \$20 million set-aside to assist Napa County in replacing the jail damaged in the 2014 earthquake





CHIEF PROBATION OFFICERS
OF CALIFORNIA

Understanding AB 109:
**A Comprehensive Review of
Public Safety Realignment**

Summary Briefs

Table of Contents

Understanding AB 109: A Comprehensive View of Public Safety Realignment Summary Briefs

The Rational Behind AB 109	42
How 2011 Public Safety Realignment is Funded.	44
2011 Public Safety Realignment and Supplantation	47
Health and Human Services Within 2011 Public Safety Realignment.	48
AB 109: Frequently Asked Questions	50

The Rationale Behind AB 109

In 2011, California undertook a major shift in how it handled certain categories of offenders.

Known as AB 109, or Public Safety Realignment, the legislation was designed to reduce overcrowding in the State's prison system, comply with federal court mandates, and create a more localized approach to rehabilitation and supervision.

A System Under Scrutiny

Two major lawsuits had been filed against the Department of Corrections and Rehabilitation (CDCR) - Coleman, alleging an unconstitutional level of mental health care and Plata, alleging an unconstitutional level of healthcare in the State's 33 prisons.

In 2006, plaintiffs asked a federal 3-Judge Panel to determine if overcrowding was the cause.

- ◆ CDCR housed more than 174,000 inmates across 33 State prisons.
- ◆ The 3-Judge Panel ruled in 2009 that the prison population must be reduced to 137.5% of capacity, which would be 110,000 inmates.
- ◆ The 3-Judge Panel appointed a compliance officer who would release offenders from prison with no supervision if the State could not reduce its prison population.

The State appealed the decision to the U.S. Supreme Court.

Quick Facts

FULL NAME:

The 2011
Public Safety
Realignment Act

BILL NUMBER:

AB 109
(Chapter 15,
Statutes of 2011)

EFFECTIVE DATE:

October 1, 2011

GOAL:

Reduce State
prison population
and shift
responsibility for
certain lower-level
offenders to
counties



Governor Schwarzenegger and SB 678

Governor Schwarzenegger was unsuccessful in his efforts to reach agreement with the State Sheriffs to hold additional offenders in county jails. However, he did sign SB 678 (Leno) that provided performance-based funding to county probation to keep persons on felony probation in the community rather than revoke them to State prison. At the time, between 250,000 and 350,000 parole violators cycled through the very expensive prison system annually with a stay of 6 months or less.

Governor Brown's Bold Proposal

Jerry Brown was elected Governor in November, 2010 and he had a plan to solve a \$26.6 billion budget deficit. Part of his plan included extending temporary tax increases that were about to expire to fund a \$5.9 billion public safety realignment that included both health and human services programs and certain law enforcement programs. This included a shift of jurisdiction from the State to the counties for certain offenders and parolees.

Governor Brown's January Budget proposal for what became AB 109 included:

- ◆ Changing jurisdiction of all non-violent, non-serious, non sex offenders from the State to the counties
 - ◆ Transferring all parolees from the State to the counties
 - ◆ Having all parole revocations done by the trial courts with revocation time served in county jails rather than State prison
- The Division of Juvenile Justice was also proposed to be closed.

Negotiations with law enforcement led to a proposal where:

- ◆ a subset of non-violent, non-serious, and non-sex offenders would serve their sentence in a county jail
- ◆ all revocations would serve their time in a county jail
- ◆ The proposal to close DJJ was dropped.

This proposal passed as AB 109 in March, 2011 and ultimately took effect on October 1, 2011.

After AB 109 was enacted, but before the 2011-12 budget which would fund 2011 Public Safety was passed, the U.S. Supreme Court upheld the 3-Judge Panel decision. Without AB 109, the court compliance officer would have been obligated to release offenders from State prison with **no** supervision.

Within two years it was estimated that AB 109 resulted in an estimated 20,000 to 25,000 fewer inmates housed in the State's 33 prisons.



How 2011 Public Safety Realignment Is Funded

Understanding the Funding Behind Realignment

Funding for California's 2011 Public Safety Realignment is critical to its implementation and success. The State created a dedicated funding stream – protected in the constitution – to support counties as they took on expanded responsibilities for incarceration, supervision, and reentry services. This section breaks down how those funds are generated, allocated, and governed.

Revenue Sources for Realignment

2011 Public Safety Realignment - covering both Health and Human Services (HHS) and Law Enforcement - is funded through:

- ◆ A 1.0625 cent State special fund sales tax
- ◆ Vehicle License Fee (VLF) revenues

These revenues are collected by the State and deposited into the 2011 Local Revenue Fund. VLF revenues only fund the Enhancing Law Enforcement Services Subaccount.

Constitutional Protections & Monthly Distribution

These funds are:

- ◆ Constitutionally protected for public safety services as defined by law
- ◆ Continuously appropriated
- ◆ Allocated monthly to counties through specified formulas

Understanding the Base Funding Formula

Each county's base funding within each subaccount follows a "rolling base" formula:

- ◆ This year's base + growth = next year's base

Exceptions:

- ◆ 1991 Mental Health Responsibilities Account: Receives growth only when available, but that growth does not add to the base
- ◆ Community Corrections Subaccount (which funds AB 109): The rolling base concept is reflected in the statewide total so the prior year's base, plus growth, equals the next year's base.

How Growth Is Allocated

- ◆ Counties receive a fixed percentage of any increase in the statewide AB 109 base
- ◆ Additional growth revenue (i.e. funds collected above the base) is distributed each October/November
- ◆ Growth for counties is determined by a county-specific formula



What Happens If Revenues Fall?

If annual revenues fall below the base, the following apply:

- ◆ The base remains unchanged
- ◆ Counties receive less revenue that year
- ◆ Once revenues rebound, the base is restored first

This provides predictability for program operations.

All the program areas in 2011 Realignment except AB 109 were funded with State General Fund prior to 2011 Realignment.

Realignment revenue was a replacement funding source for them and counties generally received what they would have otherwise gotten from the General Fund in the first year of realignment.

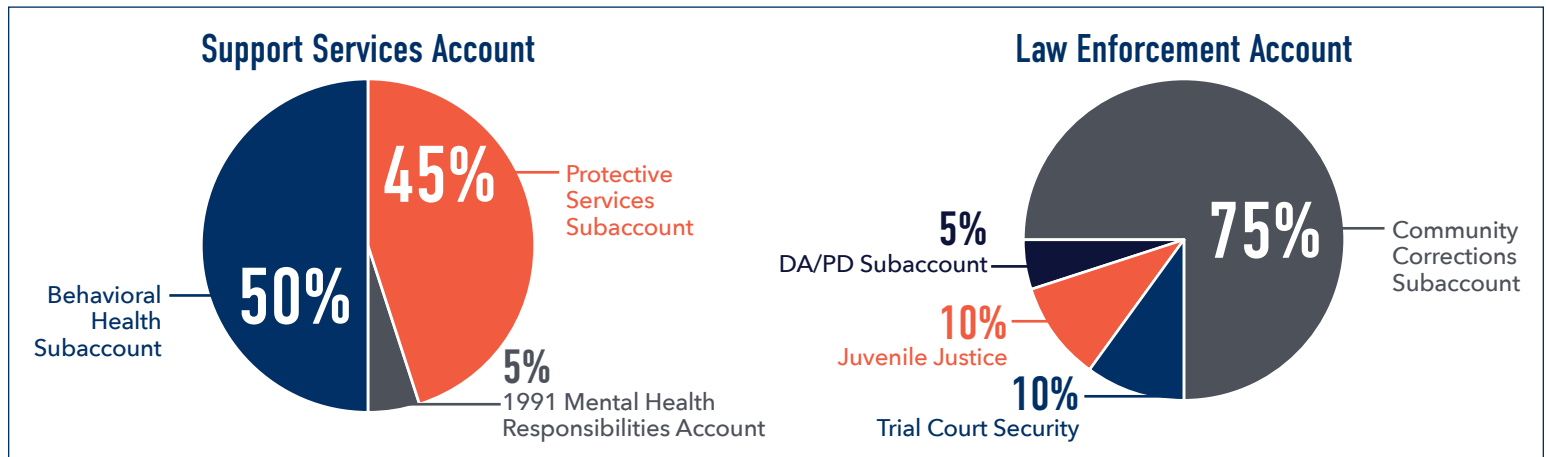
AB 109 Funding Specifics

The level of funding for AB 109 was originally estimated by the Department of Finance and reviewed and agreed to by the California State Association of Counties (CSAC) as well as Chief Probation Officers and Sheriffs. The estimate was based on Average Daily Population estimates of the population being realigned by short- and long-term jail sentences, supervision and treatment costs, plus administrative costs.

The formula for distribution of AB 109 funding was done by CSAC and a permanent base for the Community Corrections Subaccount was established in 2014. (Counties always received a share of the statewide base and growth even though a permanent formula for the base had not been established prior to this).

The total amount of statewide growth funding is split between the HHS Accounts and the Law Enforcement Account 65/35 percent respectively. This is because the HHS programs accounted for 65 percent of the total funding for 2011 Realignment.

CSAC also determined how growth would be split among the Subaccounts. Of the total 65 percent going to the Support Services Account, 45 percent goes to the Protective Services Subaccount, 50 percent to the Behavioral Health Subaccount, and 5 percent to the 1991 Mental Health Responsibilities Account. Of the Law Enforcement 35 percent growth, 10 percent goes to Trial Court Security, 10 percent to Juvenile Justice, 5 percent to the DA/PD Subaccount, and 75 percent to the Community Corrections Subaccount (AB 109).



Growth within each subaccount is distributed to counties on a proportional basis (a county's share of the base funding) except for the Community Corrections Subaccount.

Growth for the Community Corrections Subaccount is based on a formula of which 80 percent is tied to a county's success in SB 678 and 20 percent is tied to a county's prison incarceration rate. The growth formula is meant to incentivize change in a county's community corrections system. This means that a county will not know its share of growth until the amount of growth is known and the formula for each county is calculated.

Counties may transfer up to 10 percent of the lesser HHS Subaccount between the Protective Services Subaccount and the Behavioral Health Subaccount. Any transfer is for one year only, must be approved by the Board of Supervisors, and the county must notify the State Controller's Office.

There is no ability to transfer funds between the Support Services Account and the Law Enforcement Account or between subaccounts within Law Enforcement.

Started in 2015, each county must transfer 10 percent of the growth from the four Law Enforcement subaccounts funded by sales tax into a Local Innovation Subaccount. This subaccount should be used to fund additional innovative activities aimed at altering the community corrections system.



2011 Public Safety Realignment and Supplantation

Why Supplantation Matters

A key concern with 2011 Realignment funding was that counties use the funds to expand or adapt services, especially in response to the new responsibilities that came with AB 109. This section outlines the rationale behind that requirement.

Constitutional Protection

Proposition 30 added Article XIII Section 36 to the Constitution. Section 36 contains the definitions, requirements, and protections for 2011 Public Safety Realignment.

Section 36 (c) (8) states: The funds deposited into a County Local Revenue Fund 2011 shall not be used by local agencies to supplant other funding for Public Safety Services.

What Is Supplantation?

In terms of 2011 Realignment, supplantation occurs if realignment revenue replaces local or other State funds. Generally, if the service is one the county would have provided if realignment revenue had not been received and realignment revenue is used, it would probably be considered supplantation.

Why Supplantation Matters More in AB 109

The non-supplantation clause applies to the entirety of 2011 Public Safety Realignment. However, the issue has arisen more in discussions around AB 109 and the revenue to the Community Corrections Subaccount. This is probably because the Health and Human Services (HHS) programs that were realigned have clear federal and/or State requirements about who is to be served in the program. The flexibility offered within 2011 Realignment can be the most important change in these program areas. However, if a county were using county general funds in these programs and make a change because of the realignment revenue, supplantation could be an issue.

AB 109 is different because it was not a program with federal or State rules. It was a change in jurisdiction from the State to the counties for an offender population that would now serve time in a county jail or on alternative sanctions and be on county probation versus State parole. In addition, all parole revocations would be served in county jail.

The Two Intents of AB 109 Funding

The intent behind the non-supplantation clause is clear and has two components when thinking about AB 109. First, there was a new population needing housing supervision, treatment, and services. The realignment revenues were intended to cover those costs. Second, AB 109 was also intended to change the community public safety system. This means doing things differently such as using alternative sanctions so that offenders could maintain ties to family, housing, and employment while in the community, providing services that had not been provided before such as job training while in jail, or implementing programs in jail or a day reporting center that have been shown to reduce recidivism. It would be fine if offenders other than those identified as "AB 109" participated in these new activities because it would be impractical to separate offenders by smaller groups and because the new program was part of a plan to change the local system.

When in Doubt, Ask County Counsel: Questions about supplantation should be directed to County Counsel.



Health and Human Services Within 2011 Public Safety Realignment

1991 Realignment

2011 Public Safety Realignment also included significant changes to the funding and structure of Health and Human Services (HHS) programs. These changes reduced reliance on a volatile State General Fund, and aligned funding with service delivery at the county level.

Background: 1991 Realignment and HHS Funding

As background for 2011 Realignment, Health and Human Services (HHS) programs accounted for most of 1991 Realignment when new revenue (a sales tax and Vehicle License Fee (VLF) increase) paid for costs previously borne by the State General Fund. Funding for both community mental health and indigent/public health programs was realigned. Counties already operated all programs that were realigned in 1991.

The rest of 1991 Realignment was a change in sharing ratios between the State and county for some HHS programs including foster care, child welfare services, adoptions assistance, AFDC (now known as CalWORKs), some county administration for certain HHS programs, and California Children's Services. (Counties have long operated these programs on behalf of the State. Some were State/county funded and some were funded by federal, State and county funds. California's federal share of cost is 50 percent.)

1991 Realignment was an estimated \$2.2 billion transaction.

2011 Public Safety Realignment

The HHS portion of 2011 Realignment accounted for 65 percent of the total 2011 Realignment funding.

There are two Accounts within 2011 Realignment for HHS programs:

- ◆ The 1991 Mental Health Responsibility Account is funded at \$1.12 billion. This amount was previously funded within 1991 Realignment but was switched to 2011 Realignment to offer constitutional protection. There is still funding for mental health within 1991 Realignment as well.
- ◆ The second is the Support Services Account.



The Support Services Has Two Subaccounts:

1 The Protective Services Subaccount contains funding for Human Services Programs:

- ◆ Foster care*
- ◆ Child welfare services*
- ◆ Adoptions assistance*
- ◆ Child abuse prevention
- ◆ Intervention
- ◆ Treatment
- ◆ Adult protective services*

Counties are now 100 percent fiscally responsible for these programs. For the programs that were also in 1991 Realignment, 2011 Realignment funds the increase in share of cost from the 1991 level to the 100 percent level.

*Human Services programs funded by both realignments

2 The Behavioral Health Subaccount contains funding for:

- ◆ Drug Medi-Cal (funding for Substance Use Disorder programs)
- ◆ Drug Courts
- ◆ Non Drug Medi-Cal Services (services not covered by Medi-Cal)
- ◆ Mental Health Managed Care (a small amount of funding that had been provided to counties for mental health services)
- ◆ Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program which provides mental health funding for youth under the age of 21.
- ◆ EPSDT is a federal entitlement program as are all Medi-Cal services. Counties are 100 percent fiscally responsible for these programs as realigned in 2011.

The priority for funding within the subaccounts is any federal entitlement program as counties cannot impair federal funding coming to the State.

The Governor and Legislature can provide funding for any of these programs above the Realignment funding which would not affect realignment.

Why These Programs Were Realigned

The intent behind realigning the HHS programs was two-fold. First, realigning them saved State General Fund money and helped balance the State budget in 2011-12. Second, with total funding for Behavioral Health Services at the county level and a new offender population to be served, some of those offenders might be eligible for Medi-Cal services that the county was already funding. In addition, the Community Corrections Partnership could use some of its funding to purchase needed services for offenders who did not meet eligibility standards.

With implementation of the Affordable Care Act, some of these offenders became eligible for Medi-Cal and certain services would be paid by the federal and State government. Each county's CCP should review those services with its HHS members.



AB 109: Frequently Asked Questions

This FAQ is designed to provide insights into common questions related to California's 2011 Public Safety Realignment and AB 109 implementation.

Funding & Fiscal Protections

Q: How is 2011 Public Safety Realignment funded?

2011 Realignment is funded by a State special sales tax of 1.0625 cents (and some Vehicle License Funds (VLF) which only go to specified public safety programs). The Community Corrections Subaccount receives a portion of the sales tax revenue generated by the 1.0625 cents.

These funds are constitutionally protected for 2011 Public Safety Realignment. The Constitution requires that if the methodology for collecting sales tax or VLF were to change in the future, counties are guaranteed the same amount of funding that they would have received from tax as they were defined in 2011 Realignment. For instance, subsequent to the implementation of 2011 Realignment, certain items were excluded from the sales tax calculation. The State is obligated to backfill 2011 realignment as if those items still generated sales tax.

The Constitutional guarantee does not protect the level of funding generated each year from the 1.0625 cents which means the annual revenue can decrease.

Q: What is the difference between base funding and growth funding?

2011 Realignment uses the concept of a "rolling base". This means that each year's statewide base amount plus growth (if there is growth) equals next year's base.

For example, if the total revenue generated by the 1.0625 cents equals the amount of total revenue generated in the prior year, the overall "base" for the current year is met. If the revenue generated is greater than the previous year's amount, there will be growth revenue to distribute to the accounts and subaccounts. If the overall revenue generated is less than the prior year, each account and subaccount will receive less money to be distributed. Even though the subaccount might have less money to distribute in a given year, the "base" is still defined at the higher level and the base will be restored when revenues again increase prior to any new growth being distributed.

It works the same way for each county's allocation within a subaccount with the exceptions of the 1991 Mental Health Responsibilities Account and the Community Correction's Subaccount. The 1991 Mental Health Account receives growth in a year where there is growth but that growth does not add to the base. For the Community Corrections Subaccount, the concept of the rolling base is true for the statewide subaccount numbers. Therefore, if the statewide base is met in the prior year and there is growth in the prior year, that total will be the new base. Since each county receives a percentage of the statewide subaccount base, each county will receive more money which is considered base. If there is new growth, that is distributed on a formula basis by county. A county will not know if it will receive growth until the statewide numbers are known and the amount of growth a county will receive won't be known until the formula calculations are complete.



Q: Should the Community Corrections Subaccount have a reserve?

There is no requirement in statute that the Community Corrections Subaccount (or any other Subaccount) have a reserve. The County Supervisors Association (CSAC) asked for language to be included in 2011 Realignment saying reserves could be created. They did so because the law was silent on the issue of reserves in 1991 Realignment which created confusion.

Reserves are prudent given the potential volatility of sales tax revenue and unanticipated cost increases but that is a county decision. If reserves are created, each county probably has a reserve policy which could be used as a guide.

Q: If there is a reserve in the Subaccount, can the county just take the money and move it elsewhere?

No. The Constitution says the funds are to be spent in accordance with the statutes that implemented 2011 Public Safety Realignment. AB 109 states that the money in the Community Corrections Subaccount is to be used to implement the provisions of AB 109. The Subaccount funds do not have to be used explicitly on an AB 109 person but they do have to be used on an adult offender population. The intent was the funds would be used to cover costs of the new population that would be under the jurisdiction of the county in terms of housing, supervision, services, and treatment. The intent was also that the funds be used to change the community corrections system whether by developing or expanding programs and treatment in jail (educational programs, job training, mental health groups, etc.) or possibly the use of alternative sanctions so offenders could remain in the community if appropriate. The intent was centered on the reduction of recidivism.

It was important for the implementation and success of AB 109 to give each county the flexibility to deal with the population shift as needed given their circumstances. There were no specific requirements for funding included in statute though intent language did speak to alternative sanctions as being part of a community corrections system. Funds have been used to purchase equipment, IT projects, salary increases, salary bonuses, or to build buildings – in general, anything that the CCP deems necessary to operate programs and meet the goals identified in the plan.

Planning & Governance

Q: Does the CCP have to do the plan required by AB 109?

Section 1230.1 (a) of the Penal Code states: “Each county local Community Corrections Partnership established pursuant to subdivision (b) of Section 1230 shall recommend a local plan to the county board of supervisors for the implementation of the 2011 public safety realignment.” The plan is voted on by the executive committee of each county’s Community Corrections partnership (statute defines the membership). Section 1230.1 (c) states: “The plan shall be deemed accepted by the county board of supervisors unless the board rejects the plan by a vote of four-fifths of the board, in which case the plan goes back to the Community Corrections Partnership for further consideration.”

When AB 109 was implemented, the State allocated \$7.9 million to counties to facilitate the creation of the plan. A few years later, budget bill language was added stating that a county would be eligible for its share of the \$7.9 million if they submitted an updated Community Corrections Partnership plan and report.

As part of the 2024-25 budget, the \$7.9 million and the budget bill language were eliminated.

As part of the 2025-26 budget, statute was deleted eliminating the requirement that the Board of State and Community Corrections (BSCC) annually collect and analyze available data regarding implementation of the plans and eliminated the annual BSCC report to the Governor and Legislature.

There is no statutory requirement for a county to revise or update its plan.

Best practice might indicate that a county’s plan should be reviewed and updated as often as the county wants to determine if the plan is meeting its goals and objectives or to determine how increased (or decreased) revenue should be considered. That is up to each county.



Q: What is the most important thing to think about when doing or revising the CCP plan?

Clear measurable goals and objectives are critical to the plan. After that, an argument can be made that looking at the data is the most important thing. Has there been progress in meeting the goals and objectives of the plan? If not, is there sufficient information to determine which elements might be altered or dropped completely? Is there sufficient knowledge about what to substitute if the plan is being altered? If a change is made, are there data elements that can be tracked to determine if the new element is successful? Maybe the goals and objectives need updating? Anything retained, modified, or eliminated from the plan should be based on data wherever possible.

Q: What can be said to members of the CCP or BOS members (or anyone else) if they approach the CCP with a new project or request for funding?

Any new project or concept should be reviewed using the same criteria: how does it fit in with the current plan, how much would it cost (one-time, ongoing), does the county have data to measure the outcome, would it have a better outcome than something currently in the plan, etc. Change in the community corrections system and a reduction in recidivism were the most important goals behind AB 109.

Allowable Use of Funds

Q: Are there ways the AB 109 funds can be used in other program areas?

Yes. AB 109 funds can be used to purchase services or treatment from other county or nonprofit providers who provide services to the justice-involved adult population if those services are part of the CCP plan. These funds should not be used to replace other State or county funds as that would constitute supplantation.

Q: Can AB 109 funds be used for programs for youth?

The language in AB 109 centered on the adult population being shifted to county jurisdictions. There is other funding available in 2011 Realignment for the juvenile population.

However, funds could be used for the group of young people called “emerging adults” who are aged 18 to 25. Some examples of programs that could be funded are anti-gang or anti-crime efforts aimed at youth who are at risk of entering the criminal justice system or specialized mental health services for those in this age group (caution: if the youth are Medi-Cal eligible, they may meet the requirements for being served by the county through the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) program which is a required federal benefit that the county must provide. Funds for EPSDT were realigned in 2011 and are part of the Behavioral Health Subaccount in 2011 Realignment). The services that might be provided to these emerging adults depends on what services are available or needed in the county.

Tracking & Oversight

Q: How can I track the dollars coming into the county for the Community Corrections Subaccount?

The Department of Finance estimates the statewide revenue available for 2011 Realignment twice a year - in January for the Governor’s Budget and in May for the May Revision. The estimates for the Community Corrections Subaccount can give a county an idea of what the county should be receiving because the prior year’s base for your county and the estimate of growth (though it’s important to remember that the growth for the Community Corrections Subaccount is an incentive payment and not just a proportional amount so it can vary). Funds are allocated monthly to the counties and the amount depends on the total statewide receipts to be allocated in that month. The State Controller’s website identifies all payments to counties by month. Go to the SCO website, then the State and local section, then the local government section, then local government apportionments. The community corrections subaccount and growth accounts are listed there.



Also, CSAC sends out information on 2011 Realignment allocation in both January and May.

Program Structure

Q: What other subaccounts are funded under the Law Enforcement Services Account?

There are 5 subaccounts under the Law Enforcement Services Account.

The Community Corrections Subaccount: this is the subaccount that funds AB 109 activities.

Trial Court Security Subaccount: funds in this Subaccount are allocated directly to the Sheriff in the 56 counties where Sheriffs provide court security. That is the only activity these funds can be used for. The 56 counties are 100 percent responsible for court security costs.

District Attorney/Public Defender Subaccount: funds in this subaccount are split 50/50 in each county among the DA and Public Defender. As part of 2011 Realignment all revocation work was shifted from the State Board of Parole Hearings to the trial courts. This funding is available to the DA and PD only for their revocation workload, including training. This includes revocations for those on parole or Post Release Community Supervision.

Juvenile Justice Subaccount: these funds replaced State General Fund dollars previously allocated to counties for reentry grants and the Youthful Offender Block Grant.

Enhancing Law Enforcement Activities Subaccount: this is the only subaccount that is funded by VLF revenue which is guaranteed at \$489.9 million. This funding replaces the General Fund allocations for several public safety programs, including COPS, Juvenile Justice Crime Prevention grants, plus several smaller allocations. The formulas for allocation to counties are articulated in statute and were not altered by 2011 Realignment.

