

To & From for 3/1/11

From: N. Santiago

## 2011 Realignment

Executive Summary  
General Realignment Issues/Mitigations  
Technical Issues by Program Area

Updated as of February 22, 2011

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California State Association of Counties  
1100 K Street, Suite 101 ■ Sacramento, CA ■ 95814  
916/327-7500 ■ [www.csac.counties.org](http://www.csac.counties.org)



## **Executive Summary**

The California State Association of Counties (CSAC) has spent the better part of the last month vetting the Governor's 2011-12 Realignment proposal, which contemplates a "vast and historic" restructuring of state and local public services. Our analytical and evaluative efforts have been focused on determining the programs appropriate for realignment and identifying ways to provide adequate protections for counties under the Realignment construct. These conversations have been difficult, in part due to the constraints of time, but also due to the significant challenges associated with the proposal. Counties have endeavored to provide a practical and reasonable response; however, we continue to have discussions about the general protection and programmatic issues raised by the proposal. We anticipate updating this document as our work continues.

This document sets forth (1) the protections counties will be seeking and (2) chief technical issues associated with each program area identified for realignment. The latter represent the compilation of input from CSAC's technical subcommittees organized around the four general components of the Realignment proposal: (1) finance; (2) fire; (3) health and human services; and (4) public safety. The County Counsels' Association Cost Shift Committee has assisted greatly in vetting protections and general mitigations.

Based on the input of the technical subcommittees and the CSAC Realignment Working Group, we have the following overarching comments:

- Counties remain open to considering the transfer of responsibilities under a realignment plan, with the exception of the proposed parole shift, as long as the programs are accompanied by the protections and mitigations outlined.
- Some of the program proposals require additional narrowing of scope, particularly on the public safety side.
- The health and human services programs have been cut over recent years and program standards have not been properly funded; this gap results in significant underfunding in the proposal.
- The savings from the fire proposal are overstated.
- We continue to evaluate revenue projections, but have concerns that revenue estimates are optimistic.

In the pages that follow, we outline desired constitutional protections and detail specific technical issues by program area. In the meantime, our work to provide meaningful and timely input to the Administration continues.

# General Realignment Issues and Mitigations

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## **General Realignment Issues and Mitigations**

### **Realignment: CONSTITUTIONAL PROVISIONS/PROTECTIONS**

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#### **Beyond Year 5: Constitutionally protecting ongoing realignment funding source**

Constitution authorizes counties to use the schools' share of property taxes as the revenue source for funding Realignment in Year 6 and beyond (a la Triple Flip and VLF Swap).

*Potential complications: basic aid schools, redevelopment, adequacy of revenue source (particularly in small counties), constitutional prohibition on use of property tax revenues to fund mandates.*

*Potential benefit: provides a relatively stable revenue source for caseload-driven programs and incentivizes county investment in the property tax administration system.*

Alternative is dedicated funding from the state General Fund.

Poison pill if ballot measure is rejected by voters or blocked by courts.

Constitutional dedication of revenues should be extended to the 1991 Realignment revenues and revenues that support 2007 and 2010 juvenile probation realignments.

#### **Protection: When revenues are not adequate to meet program needs**

Counties' primary concern about realignment is that revenues are insufficient to meet program needs. To remedy this problem, we must

- protect the revenues dedicated to realignment; and
- require a state share of costs if programs are expanded by voter initiative or state, federal, or judicial action.

Counties need authority to seek direct relief from the courts, and courts must have the authority to direct the Controller to use any unencumbered funds to make payment. This provision seeks to provide an alternative to the cumbersome SB 90 mandate reimbursement process.

Counties may reduce service levels to meet available resources.

Other key components:

- State realignment funds must be continuously appropriated.
- State realignment funds should be a priority payment to ensure continuous flow of funds during state cashflow shortfalls.
- The state must be an indispensable and necessary party to any third-party lawsuit challenging the county's performance of a realigned program.

- The state must share in future federal penalties associated with federally-mandated programs. Penalties associated with programs pre-2011 are the state's.
- There must be a mechanism or process by which counties and the Administration and/or Legislature can "reopen" a component of the realignment to address statewide issues (revenue shortfall, program changes, federal law changes, etc.) without threat of blowing up the entire package. Must have specific, narrow focus.
- For those programs for which the state must remain the single state entity to negotiate with the federal government, counties must have a formal role in state decision-making process and/or have sign-off authority on state decisions, including federal waivers, federal improvement plans, and court settlements.

These constitutional remedies should be extended to the 1991 Realignment revenues and revenues that support 2007 and 2010 juvenile probation realignments.

**Protection: Realignment reserve and/or General Fund safety net**

Counties support the concept of a "realignment reserve" account that captures certain revenues during good economic times, after realignment base and growth amounts are appropriately funded to allocate to counties when revenues do not keep pace with service requirements or caseload growth.

Additionally, we support a state General Fund guarantee to provide the revenues when the difference between realignment funds and caseload needs hits a certain threshold.

The structure of these protection components is dependent upon the chosen revenue source. The more volatile the source, the greater the need for these protections.

**Realignment: OTHER CONSIDERATIONS**

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**Restore Funding to Chronically Underfunded Programs**

Provide means to restore base funding to mental health and social services programs and base restoration to 1991 realigned programs<sup>1</sup>.

**Pre-2004 and Suspended Mandates**

- Address long-standing mandate debt:
  - Option #1: More defined and required repayment schedule; or
  - Option #2: Authority to securitize eventual payments from the state.
  - For either option:
    - Include in repayment the two years' claims prior to suspension for those mandates that were recently suspended.
    - Include in repayment amounts owed for AB 3632.
- Make optional long-suspended mandates.

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<sup>1</sup> See chart at end of document for details.

**Facilities**

AB 900/SB 81 changes

**Other Items**

Provide language to ensure timely reimbursement to counties for costs of the special election.

Reinstate statutory reimbursement for special elections called by the Governor.

**Realignment: Considerations**

*General authority:* In order for counties to properly manage these programs and better serve the community, the Board of Supervisors must retain expenditure and program authority for realigned programs.

*Local taxing authority:* We do not view local taxing authority as an appropriate means for providing resources for programs that are statewide in nature, as contemplated in a realignment of programs and service from the state to counties.

*Program flexibility:* Counties need broad flexibility in order to manage realigned programs and to generate improved outcomes. We support the ability to provide services regionally to ensure appropriate economies of scale and encourage collaborative approaches.

*State oversight:* As contemplated in this proposal, counties support a new role for state agencies to ensuring maximum investment in program success with a focus on evaluating outcomes and sharing best practices. Counties support the Governor's proposal to streamline and refocus state activities in realigned programs.

*Labor concerns:* Counties must maintain independent authority to hire employees of their preference.

*Revenue projections:* Counties are concerned that the Administration's revenue projections are optimistic. Overly optimistic revenue projections in 1991 caused immediate base shortfalls and funding problems. Counties want to avoid a similar revenue problem in 2011 and continue to evaluate data received by the Department of Finance.

*1991 concerns:* Counties do not want to re-open the 1991 realignment as part of Phase One.

*Phase Two concerns:* Counties remain extremely concerned about the Phase Two Realignment proposal (programs, timing, financing) and the interaction with Phase One.

**Base shortfalls in 2011 realignment package**

Program	2011-12	2012-13	2013-14	2014-15
CWS	\$478 million			
APS	\$100 million			
AB 3632	\$200 million			
EPSDT	\$130 million			
Mental Health managed care	\$71 million			
Drug Medi-Cal	\$30 million			
AOD & Mental Health parity	Unknown	Unknown, potentially hundreds of millions	Unknown, potentially hundreds of millions	
AB 12 (extended care to age 20)		\$21 million	\$41 million	
AB 12 (extended care to age 21)		\$21 million	\$53 million	\$66 million
<b>Total</b>	<b>\$1.009 billion</b>			

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Program	2011-2012	2012-2013	2013-2014	2014-2015
Health and Human Services Programs				
Social Services				
Mental Health				
Substance Use Disorder				

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## Child Welfare Services

<p><b>Issues</b></p>	<ul style="list-style-type: none"> <li>▪ SB 2030 study found that social worker caseloads in California are excessively high for a minimal level of case management for vulnerable children and families. In fact, the optimal caseload standards would be approximately half of the current budgeting standards. Counties would need \$759 million (\$242 million General Fund) in addition to restoration of the underfunding described below to meet the optimal SB 2030 standards.</li> <li>▪ CWS is the subject of a constant barrage of new mandates, new demands for greater service levels and new accountability requirements. Legislative interest (both at the state and federal level) in this program is constant and seems unlikely to change regardless of the county share of costs imposed by realignment. Court judgments also increasingly impose new service and accountability requirements.</li> <li>▪ The state froze its contribution to the program in 2001. CWS is underfunded by approximately \$616 million (\$291 million General Fund).</li> <li>▪ \$80 million General Fund was also vetoed from CWS in 2009-10. This funding cut remains in place today.</li> <li>▪ The state will remain the single statewide agency responsible for oversight and for reporting to and negotiating with the federal government and the courts. At the same time, the state could have no financial stake in penalties or increases in mandated costs.</li> <li>▪ There are two counties participating in a federal child welfare waiver, the terms of which guarantee them a specified amount of General Fund plus growth funding each year of the waiver. Will the current fiscal terms of the waiver be honored under the realignment scheme? Will ongoing waiver participation be allowed (and will additional counties be able to join) if the federal government chooses to continue the waiver program?</li> <li>▪ Federal outcome monitoring system required by AFSA. California has a negotiated Program Improvement Plan (PIP) in place. The state as the single statewide agency, not the counties, enters into and negotiates the PIP. The PIP will require new investments in the CWS program. California could face penalties for failure to improve.</li> <li>▪ CWS/CMS is not included in the proposal for realignment, but it may make sense to give counties more control over the technology tool used by social workers in the program. Sole state control means system less responsive to county needs.</li> </ul>
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<b>Flexibilities</b>	Few to no opportunities for flexibility.
<b>Protections/ Mitigations</b>	<ul style="list-style-type: none"> <li>▪ Base restoration plus additional funding to meet SB 2030 standards.</li> <li>▪ How to prevent against DSS negotiating with federal government and settling lawsuits – both of which have fiscal implications for counties – without county input? Give counties authority in state decision-making process and/or sign-off authority on state decisions.</li> <li>▪ Maintain state share in penalties.</li> <li>▪ General Fund backstop if revenue sources underperform.</li> <li>▪ Restore realignment shortfall in existing realignment structure.</li> </ul>

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## Foster Care Grants

<b>Issues</b>	<ul style="list-style-type: none"> <li>▪ Costs have risen faster than caseload as a result of increases in provider rates and in increase in the proportion of children being placed at higher and more expensive levels of care. In addition fewer cases over time have been and will continue to be eligible for federal reimbursement due to federal law using 1996 income limits (the "look-back").</li> <li>▪ There has been increased judicial activity in the program. A recent court case that the state settled forced a 32% increase in Group Home rates (with guaranteed growth each year) and there is expected to be a court ruling increasing Foster Family Home rates. Litigation around Foster Family Agency rates is expected.</li> <li>▪ While caseload growth appears to be slow, it is important to note that, historically, rates of growth and decline in the foster care program can be precipitous and unpredictable. A highly publicized tragedy, a McMartin pre-school-like scare, or a new substance abuse epidemic can result in substantial and unexpected swings in foster care caseloads.</li> <li>▪ The state will remain the single statewide agency responsible for oversight and setting rates, and for reporting to and negotiating with the federal government and the courts. At the same time, the state could have no financial stake in penalties or increases in mandated costs.</li> <li>▪ There is no funding for AB 12 included in the current funding base to be realigned. AB 12 extended the amount of time that youth meeting specified criteria may remain in foster care, from age 18 to age 20 (with possible extension to age 21). AB 12 specified that the foster care extension shall be cost-neutral to counties by capping each county's contribution to the costs at each county's savings from converting state-only Kin-GAP cases to federal Kin-GAP cases.</li> <li>▪ There are two counties participating in a federal child welfare waiver, the terms of which guarantee them a specified amount of General Fund plus growth funding each year of the waiver. Will the current fiscal terms of the waiver be honored under the realignment scheme? Will ongoing waiver participation be allowed (and will additional counties be able to join) if the federal government chooses to continue the waiver program?</li> <li>▪ The major policy issue faced by counties in the foster care program is a severe shortage of foster family homes and intensive treatment facilities for seriously troubled children. Rates and state recruitment efforts have historically lagged,</li> </ul>
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	resulting in serious shortages of needed placement resources. Recent (and expected) rate increases will help, but will come at 100% county expense.
<b>Flexibilities</b>	Few to no opportunities for flexibility.
<b>Protections/ Mitigations</b>	<ul style="list-style-type: none"> <li>▪ How to prevent against DSS negotiating with federal government and settling lawsuits – both of which have fiscal implications for counties – without county input? Give counties authority in state decision-making process and/or sign-off authority on state decisions.</li> <li>▪ General Fund backstop if revenue sources underperform.</li> <li>▪ Restore realignment shortfall in existing realignment structure.</li> </ul>

<b>Foster Care Administration</b>	
<b>Issues</b>	<b>Protections/Mitigations</b>
Same issues as enumerated in Foster Care Grants (except that the federal “look-back” issue described in the Foster Care Grants evaluation does not apply to Foster Care Administration).	Same mitigations as enumerated in Foster Care Grants.
The state froze its contribution to the program in 2001. Foster Care Administration is underfunded by approximately \$12.5 million (\$8.2 million General Fund).	Base restoration.

## Adoptions Program and Adoption Assistance Programs

<b>Issues</b>	<ul style="list-style-type: none"> <li>▪ The Adoptions Program provides funding to cover the independent and agency adoptions for 30 counties. The remaining 28 counties (which are small) opt for the state to administer the program. If this is realigned, there will be resource and infrastructure issues for the small counties currently not operating the program.</li> <li>▪ The state froze its contribution to the Adoptions Program in 2001. This program is underfunded by approximately \$25.4 million (\$19.8 million General Fund).</li> <li>▪ AAP is a fast-growing program.</li> <li>▪ AAP benefits are not to exceed the foster family home rate for which the child would otherwise be eligible, although in many cases the AAP and foster care rates are similar. To the extent that rate increases are provided to foster family homes pursuant to pending litigation (see Foster Care Grants issues), then AAP rates are also likely to be higher.</li> <li>▪ In addition fewer AAP cases over time have been and will continue to be eligible for federal reimbursement due to federal law using 1996 income limits (the "look-back").</li> </ul>
<b>Flexibilities</b>	There are opportunities for flexibility in Adoptions Program. Few opportunities for flexibility in AAP.
<b>Protections/ Mitigations</b>	<ul style="list-style-type: none"> <li>▪ Base restoration plus additional funding for the 28 counties currently not operating an Adoptions Program.</li> <li>▪ General Fund backstop if revenue sources underperform.</li> <li>▪ Restore realignment shortfall in existing realignment structure.</li> </ul>

## Child Abuse Prevention, Intervention, and Treatment

<b>Issues</b>	<ul style="list-style-type: none"> <li>▪ Program is currently a block grant.</li> <li>▪ Program funding, which is all GF, is currently used as the match to fulfill federal Community-Based Child Abuse Prevention (CBCAP) grant matching and leveraging requirements.</li> </ul>
<b>Flexibilities</b>	Other than funds being used a match, no federal programmatic requirements.
<b>Protections/Mitigations</b>	<ul style="list-style-type: none"> <li>▪ General Fund backstop if revenue sources underperform.</li> <li>▪ Restore realignment shortfall in existing realignment structure.</li> </ul>

## Adult Protective Services

<p><b>Issues</b></p>	<ul style="list-style-type: none"> <li>▪ The current funding level is at least \$111 million less than needed to provide mandated services due to lack of funding increases, cuts to the program, and a base shortfall.</li> <li>▪ The demand for services has nearly tripled since 1997.</li> <li>▪ Current state law does not clearly allow county flexibility to modify the array of services to meet local needs or manage within available resources. Counties are thus exposed to significant liability for failure to provide needed services despite inadequate funding.</li> <li>▪ Projected increases in California's elderly population will steadily increase the demand for APS.</li> <li>▪ Tort liability is a concern. Some counties have been sued even though according to current law services only have to be provided to the extent funding is available.</li> <li>▪ Looming federal law changes (the Elder Justice Act) may impose new federal requirements on states for APS.</li> </ul>
<p><b>Flexibilities</b></p>	<p>There are currently no federal programmatic requirements. Opportunities to modify state law to allow for flexibility.</p>
<p><b>Protections/Mitigations</b></p>	<ul style="list-style-type: none"> <li>▪ Base restoration.</li> <li>▪ Establish a process for reimbursement of federal and judicial mandates.</li> <li>▪ General Fund backstop if revenue sources underperform.</li> <li>▪ Restore realignment shortfall in existing realignment structure.</li> <li>▪ Change state law to allow for more county flexibility.</li> <li>▪ Require the state to pass on future federal funds (Elder Justice Act) for APS activities and clarify that the state cannot divert a share of those funds (similar protection to the FMAP increases).</li> </ul>

## Mental Health Issues

<b>Mental Health Managed Care</b>	
<b>Issues</b>	<ul style="list-style-type: none"> <li>▪ Federal entitlement programs, giving counties limited or no ability to manage the caseloads of the programs with limited funding.</li> <li>▪ 1991 realignment funding base for mental health is approximately \$200 million below what it was two years ago. Caseload-driven social services programs receive priority for sales tax growth, leaving only VLF growth (if any) for mental health.</li> <li>▪ State Medicaid plans and waivers specify required coverage, financial, beneficiary protection and provider limitations. DHCS is the single statewide Medicaid agency, which, along with DMH, has negotiated the state plans and waivers with limited county involvement, to date.</li> <li>▪ Section 10201(c)(6) of the federal health care reform law, the Affordable Care Act (ACA), prohibits States from requiring political subdivisions (e.g., counties) to incur a percentage share of non-federal Medicaid costs above what was required on December 31, 2009 as a condition for receipt of the enhanced Medicaid FMAP for newly Medicaid eligible persons under the ACA. How does the State plan to comply with this federal requirement?</li> <li>▪ Proposed base is underfunded by \$71 million.</li> </ul>
<b>Flexibilities</b>	<ul style="list-style-type: none"> <li>▪ Eliminate state-only Medicaid rules applied to Medi-Cal Specialty Mental Health Managed Care program that limit counties' access to federal reimbursement.               <ol style="list-style-type: none"> <li>1. Eliminate State Maximum Allowances for federal reimbursement. Instead, use federal Upper Payment Limits.</li> <li>2. Eliminate 15% cap on administrative costs. Instead, use federal requirements permitting full cost reimbursement to counties.</li> <li>3. Eliminate 6-month deadline for claims submission. Instead, use federal 12-month deadline.</li> </ol> </li> <li>▪ Modify the statutory basis for the current realignment of community mental health programs, clarifying responsibilities for health care ancillary services delivered to residents of IMDs, and addressing the current mental health realignment annual shortfall of approximately \$200 million.</li> </ul>
<b>Protections/ Mitigations</b>	<ul style="list-style-type: none"> <li>▪ Base restoration.</li> <li>▪ When revenues underperform, GF backstop with constitutional, anti-raid measures.</li> <li>▪ Maintain state share of program cost growth that results from changes in federal or state law, court actions, penalties, or growth in entitlement costs that exceed a defined baseline threshold.</li> <li>▪ Formal county role in state decision-making, including negotiations with federal CMS on California's Medicaid state plan and waivers.</li> </ul>

**EPSDT**

<p><b>Issues</b></p>	<ul style="list-style-type: none"> <li>▪ Federal entitlement programs, giving counties limited or no ability to manage the caseloads of the programs with limited funding.</li> <li>▪ 1991 realignment funding base for mental health is approximately \$200 million below what it was two years ago. Caseload-driven social services programs receive priority for sales tax growth, leaving only VLF growth (if any) for mental health.</li> <li>▪ Beginning in FY 2009-10, DMH began developing EPSDT funding estimates using questionable offsets, including "voluntary" MHSA contributions by counties. These practices have not been adequately explained by DMH, to date.</li> <li>▪ The state budget allocation for this program has been typically insufficient, causing DMH to seek deficiency appropriations in the state budget.</li> <li>▪ Proposed base is underfunded by \$130 million.</li> <li>▪ Significant Litigation. The state has settled lawsuits in the program requiring counties to produce increases in program utilization, with no additional funds. Settlements require therapeutic behavioral services to grow by 4 percent per year. In addition, there remains ongoing litigation in EPSDT (<i>Emily Q.</i> and <i>Katie A.</i>). Settlement of these suits may drive costs at rates well beyond how the revenue sources will perform.</li> <li>▪ State Medicaid plans and waivers specify required coverage, financial, beneficiary protection and provider limitations. DHCS is the single statewide Medicaid agency, which, along with DMH, has negotiated the state plans and waivers with limited county involvement, to date.</li> <li>▪ Section 10201(c)(6) of the federal health care reform law, the Affordable Care Act (ACA), prohibits States from requiring political subdivisions (e.g., counties) to incur a percentage share of non-federal Medicaid costs above what was required on December 31, 2009 as a condition for receipt of the enhanced Medicaid FMAP for newly Medicaid eligible persons under the ACA. How does the State propose to comply with this federal requirement?</li> </ul>
<p><b>Protections/ Mitigations</b></p>	<ul style="list-style-type: none"> <li>▪ Base restoration.</li> <li>▪ When revenues underperform, GF backstop with constitutional, anti-raid measures.</li> <li>▪ 100% state share of cost for settlement costs related to <i>Katie A.</i> and <i>Emily Q.</i></li> <li>▪ Maintain state share of program cost growth that results from changes in federal or state law, court actions, penalties, or growth in entitlement costs that exceed a defined baseline threshold.</li> <li>▪ Formal county role in state decision-making, including negotiations with federal CMS on California's Medicaid state plan and waivers.</li> </ul>



<b>Special Education Mental Health Related Services</b>	
<b>Issues</b>	<ul style="list-style-type: none"> <li>▪ Federal law entitles special education students to services that enable them to benefit from their free, appropriate public education. Schools determine AB 3632 referrals to counties; therefore, counties do not have the ability to manage the caseload with limited funding.</li> <li>▪ Annual amount budgeted for AB 3632 is approximately \$200 million short.</li> <li>▪ Counties would lose access to the SB 90 mandate reimbursement process under this proposal.</li> <li>▪ Unclear how state/local responsibility for residential placements would be financed.</li> <li>▪ Long history of underfunding and litigation with AB 3632 mandate. Counties are owed approximately \$400 million in past mandate claims.</li> <li>▪ If schools have no "skin in the game" financially for ensuring the provision of IEP-identified mental health services to students under the realigned program, how can counties appropriately manage their financial risk?</li> </ul>
<b>Protections/ Mitigations</b>	<ul style="list-style-type: none"> <li>▪ Base restoration.</li> <li>▪ Remove the federal educational entitlement responsibilities from counties, and provide assurances that these IEP-related and due process obligations are the responsibility of local educational agencies, consistent with federal law;</li> <li>▪ Rewrite state statute and regulations regarding services provisions. Please note that 27 years after the original bill passed service models and best practices have changed;</li> <li>▪ Specify in the new realignment that the "realigned" responsibilities for special education-related mental health services provided by counties are limited to the extent resources are available, and subject to the allocation specified in provisions of the state-county realignment performance contract; and</li> <li>▪ Require county mental health departments and local education agencies to develop an MOU specifying provisions for the delivery and coordination of mental health services to special education students, including how services would be sustained once a county's annual performance contract realignment allocation for these services is exhausted.</li> <li>▪ Preserve use of IDEA funds for special education mental health related services.</li> <li>▪ Realign to counties for one year, and require stakeholders to develop a transition plan to return primary fiscal and legal responsibility to schools.</li> </ul>

### **MHSA Issues**

- Can the Legislature diverting MHSA funds by 2/3 vote of the Legislature, rather than seeking voter approval? MHSA statute permits amendments to the Act by 2/3 vote of the Legislature so long as such amendments are "consistent with and further the intent of" the Act.
- In order to divert MHSA funds for the proposed purpose, amendments to MHSA statute would be needed to relieve the state of its non-supplantation and maintenance of effort obligations.
- Can MHSA funds be used for the entitlement services in the three realigned programs? MHSA funds must be used for services that are "voluntary in nature."
- Can MHSA funds be used to pay county SB 90 mandates for AB 3632 in FY 2011-12? Mandates must be paid with general purpose funds.
- Take a "least harm" approach to the one-time MHSA fund redirection to minimize disruption of services for consumers and families:
  1. Develop budget trailer bill language to specify that the state will borrow \$557,948,000 from the MHS Fund in the state treasury to cover its MHSA maintenance of effort for FY 2011-12. These funds would be included in the EPSDT and Medi-Cal Specialty Mental Health Managed Care realignment transfer for 2011-12 and be subject to repayment within 5 years.
  2. Utilize existing and to-be-collected funding in the MHS Fund in the State Treasury, rather than reduce MHSA local assistance funds in 2011-12.
  3. Consult with counties on a formula to distribute MHSA funds to each county to meet the state's 2011-12 EPSDT and Medi-Cal Specialty Mental Health Managed Care obligations.

## Substance Use Disorder Treatment Programs

<b>Issues</b>	<p><b>Funding Adequacy.</b> Rising caseload levels in Drug Medi-Cal threaten to pose significant cost increases over both the short- and long-term. Funding must correspond with caseload growth and inflationary factors. Additionally, the base funding level must be based on the actual cost of delivering the service.</p> <p><b>Federal MOE.</b> Federal regulations governing the Substance Abuse Prevention and Treatment Block Grant require that in order to meet federal maintenance of effort requirements, state must maintain "aggregate State expenditures by the principal agency for authorized activities." A required level of service must be maintained through the single state agency for alcohol and drug programs or California risks losing a federal dollar for each dollar the state falls below the MOE. Would placing the funds in a special fund locally or maintaining a categorical appropriation help satisfy federal MOU requirements?</p> <p><b>Statewide Agency.</b> Need a statewide principal agency (Single State Agency) to continue to receive federal Substance Abuse Prevention and Treatment (SAPT) Block Grant funding.</p> <p><b>Lack of Flexibility.</b> Drug Medi-Cal is a federal entitlement program.</p> <p><b>Scope of Services.</b> Given the patchwork nature of Drug Medi-Cal, along with varying degrees of support among different communities for SUD services, any realignment must examine the specific services and populations that will best be served at the local level and give counties the funding and flexibility to tailor services to these parameters.</p> <p><b>Parity.</b> Federal regulations are pending that will require Medicaid to treat mental health and SUD services like other illnesses. Federal law requires that any group health plan that includes mental health and substance use disorder benefits, along with standard medical and surgical coverage, must treat them equally in terms of out-of-pocket costs, benefit limits and practices such as prior authorization and utilization review. It is unclear how this will impact Drug Medi-Cal but it could significantly reshape the program and drive spending much higher than revenues. Existing caps on services would be lifted and <u>could create a very substantial open-ended entitlement for substance use disorder treatment.</u></p> <p><b>Federal Medicaid Issues.</b> Section 10201(c)(6) of the federal health care reform law, the Affordable Care Act (ACA), prohibits States from</p>
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	<p>requiring political subdivisions (e.g., counties) to incur a percentage share of non-federal Medicaid costs above what was required on December 31, 2009 as a condition for receipt of the enhanced Medicaid FMAP for newly Medicaid eligible persons under the ACA. How does the State plan to address this issue?</p> <p><b>Participation.</b> Forty-one counties currently participate in Drug Medi-Cal, and 17 do not. How would a realignment affect all counties? Would a realignment be effective on a county-by-county basis? Would a realignment permanently lock in or lock out a county decision on providing Drug Medi-Cal, and how would this affect health care reform and parity efforts in the future?</p>
<b>Flexibilities</b>	<ul style="list-style-type: none"> <li>▪ May be few opportunities for flexibility with Drug Medi-Cal</li> <li>▪ Counties must have authority to set rates and to certify programs for providing Drug Medi-Cal services.</li> <li>▪ More flexibility locally for Non Drug Medi-Cal Regular, Non Drug Medi-Cal Perinatal, and drug courts</li> <li>▪ Allow counties to opt in or out (similar to current structure)?</li> </ul>
<b>Protections/ Mitigations</b>	<ul style="list-style-type: none"> <li>▪ When revenues underperform, GF backstop with constitutional, anti-raid measures</li> <li>▪ State maintains share of penalties and legal judgments</li> <li>▪ Formal county role in state decision-making</li> <li>▪ Better constitutional mandates process – faster, more certain</li> <li>▪ Mandate reimbursement for federal acts and court judgments</li> </ul>

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## **Public Safety Programs**

Population Shifts (Low-Level Offender, Parole, DJJ)

Court Security

Local Public Safety Funding

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## Public Safety Realignment Elements

### Overarching Issues

- **Capacity –**
  - Need to address ways to expand and expedite physical capacity for new population
  - Still evaluating sufficiency of investment across the broad spectrum of supportive services (mental health, alcohol and drug, public health, other transitional – jobs, housing, training – services) to produce desired outcomes for offenders and reduced recidivism
  - Foundation of services not presently in place, especially in current economic climate and in face of consecutive years of staffing and programmatic reductions across systems (probation, MH, AOD, etc.)
- **Individual/collective impact –**
  - Proposal is massive and complex, with significant transitional issues
  - Challenge to evaluate counties' capacity to take on individual components of realignment; more difficult to evaluate collective capacity
- **Authority –**
  - Counties need flexibility to design systems and services to meet local needs; calls for decision-making to be centered at the executive level of local government
  - Boards of supervisors must have broad authority – within the realignment public safety construct – to allocate funds and make vital programmatic decisions
- **Funding –**
  - In public safety, counties are being asked to fundamentally rethink investments, strategies, and approaches in dealing with the offender population. In time frame available, counties are struggling to bridge the state's costing model/assumptions to a new local service design and determine what funding is needed to cover all costs (detention, supervision, treatment, medical, other supportive services). We will continue to work on this aspect once additional population data is received.
  - Must require state to cover costs related to future changes in law that expand crimes in "non-non-non" category
  - Need to tie full range of program shifts to funding
- **Results driven –**
  - Bottom line: if properly resourced and give sufficient authority and flexibility, counties can show improved outcomes for offenders, contribute meaningfully to reduced recidivism rates, and promote healthier communities

## Key issues by program area

### ➤ **Low-level offender transfer**

- Capacity development: Counties are conceptually interested in investing differently in the criminal justice system to produce improved offender outcomes and address recidivism. Significant work needs to be done to identify appropriate level of resources across systems to adequately address offender populations' needs and produce desired outcomes. Flexibility will engender innovation.
- Population scope: Perceived need to further circumscribe eligible population for transfer. Potential ways to refine non-non-non definition include (1): expanding "ineligible" criteria by adding specified crimes beyond serious/violent/sex; (2) setting cap for local sentences; (3) measuring offenders' risk; and/or (4) excluding potential deportable population (who cannot be paroled or otherwise released into the community in lieu of serving their sentences). Population must match both county role in criminal justice and current/future local capacity; jails are not equipped to house offenders for long terms.
- SB 678: Are there ways to sustain the probation incentive model in the context of a low-level offender shift? Can we build on early successes of 678 to weave in an incentive component for counties that demonstrate significant improvement in reducing recidivism?
- Philosophical shift: Realignment contemplates in the public safety arena a transfer of offender populations for local supervision, management, and treatment. The underpinning of the population shift is, in large part, the notion that the status quo in the criminal justice system is unsustainable – both financially and in terms of outcomes. It will take time for counties and partners across local criminal justice continuum to arrive at a new construct for offender management.

### **CONCLUSION -**

- Counties are willing to continue discussion on the low-level offender shift, with the following modifications to the proposal:
  1. Limit population by:
    - expanding "exclusion" list to include the crimes specified at the end of this document;
    - limiting eligibility for low-level offenders serving time in county jurisdiction to those sentenced to a term of 24 months or less;
    - eliminating potentially deportable immigrants from low-level category
  2. Establish a reimbursement methodology or mechanism to address low-level offender medical costs and expand resources for treatment;

### ➤ **Parole shift**

- Transitional issues: Despite natural "ramp up" of population due to prospective nature of proposal, shift of entire parole population brings with it significant

transitional issues. Counties will need time to hire and train personnel, build local capacity for parolee services, and develop coordination/communication protocols with CDCR for discharge/handoff.

- Statutory construct: Need to further understand the process for what entity will set terms of parole.
- Revocation process: A revocation process is not specified in the Governor's proposal. Significant policy and liability issues require thoughtful examination. Counties likely would view a local process as preferable, but more thought needs to go in to weighing the benefits/risks of a court-centered or county-centered (i.e., local parole board) approach.
- Long-term costs: Counties still evaluating long-term costs of entire parole population shift, with questions in particular around Jessica's Law and lifetime GPS monitoring.
- Protocols for release: CSAC has been working with CDCR for over a year to develop a protocol and/or procedures for release of inmates at the conclusion of their term who are returning to the community with significant medical and/or mental health treatment needs. Thus far, that effort has produced better understanding of mutual roles and constraints, but no specific protocol. Counties will be seeking statutory direction to require tight coordination with CDCR around the discharge process for parolees, with an expectation of advance information and notification regarding the specific parolees.

**CONCLUSION –**

- Counties believe the transitional issues associated with the adult parole shift and the need to craft a revocation process are insurmountable.

➤ **DJJ closure**

- Outright elimination: Taking DJJ off the table does not work, if it assumes that 58 counties will have individual responsibility for their respective population, given the acute needs of these offenders and counties' lack of capacity/program to handle locally. Rural counties in particular would be severely challenged to manage these kids locally. Serious need for further capacity development.
- Other workable options: Counties could consider other alternatives such as reinvesting other bonding capacity into rehabilitative facilities for this population (locally/regionally); transferring state facilities to counties for use as regional rehabilitation facilities; or allowing for contracting back options.
- Concerns linger over liability associated with *Farrell*.

**CONCLUSION –**

- While counties cannot accept jurisdiction for this population, we believe we can craft this proposal in a manner that allows the state to capture its needed cost savings if it remains cost neutral to counties.

➤ **Court security**

- Growth/out-year management: Need to develop a mechanism to account for changes in court facilities, new judgeships, or other changes that significantly



- alter court security needs across 58 counties. How will a statewide allocation based on historic funding levels adjust to future changes?
- **Cost containment:** Need to identify mutually agreeable cost containment methods that balance court security needs against resources now and in out years
- **Liability:** As an indispensable party in the agreement for court security services, the courts must retain some measure of liability.
- **Governance:** The executive level of local government must have a role in the negotiations between the court and sheriff on service provision.
- **Precedent:** Counties are wary about unwinding the division of court/county functions achieved under trial court funding reforms. Need some recognition that this move does not signal an intent to revisit other redistribution of court/county responsibilities. On a positive note, other counties see a benefit in a more direct allocation to the service provider.

**CONCLUSION –**

- While there are governance issues that need to be addressed, counties are open to the Governor’s realignment proposal on court security funding.

➤ **Funding for local public safety**

- Counties and local public safety partners view the local public safety subventions as foundational investments, and we appreciate the recognition of the need to sustain these core programs into the future.

**CONCLUSION –**

- Counties are supportive of including funding for the local public safety subventions within the realignment framework.

<b>Mitigations</b>
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- **AB 900/SB 81**
  - Revisit match requirements: eliminate/reduce county match?
  - Redirect resources from state reentry construction to local projects
  - Expanding use of funds to include infrastructure
  - Evaluate other means to expedite AB 900 projects, including rethinking steps that trigger Phase II investments
  - Loosen CEQA requirements for detention construction projects
- Revisit detention facility construction/operational standards
- Examine frequency of training requirements for peace officers
- Expand local capacity/authority to use tools to manage offenders (e.g., telemedicine, video arraignment, alternative custody options)
- Make MIOCR-type investment; expand investment in other treatments/services
- Sustain SB 678 model – incentive fund
- Transfer of state facilities (DJJ/other state correctional facilities to repurpose for local use)

- Maintain funding for benefit officers in the state prisons who assist inmates in applying for Medi-Cal and SSI prior to their release from prison

**DRAFT**

**Proposed additional exclusions from “low-level offender” definition**

- (A) Administering stupefying drugs to assist in commission of a felony in violation of Penal Code Section 222.
- (B) Battery against a juror in violation of Penal Code Section 243.7.
- (C) Gassing of a peace officer or local detention facility employee in violation of Penal Code Section 243.9.
- (D) Abduction or procurement by fraudulent inducement for prostitution in violation of Penal Code Section 266a.
- (E) Purchasing a person for purposes of prostitution or placing a person for immoral purposes in violation of Penal Code Section 266e.
- (F) Sale of a person for immoral purposes in violation of Penal Code Section 266f.
- (G) Pimping and pimping a minor in violation of Penal Code Section 266h.
- (H) Pandering and pandering with a minor in violation of Penal Code Section 266i.
- (I) Procurement of a child under age 16 for lewd or lascivious acts in violation of Penal Code Section 266j.
- (J) Felony child abuse likely to produce great bodily injury or death in violation of Penal Code Section 273a(a).
- (K) Assault resulting in death of a child under age 8 in violation of Penal Code Section 273ab.
- (L) Felony domestic violence in violation of Penal Code Section 273.5.
- (M) Poisoning or adulterating food, drink, medicine, pharmaceutical product, spring, well, reservoir, or public water supply in violation of Penal Code Section 347.
- (N) Felony physical abuse of an elder or dependent adult in violation of Penal Code Section 368(b).
- (O) Brandishing firearm or deadly weapon to avoid arrest in violation of Penal Code Section 417.8.
- (P) Unlawfully causing a fire that causes an inhabited structure or inhabited property to burn in violation of Penal Code Section 452.
- (Q) Felony stalking in violation of Penal Code Section 646.9.
- (R) Solicitation for murder in violation of Penal Code Section 653f.
- (S) Possession of a firearm by a prohibited person in violation of Penal Code Section 12021.
- (T) Possession of an explosive or destructive device in violation of Penal Code Section 12303.2.
- (U) Escape in violation of Penal Code Section 4532.
- (V) Possession of a controlled substance while armed with a firearm in violation of Health and Safety Code Section 11370.1.
- (W) Evading a peace officer by driving in a willful or wanton disregard for safety of persons or property in violation of Vehicle Code Section 2800.2.
- (X) Evading a peace officer causing death or serious bodily injury in violation of Vehicle Code Section 2800.3.
- (Y) Hit and run driving causing death or injury in violation of Vehicle Code Section 20001.
- (Z) Felony driving under the influence causing injury in violation of Vehicle Code Section 21153.
- (AA) Felony convictions with a Penal Code Section 186.11 enhancement.
- (BB) Felony offenses involving violations of the public trust or public corruption.

# CAL FIRE

**DRAFT**

## CAL FIRE

### General Concerns

- Very little detail provided with proposal so hard to determine exact impact.
- Current CAL FIRE & SRA system works very well and is part of overall effective California mutual aid system. Any shift in land from SRA to Local Responsibility (LRA) should not affect the goals and operations this system, nor should it adversely impact the State's overall fire protection system.
- Availability of on-going funding for counties/districts to protect the former SRA land.

### Technical Issues/Questions

- How would the money be allocated amongst counties and special districts?
- If SRA is realigned to LRA with funding from the state, will locals be dictated as to how to spend the funds on fire protection?
- Does the realignment only transfer base funding and not emergency funding (e-fund)?
- Wouldn't many counties simply contract back with CAL FIRE for the realigned responsibility? What about small communities with limited resources?
- Equity Issue -- Funding proposal addresses funding for fire protection in newly designated LRAs, but not for existing LRAs.
- Increased medical responses, in and of themselves, are not an indicator that CAL FIRE is absorbing local government responsibilities, resulting in increased State costs. A better indicator may be a substantial increase in the number of structural fires in SRA where CAL FIRE (non-schedule A and non-Amador) is the first responder.
- Increased medical responses are relevant to the extent that responding to these medical calls prevents CAL FIRE from responding to wildland fires. Are there documented cases of this? Otherwise, it could be that CAL FIRE is responding to medical calls with staff that is still needed for wildland fire protection that would otherwise be at the station, costing the State no less.
- The Governor's budget includes the statement "CAL FIRE, as a first responder in the mutual aid system, responds to over 60,000 medical emergency response

incidents in SRAs each year.” Does the 60,000 figure include work performed by Schedule A or Amador stations? Or, during the winter, where wildland fires are at a minimum?

- Was there a corresponding study of how many local firefighting resources are first responders to SRA wildland fires, either by mutual aid or automatic aid?
- Higher density rural development in SRA is often just a small enclave. Realigning these to LRA would likely result in a SRA Swiss cheese map.
- If realigning some SRA to LRA results in closing down CAL FIRE stations, would locals be first on scene for bordering wildland SRA fires?
- There is a minimum threshold of residences/funding necessary to justify adding a fire station. If these small enclaves do not meet that threshold, and the realignment results in CAL FIRE closing a nearby station, there will be a marked decrease in fire protection to the enclave, as well as the surrounding SRA?
- How would this proposal impact the current dispatch system?

#### **Mitigations**

If this proposal is carried out through the Board of Forestry’s regulatory process:

- Counties must be at the table and be included as a close partner in this process, including the development of formulas for the allocation of funding.
- The Board of Forestry remapping must be guided by specific policy goals and not driven by a specific fiscal outcome.
- Any shift in land from SRA to Local Responsibility (LRA) should not affect the goals and operations the existing mutual aid system, nor should it adversely impact the State’s overall fire protection system.