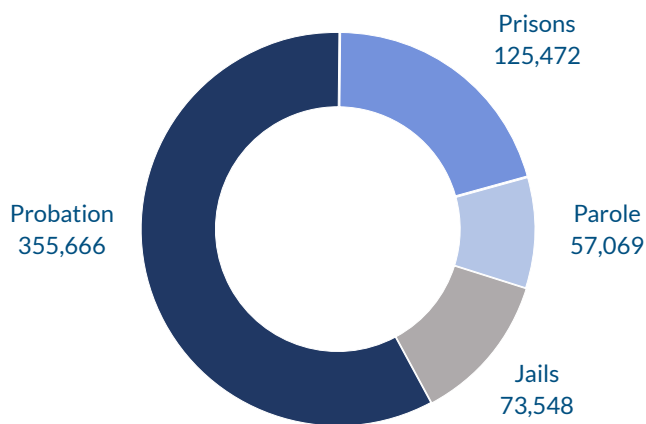


III Cicero Institute

Reforming California's Parole System

SEPTEMBER, 2019

Our state has an opportunity to lead the nation in criminal justice reform. Rather than trapping people in a perpetual wheel of crime and punishment, our parole system must develop strategies that allow these individuals to return to peaceful lives in their communities. Instead of paying correctional officers to “warehouse” and “process” human beings, we must reward them for helping people reintegrate and become productive members of society.



California Corrections Population^{1, 2, 3}

California has made historic strides in reducing its prison population over the past decade. Since the 2011 in *Brown v. Plata* held that overcrowding was a violation of prisoners’ Eighth Amendment rights, many formerly incarcerated persons have been shunted into jails, probation, and parole

1 Prison and Parole figures as of June 2019. Parole figure includes parolees at large, people on medical discharge, and people currently in court as well as people under active supervision: <https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2019/07/Tpop1d1906.pdf?label=View%20Monthly%20Report&from=https://www.cdcr.ca.gov/research/population-reports-2/>
 2 Probation figures as of June 2017. https://www.cpoc.org/sites/main/files/file-attachments/california_probation_executive_summary_2.pdf
 3 Jail figures as of December 2017. <https://www.ppic.org/publication/californias-county-jails/>

systems.^{4, 5, 6, 7} Today, about 600,000 Californians are incarcerated or under supervision, and at nearly \$15 billion a year California spends more on criminal justice than the next three states combined.^{8, 9, 10, 11, 12} This is a staggering sum: consider that the state funds the entire University of California system only \$3.3B a year!¹³ Despite recent efforts at rehabilitating detainees, 69% of people are re-arrested in the two years after they are released from jail or prison. The reconviction rate – which is lower than the re-arrest rate – has actually increased 5% in recent years.¹⁴

A SNAPSHOT OF CALIFORNIA PAROLE

Upon release from prison, an individual in California corrections is routed to parole, which is administered by the state government, or to “Post-Release Community Supervision” (PRCS), which is administered by the counties. Our reform proposal focuses on the state-run parole population, which consists of around 57,000 individuals.

People on parole face severe challenges as they attempt to re-enter society. Many leave prisons

4 California has a prison population of 125,472 down from a peak of 163,000 inmates in 2006, or a 33% reduction. <https://www.ppic.org/wp-content/uploads/r-118mlr.pdf>
 5 County jail populations are now serving much longer sentences and doing rehab in jail. Rates of inmate violence in jails are up substantially since 2011. <https://www.ppic.org/publication/public-safety-realignment-impacts-so-far/>
 6 Petersilia, Joan and Francis T. Cullen. “Liberal but Not Stupid: Meeting the Promise of Downsizing Prisons.” *Stanford Journal of Criminal Law and Policy*, 2015.
 7 563 U.S. 493 (2011).
 8 California has a combined inmate population of 199,020 people in state prisons and county jails. <https://www.sentencingproject.org/the-facts/#detail?state1Option=California&state2Option=0>
 9 (CA, 14.9B; Texas, \$3.3B; New York, \$3.2B; Florida, \$2.4B). <https://lao.ca.gov/Publications/Report/3940>
 10 https://www.tdcj.texas.gov/documents/bfd/Agency_Operating_Budget_FY2018.pdf
 11 <https://www.budget.ny.gov/pubs/archive/fy19/exec/agencies/approp-Data/CorrectionsandCommunitySupervisionDepartmentof.html>
 12 <https://www.politico.com/states/fl?id=00000163-846c-d92c-a17f-edfcfd4b0001>
 13 Wexler, Ellen. “More State Funds, on One Condition.” *Inside Higher Ed*, June 17, 2016.
 14 <https://www.ppic.org/wp-content/uploads/r-118mlr.pdf>

with little more than the clothes on their backs and \$200 in “gate money”.¹⁵ A majority struggles with drug abuse and alcoholism. Many are semi-literate and have poor educational credentials. Only 1 in 5 Californians on parole is able to find a job in their first year out.¹⁶ In large urban areas such as San Francisco and Los Angeles, the rate of homelessness among people on parole is as high as 50%.^{17,18} Behavioral and mental health issues are common, and most people on parole exist in a state of quiet desperation.

7 in 10 people on parole are re-arrested within two years of their release. Those convicted of felonies are returned to state prisons, but the vast majority of failed parolees are sent to county jails. Most people arrested for new crimes or technical violations never see traditional criminal proceedings, and instead are returned to incarceration through an administrative process. All “technical violations” and around 75% of all criminal violations are referred to the Board of Parole Hearings, which decides cases according to the “preponderance of the evidence” standard. The Board revokes parole in most cases and sends people to county jail.¹⁹

A person who has their parole revoked spends no more than a year in jail.²⁰ Short sentences create a “catch and release” dynamic in which people on parole churn in and out of incarceration. This distinctively Californian arrangement has little deterrent effect, makes continuous rehabilitation and steady employment impossible, creates wasteful administrative overhead, and

results in sentences that are disproportionate to infractions.²¹ As Stanford Law Professor Joan Petersilia notes, “it has transformed a trip to prison, which should properly be regarded as an extraordinary chapter in an individual’s life, into a trivial and short-lived intrusion on day-to-day criminality.”²²

THE LEGACY OF SB 678

One promising variety of parole reform is “Performance Incentive Funding” (PIF) which rewards parole departments for successfully rehabilitating people on parole. Several states have demonstrated that PIF programs can shift the behavior of parole departments and achieve measurable outcomes. In Illinois, for instance, a PIF program in juvenile corrections reduced the number of juveniles admitted to youth corrections facilities by 51%.²³ A 2005 reform in Texas reduced technical revocations in participating probation departments by 13.4%, while those who did not opt-in increased such revocations by 5.9%.²⁴ In a recent meta-study, La Vigne et al. find that 17 out of 17 performance-based funding programs reduced prison populations or slowed prison population growth.²⁵

California has experienced success with performance incentive funding in its probation system since the legislature enacted Senate Bill 678. SB 678 was sponsored by Mark Leno, a San Francisco Democrat, and John Benoit, a Riverside Republican. Remarkably, the bill passed both houses without a single No vote and elicited

15 Harding et al. “Making Ends Meet After Prison.” *Journal of Policy Analysis and Management*, Vol. 33.2, 2014.

16 Petersilia, Joan. “Understanding California Corrections.” CPRC Report, 2006. https://www.prisonpolicy.org/scans/carc/understand_ca_corrections.pdf

17 Petersilia, Joan. “Understanding California Corrections.” CPRC Report, 2006. https://www.prisonpolicy.org/scans/carc/understand_ca_corrections.pdf

18 Understanding California Corrections, *ibid*.

19 Grattet, *ibid*.

20 Typically around 5.4 months. Petersilia, *ibid*.

https://www.prisonpolicy.org/scans/carc/understand_ca_corrections.pdf

21 Proportionality is a slippery concept, but our view is that revocations for more serious crimes are likely not harsh enough, whereas revocations for minor infractions are likely too harsh.

22 Petersilia, *ibid*.

23 <http://www.icjia.state.il.us/redeploy/>

24 Glod, Greg. “Incentivizing Results.” Texas Public Policy Foundation, January 2017. <https://files.texaspolicy.com/uploads/2018/08/16103231/2016-11-PP27-IncentivizingResults-CEJ-GregGlod.pdf>

25 LaVigne, Nancy. “Justice Reinvestment Initiative State Assessment Report.” Urban Institute, 2014.

broad support from interest groups of all stripes. Though little-known, SB 678 (“The California Community Corrections Performance Incentives Act”) is one of the most impressive achievements in California criminal justice policy in the last decade.

A classic problem in criminal justice is that county-funded probation departments tend to shift costs to state-funded prisons. Seventy-five percent of people charged with felonies in California are sent to probation, and probation officers are only too happy to lighten their caseloads and reduce county costs by sending these individuals to state prison – even though prisons are more expensive by an order of magnitude. SB 678 solved this problem by allocating performance-based funding to counties which reduced the percentage of felon probationers they returned to prison for technical violations of probation or for new crimes.²⁶

Under the original version of SB 678, the state calculated the historic annual “probation failure rate” for a given county, determined the current probation population, and then estimated the number of people who would have been returned to prison at the historical rate. If the county was able to return a lower number of people than predicted, the county was entitled to 40-45% of the projected savings on each individual not returned (the estimated marginal cost of the time

they would have spent in prison and on parole).^{27, 28} Another 5% of the total savings on averted people was distributed to counties that were already below 50% of the baseline, statewide return-to-custody rate as a reward for their excellent performance.

Although the rewards structure for county probation departments has changed slightly, the essential framework of SB 678 is still in place: counties are incentivized to rehabilitate as many inmates as possible, to obtain the maximum amount of shared savings.²⁹ The results are staggering. Between 2009 and 2017, probation officers successfully averted thousands of supervised felons from incarceration, resulting in a total allocation of \$703 million to California counties and over a billion dollars in estimated savings to California taxpayers.³⁰

Some of California’s success over the past decade is due to the statewide Public Safety Realignment (AB 109) that occurred in 2011 and limited the number of new convictions made across the state. But even in the first two years of the SB 678 program the results were obvious. Compared to an annualized return-to-prison rate of 7.9% in 2006-2008, the return-to-prison rate declined to 6.1% in 2010, and 5.4% in 2011, even while violent and property crimes decreased substantially.^{31, 32}

³³ The Legislative Analyst’s Office estimates that SB 678 averted 27,000 people from prison between

26 The bill also required county probation departments to implement “evidence-based” rehabilitation practices and allocate shared savings towards “evidence-based” rehabilitation, but the term “evidence-based” has become so vague as to be meaningless, so the financial rewards structure is the much more interesting component of the law. See: http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0651-0700/sb_678_bill_20090625_amended_asm_v96.pdf

27 Counties with a return-to-prison rate of over 125% of the statewide failure rate were entitled to 40% of savings if they reduced their population relative to their county return-to-prison rate; counties with a return-to-prison rate of under 125% of the statewide failure rate were entitled to 45% of savings relative to their historical county rates. This funding structure changed in 2015, see appendix for details.

28 Initial funding was a federal grant under the American Recovery and Reinvestment Act of 2009, which seeded \$45 million to the counties. See: Flynn, Kathleen. “Putting Teeth into A.B. 109.” Golden Gate University Law Review, 2013.

29 See technical appendix 1.

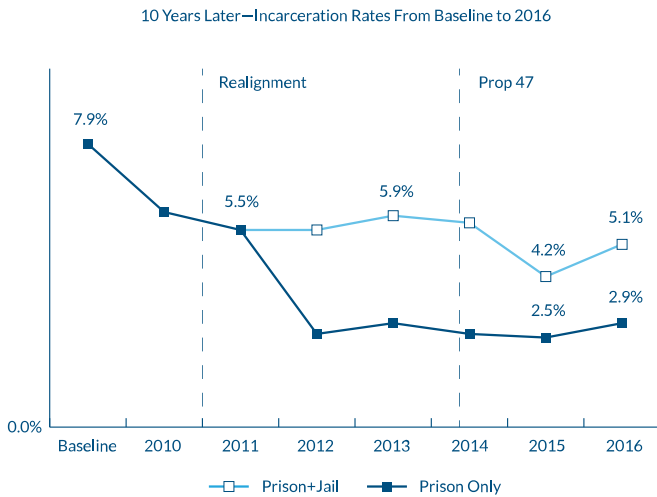
30 <https://www.courts.ca.gov/documents/lr-2017-JC-SB-678-CCC-performance-incentives-act.pdf>

31 <https://openjustice.doj.ca.gov/crime-statistics/crimes-clearances>

32 <https://www.courts.ca.gov/documents/SB678-Year-2-report.pdf>

33 The statewide return-to-prison rate has since stabilized around 3.3%. <https://www.courts.ca.gov/documents/lr-2017-JC-SB-678-CCC-performance-incentives-act.pdf>

2010 and 2013 and saved \$230 million for the state.³⁴



In addition, Realignment channeled more serious, high-risk individuals into California probation departments, which made it more difficult for probation departments to reduce the rates at which they returned people to prisons and jails. But surprisingly, probation failure rates (returns to either prisons or jails) have remained low and have even dropped since the passage of the Realignment. This success is attributable to the healthy incentive structure created by SB 678. Whereas only 12% of Realignment funding wound up in community-based rehabilitation programs, nearly half of SB 678 funding was deployed towards rehabilitation.³⁵

In the last decade, California county probation departments developed risks-and-needs assessments to determine the level of supervision for probationers, adopted electronic monitoring, hired additional staff, and implemented a variety of evidence-based rehabilitation practices. Each county pursued a slightly different strategy according to the needs of their probation

population. Whereas Marin County probation hired “recovery coaches” to work with people on substance abuse treatment, vocational training and more, San Diego County partnered with UC San Diego to identify the best evidence-based practices, and Fresno County created a Day Reporting Center with a variety of service offerings.³⁶

In general, we know that certain extremely successful rehabilitation programs – such as the Prison Entrepreneurship Program in Texas and The Last Mile program here in California – have been able to get recidivism rates down to a mere 7% or lower.^{37, 38, 39, 40} We also know that educational, cognitive behavioral, and domestic violence programs can reduce recidivism by more modest, but significant margins.^{41, 42} What we need to do is make sure California’s parole system is incentivized to comb through a toolbox of rehabilitation techniques to find strategies that truly work, rather than “checking the box” and enrolling people on parole into programs with low success rates.

PAROLE REFORM: THEN AND NOW

California has experimented with a variety of parole reforms in the past several decades. But a brief review of two tales of California parole reform illustrates how important it is to establish the correct financial incentives for parole

34 <https://www.courts.ca.gov/documents/SB678-Year-2-report.pdf>

35 Flynn, Kathleen. “Putting Teeth into A.B. 109.” Golden Gate University Law Review, 2013.

36 Californians for Safety and Justice. “Strengthening Community Corrections: Increasing Public Safety and Reducing Costs in California.” https://www.cpoc.org/sites/main/files/file-attachments/sb_678_-_californians_for_safety_and_justice_0.pdf

37 <https://www.pep.org/pep-results/>

38 Guynn, Jessica. “Silicon Valley turns prisoners into programmers at San Quentin.” USA Today, Nov 14., 2014.

39 Alfaro, Lyanne. “Texas Program is Turning Thousands of Ex-Cons into Entrepreneurs.” CNBC, March 22, 2017.

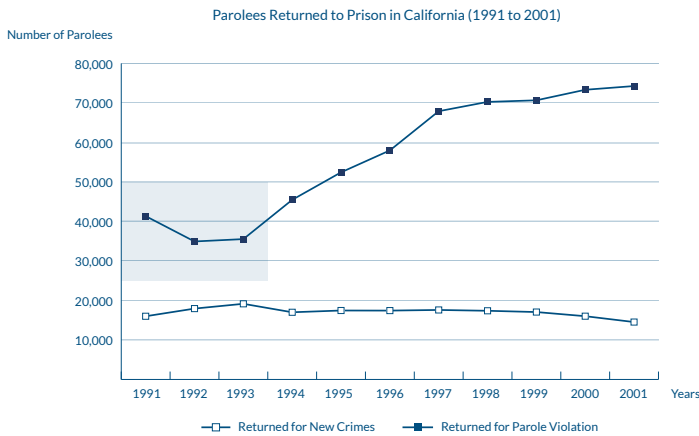
40 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1494019

41 Nicholaichuk et al. “Outcome of an Institutional Sexual Offender Treatment Program: A Comparison Between Treated and Matched Untreated Offenders.” SEX ABUSE, 2000.

42 Coulter, Martha and Carla VandeWeerd. “Reducing Domestic Violence and Other Criminal Recidivism: Effectiveness of a Multilevel Batterers Intervention Program.” Violence and Victims, Vol. 24.2, 2009.

departments.

In the early 1990s, California experimented with rewarding parole units if they were able to reduce the number of people they revoked to prison, and taxing parole units if they increased the number of people they revoked to prison. Savings were redistributed to successful parole units.⁴³ The program resulted in approximately ten thousand fewer parole revocations in 1992 alone, and within two years the revocation rate had dropped from 58% to 35.5%.⁴⁴ In addition, the disparity in return rates between parole offices and parole regions dropped significantly – by 48% and 67% respectively! That is, under a uniform set of incentives, California parole units converged on a strikingly similar set of best practices and results. The reform was hugely successful at its stated aim until it was repealed in 1993, after which parole revocation rates skyrocketed.



In 2010 California piloted a very different kind parole reform called the “Parole Supervision

and Reintegration Model” (CPSRM). This reform mandated that parole agents implement particular rehabilitation strategies but did not give parole agents a stake in the savings. However, because CPSRM did not financially incentivize parole departments to enact the reform, it has not experienced anything remotely close to success. In fact, violation rates for people in CPSRM programs are virtually identical to violation rates for the control group.

Violations by Group and Type of Release

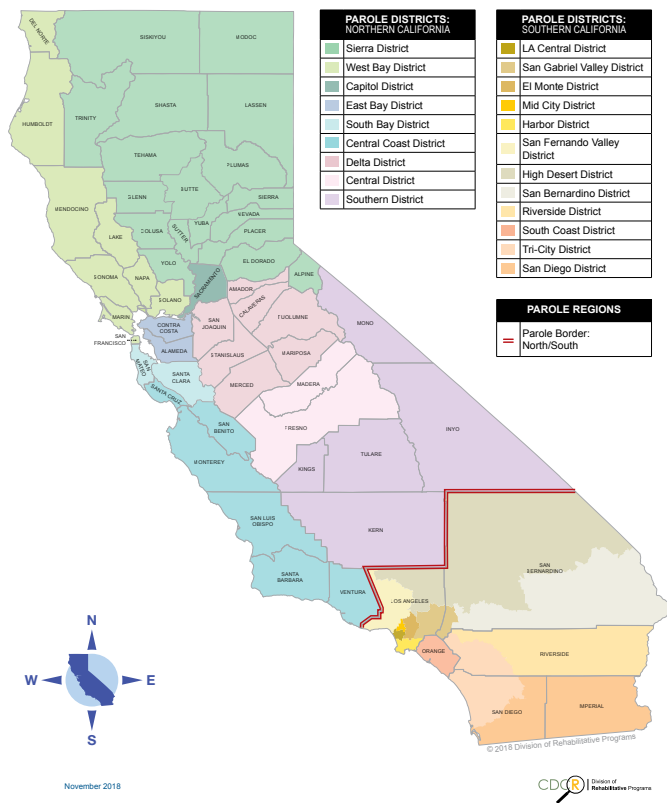
	First released (N=1,625)				Re-released (N=1,057)			
	CPSRM (N=1625)		Control (N=966)		CPSRM (N=446)		Control (N=608)	
	N	%	N	%	N	%	N	%
Any violation	411	62.4	600	62.1	362	80.6	477	78.5
Technical violation	253	38.4	383	39.6	274	65.1	348	57.2
New crime violation	358	54.3	541	56	309	68.8	412	67.8

We propose that California instead adopt an SB 678-style reform to California parole. As in probation, we should calculate the historical return-to-incarceration rate for each parole district (inclusive of returns to jail and prison), estimate the number of parolees averted from having their parole revoked and from committing new crimes, and reward successful parole departments with a percentage of their savings.⁴⁵ The California Department of Finance would disburse the reward to the parole district supervisor, who would be empowered to spend the funding on evidence-based rehabilitation programs.

43 Austin, James. “Regulating California’s Prison Population: The Use of Sticks and Carrots.” *Annals of the American Academy of Political and Social Science*, February 18, 2016. <https://journals.sagepub.com/doi/abs/10.1177/0002716215602700?journalCode=anna>

44 California Department of Corrections and Rehabilitation “A Roadmap for Effective Offender Programming in California.” Report to the California State Legislature, 2007. http://ucicorrections.seweb.uci.edu/files/2007/06/Expert_Panel_Report.pdf

45 Whereas SB 678 initially rewarded probation departments on the basis of reduced “return-to-prison” rates, we propose rewarding parole departments on the basis of reduced “return-to-incarceration” rates, inclusive of returns to jail as well as returns to prison.



for instance – whereas others will perform them separately. We expect to see simple improvements, for instance daily, positive text messages from parole agents, and a relaxing of check-in requirements for low-risk individuals. Some districts will hire additional staff such as parole agents, parole service associates, or private contractors. All parole districts will become more selective about the kinds of vendors they work with, and more carefully allocate resources to third-party programs based on their performance. They may pursue the use of social impact bonds in which third parties are paid only if they reduce recidivism by a predetermined amount.⁴⁶

Our rough calculations suggest that if the state of California implements an SB 678-style reform in state parole departments, we could easily save the state taxpayers tens if not hundreds of millions over the next decade, while helping to reduce our incarcerated and supervised populations by more than ten thousand people.⁴⁷ This reform would help to shift the culture of California parole departments and give people on parole a real shot at starting new lives.

If properly motivated, parole districts would experiment with several different kinds of rehabilitative strategies. Chief among these are supplying additional housing to people on parole, locating the best possible rehabilitation programs for substance abuse, investing in educational programs such as college classes for people on parole, and refining behavioral rehabilitation programs for anger management, sexual abuse, batterers, mental disability, etc. Community-Based Organizations (CBOs) are an excellent alternative to “hook ‘em and book ‘em” parole strategies, and will become central to successful rehabilitation efforts in progressive parole districts.

Some parole districts will locate these rehabilitation programs under the same roof – in a halfway house or navigational center,

CONCLUSION

California’s historic probation reform set the bar for the nation. Policymakers and reformers must mobilize a bipartisan consensus to deliver a similar reform in our parole districts. California policymakers must have the political courage to embrace a marketplace of ideas in corrections and create a new system that rewards rehabilitation strategies that succeed and phases out those that don’t. Only in a system with real accountability will the best ideas and methods win. With the appropriate framework, we can restore our

46 Cullen et al. “Reinventing Community Corrections.” Crime and Justice, 2017.

47 See technical Appendix 2.

most fragile communities and improve public safety by reducing recidivism rates statewide. Performance-based funding in the image of California's probation model would transform our criminal justice system into the humane, modern institution it should be.

TECHNICAL APPENDIX 1

The SB 678 funding structure has undergone two mutations. In 2013 the state began rewarding probation departments based on the combined return to prison-and-jail rate rather than just the return-to-prison rate, since the Realignment had diverted about half of all failed felon probationers into county jails. In 2015, the California state legislature included the PRCS and Mandatory Supervision populations of felon probationers in the total county numbers, and updated SB 678 with a slightly modified funding structure. Today, a county probation department’s reward is calculated in the following way:

1) If the felon probation population’s rate of return to prison is greater than or equal to the original statewide baseline of 7.9%, county gets 40-100% of the highest payment accorded to it between 2009 and 2015 (when the rewards structure changed).^{48,49}

Return-to-Prison Rate	% of Highest Prior Payment
<1.5%	100%
1.5-3.2%	70%
3.2%-5.5%	60%
5.5-6.1%	50%
6.1-7.9%	40%

2) Is the county sending fewer people to prison than would be expected from the return-to-prison rate from last year? If yes, county receives 35% of state’s costs to incarcerate an individual * # of individuals kept out of prison.

3) If (1) and (2) don’t add up to \$200,000 CA will guarantee the county the difference so the county

is making at least \$200,000 for implementing evidence-based practices.

We prefer the reimbursement schedule in the original SB 678 for a new parole reform bill. The original rewards model is simple: for each inmate that you keep out of prison relative to your historic county return-to-custody rate, keep 40-45% of the projected marginal cost of that individual. Although costs of operating prisons remain static, counties save the state the “marginal cost” of putting an additional person through prison (in 2009 this number was estimated to be \$29,000 at a time when it cost about \$50,000 a year to incarcerate a person).^{50,51} The 2015 amendment ties rewards to performance relative to the prior year and makes rewards partially a function of the highest prior payment, which is a more arbitrary metric.

As probation and parole districts become better at rehabilitating inmates, legislators may want to adjust the original state and county return-to-prison baselines downwards, to stimulate departments to become more effective at rehabilitating the people they supervise. But the 2015 amendment is a very unusual and needlessly complicated approach. Instead, the statewide baseline should have adjusted from 7.9% to the average rate during some new period, say 2013-2015 (when the average rate was about 3.2%). Legislators could have retained the initial rewards structure of 40-45% for county probation departments.

We endorse rewarding parole districts on a similar shared savings model to the original SB 678 proposal.

48 http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0651-0700/sb_678_bill_20090625_amended_asm_v96.pdf

49 https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB85

50 <https://www.courts.ca.gov/documents/SB678-Year-2-report.pdf>

51 https://lao.ca.gov/PolicyAreas/CJ/6_cj_inmatecost

TECHNICAL APPENDIX 2

How many people will the proposed parole reform avert from incarceration, and how much money will the proposed reform save the state of California? The current parole population is substantially different than the felon probationer population in 2009, but a rough comparison is possible based on the measured effects of SB 678 prior to the Realignment.

In its first year, SB 678 kept 6,182 adult felony probationers out of state prison, compared to the baseline years of 2006–2008, and generated \$91.5M in savings for the state after a payout of \$87.5M to the counties.⁵² In its second year, SB 678 kept 9,500 offenders from returning to state prison, saving the state \$141.8M after a \$136M payout to the counties.⁵³ The Judicial Council estimates that in the 8 years between 2009–2017, SB 678 generated \$1B in state savings after allocating \$703M to county probation departments.⁵⁴

The statewide felony probation population in 2009–2011 was around 330,000 people, or around 6 times as many people as are currently in California parole (roughly 57,069). If the proposed parole reform is similarly successful, we might expect to avert roughly 1,000 people from prisons and jails in the first year, and roughly 1,500 people from prisons and jails in the following year. If these numbers remain constant, our parole reform will avert more than 10,000 people from incarceration over the next decade. Assuming the ratio of payouts to parole districts and net savings to the state remain constant, we expect the proposed reform to pay out around \$145M to parole districts over the next decade, and generate north of \$200M in savings for the

state of California.⁵⁵

These calculations are very tentative but give a sense of the order of magnitude of our proposed reform. We are sensitive to the concern that people on parole in California may be more difficult to rehabilitate than people on probation for felonies. We are also sensitive to the concern that the Judicial Council’s calculation of net savings relies on “marginal cost of incarceration” numbers that may be artificially inflated.⁵⁶ The originality of the proposed reform makes accurate projections difficult. But we are convinced that reforming California parole along the lines of SB 678 will help thousands return to productive lives and save the state significant sums in the coming years.

52 <https://www.courts.ca.gov/documents/SB678-Year-1-Report-FINAL.pdf>

53 <https://www.courts.ca.gov/documents/SB678-Year-2-report.pdf>

54 <https://www.courts.ca.gov/documents/lr-2017-JC-SB-678-CCC-performance-incentives-act.pdf>

55 If SB 678 generated \$700M in revenue for the counties over 8 years 2009–2017, it should have generated around \$875M over the full decade from 2009–2019. And if SB 678 generated \$1B in revenue for the state over 8 years 2009–2017, it should have generated \$1.25B in revenue for the state over the full decade 2009–2019. Dividing each of these numbers by 6 to reflect the smaller parole population yields results of \$146M paid out to the counties, and \$200M saved by the state.

56 After all, the CDCR budget has increased every year over the past decade.