



Frequently Asked Questions on 2011 Criminal Justice Realignment

[AB 109](#) (Chapter 15, Statutes of 2011) as subsequently amended by [AB 117](#) (Chapter 39, Statutes of 2011) and [ABX1 17](#) (Chapter 12, Statutes of 2011)

It is important to note that the 2011 criminal justice realignment becomes operative on October 1, 2011. Anyone on parole or sentenced prior to October 1, 2011 will be subject to pre-criminal justice realignment laws and processes. It is anticipated that future clean-up legislation will be required to resolve any issues identified by counties, the courts, and/or the state as realignment is implemented.

This document will be updated in the near future to include questions presented during the five regional conference calls held in mid-September.

NOTE: All references are to the Penal Code, unless otherwise noted.

NON-VIOLENT, NON-SEX, NON-SERIOUS OFFENDERS AND SENTENCING

1. What felonies are excluded from county jail? Can strikers or sex offenders go to jail for a non-non-felony?

Notwithstanding that a crime usually is punished by commitment to the county jail, the following crimes and/or defendants, if denied probation, must be sentenced to state prison: (Section 1170(h)(3))

- Where the defendant has a prior or current serious or violent felony conviction under Section 1192.7(c) or 667.5(c);
- Where the defendant is required to register as a sex offender under Section 290;
- Where the defendant is convicted of a felony with an enhancement for aggravated theft under Section 186.11;
- Where the defendant has a prior out-of-state felony conviction that has all of the elements of a serious or violent felony; or
- Specific crimes carved out by the Legislature where the sentence must be served in state prison. It will be incumbent on courts and counsel to verify the correct punishment for all crimes sentenced after the effective date of the realignment legislation.

2. Is there a period of automatic mandatory supervision – or supervision “tail” – for a felony offender sentenced to county jail under Section 1170(h)(1) or (2)?

No. Persons sentenced under Section 1170(h)(1) or (2) to county jail do not have an automatic supervision tail upon their release from jail – unlike those who serve time in state prison. However, the court may order a period of mandatory supervision as part of its sentence imposed under Section 1170(h)(5)(B). This period of mandatory supervision will be implemented by the probation department in accordance with the terms, conditions, and procedures generally applicable to probation.

3. Do we have to allege prior strikes/290 offenses in order to prevent a non-non-non from going to jail?

There is no statutory requirement that strikes or other disqualifying offenses be pled and proven. That said, as a matter of course, many counties have indicated that they plan to plead and prove disqualifying offenses just to be safe.

4. Certain convictions (e.g. Section 1203.076 relative to the sale of specified controlled substances) require a minimum term of local jail custody as a condition of probation, if probation is granted. Does realignment change this requirement?

No. This requirement is not altered by realignment and since felony probation remains a possible disposition, there is no reason to believe that this requirement would be applied differently.

5. What felonies are sentenced to county jail?

The realignment legislation amends hundreds of sections of statute across several codes to specify which felonies or alternate felony/misdemeanors are now punishable by imprisonment in the county jail instead of prison by adding a reference to the new Section 1170(h) to each code section. Section 1170(h) provides that the following defendants, without disqualifying crimes, must be sentenced to county jail if probation is denied:

- Those who commit a crime where the statute references Section 1170(h) but does not specify a term of imprisonment. In such circumstances, the crime is punished by 16 months, two, or three years in county jail. (Section 1170(h)(1).)
- Those who commit a crime where the statute references Section 1170(h) and specifies a term of imprisonment. The length of the term is not limited to 16 months, two, or three years, but will be whatever triad or punishment is specified by the statute. (Section 1170(h)(2).)

6. How does the change in custody credits (Penal Code Section 4019) work?

The calculation of custody credits is predicated on when the crime was committed. Changes in custody credits (Section 4019) apply as follows:

- If the offense is committed *on or after* October 1, 2011 and the person is held in county jail, they get one day of credit for every one day served (also known as “day for day” credit).
- If the offense was committed *prior* to October 1, 2011 and the person is sentenced to county jail (even if sentenced after October 1, 2011), then the person gets one day of credit for every two days served (also known as “one for two” credit).

SENTENCING

7. Do the rules of sentencing change?

No. The rules of sentencing and sentencing length do not change. Only where the sentence is served changed.

8. What is a split sentence?

Section 1170(h)(5) was added by AB 117 and amended by ABX1 17 to give the sentencing judge discretion regarding how individuals convicted of felonies who are sentenced to county jail serve their term. When imposing a sentence under Section 1170(h)(1) or (2), the court may

commit the defendant to county jail for the full term allowed by law, or may suspend execution of a concluding portion of that term, during which time the defendant will be supervised by the county probation department in accordance with the terms, conditions, and procedures generally applicable to persons placed on probation, for the remaining unserved portion of the sentence imposed by the court. This portion of supervision, if imposed by the court, will be mandatory. During the period when the defendant is under such supervision, unless in actual custody related to the sentence imposed by the court, the defendant shall be entitled to only actual time credit against the term of imprisonment imposed by the court. Under Section 1170(h)(5), a judge, when imposing a sentence pursuant to 1170(h)(1) or (2), may order the defendant to serve a term in county jail for a period not to exceed the maximum possible term of confinement or may impose a sentence which includes a period of county jail time and a period of mandatory supervision that when combined shall not exceed the maximum possible sentence. A term of imprisonment in county jail imposed under Section 1170(h)(5), even if a portion of the term is suspended by the court to allow mandatory supervision, shall qualify as a prison prior for the purposes of the existing one-year enhancement described in Section 667.5(b).

9. Will offenders serve their entire local sentence under realignment in county jail?

Not necessarily. Individuals sentenced under Section 1170(h)(1) or (2) for a non-non-non offense under realignment will serve their sentence locally; however, the sentence might not be served in its entirety in county jail. For example, an individual who is serving time can be evaluated by the county sheriff for placement into an alternative custody program. These options could include, but are not limited to, the individual being sent to an alcohol and drug or mental health treatment program in the community, referred to a day reporting center, or placed on electronic monitoring. If a sheriff deems the individual appropriate for an alternative custody program, he or she could serve the remainder of his or her sentence participating in this program.

10. Is there a period of automatic mandatory supervision – or supervision “tail” – for a felony offender sentenced to county jail under Section 1170(h)(1) and (2)?

No. Persons sentenced under Section 1170(h)(1) or (2) to county jail do not have an automatic supervision tail upon their release from jail – unlike those who serve time in state prison. However, the court may order a period of mandatory supervision as part of its sentence imposed under Section 1170(h)(5)(B). This period of mandatory supervision will be implemented by the probation department in accordance with the terms, conditions, and procedures generally applicable to probation.

11. Are crimes committed by current prison inmates exempt from realignment?

Not by virtue of the fact that they are committed by a person in prison. If the inmate has a disqualifying crime, he/she would remain eligible to get another prison sentence, but there is no specific disqualification based on the fact that the crime was committed by a prison inmate. Please also see question 1.

POSTRELEASE COMMUNITY SUPERVISION (PRCS)

12. What is postrelease community supervision?

Postrelease community supervision (PRCS) is the term used to define inmates being released from state prison who will be the responsibility of a local supervising agency (county probation department) rather than state parole upon their release into the community.

13. Who is supervised on PRCS and who remains supervised on state parole?

Beginning October 1, 2011, PRCS supervision for offenders upon release from prison will include:

- Current non-violent offenders (irrespective of priors)
- Current non-serious offenders (irrespective of priors)
- Some sex offenders

PRCS supervision will not include:

- Anyone on state parole prior to October 1, 2011
- 3rd strikers
- Individuals with a serious commitment offense
- Individuals with a violent commitment offense
- High risk sex offenders as defined by CDCR
- Mentally disordered offenders (MDO)

See question #36 for details on who remains on state parole.

14. Who supervises people on PRCS?

Each county board of supervisors was required to designate the county department responsible for supervising those individuals discharging from prison onto PRCS. In all 58 counties, county probation is the designated agency.

15. How and by whom are violations of postrelease community supervision handled?

Upon determination of a violation of a term or condition of postrelease community supervision, the supervising agency has the authority – and in fact has an affirmative duty under realignment – to assess and determine whether an intermediate sanction not requiring court involvement is appropriate. The supervising agency has the authority to impose sanctions up to and including flash incarceration without court involvement.

16. What is the length of time that flash incarceration can be used under statute for offenders on PRCS?

Flash incarceration may be used for a period of up to 10 consecutive days. There is not an aggregate limit on the use of flash incarceration over the supervision period; therefore, flash incarceration can be utilized as long as time remains in the total supervision period. Flash incarcerations may only be imposed by county probation as long as time remains on the offenders' PRCS supervision period.

17. Do custody credits apply to flash incarceration?

No. ABX1 17 amended Section 4019 to clarify that there is no custody credit for time served under flash incarceration.

18. What entity conducts the final revocation proceedings for offenders on PRCS who violate their terms and what is the timeline for that?

Beginning October 1, 2011, petitions for revocation of postrelease community supervision will be filed in the superior court in the jurisdiction in which the violator is being supervised. These petitions will be filed by the local supervising agency (county probation department).

19. What are the court's options if it revokes supervision for PRCS?

Upon a finding of a violation, the court has discretion to impose one of three options: (1) Return the person to postrelease supervision with modifications of conditions, *including jail time if appropriate*; (2) Revoke supervision and order confinement in the county jail; or (3) Refer the person to a reentry court or other evidence-based program. (Section 3455(a)(1)–(3); emphasis added.) Any confinement ordered under subdivision (1) or (2) must not exceed 180 days. (Section 3455(c); emphasis added.)

20. Will the Judicial Council develop rules and forms for revocation procedures?

Yes. Criminal justice realignment requires the Judicial Council to adopt forms and rules of court to establish uniform statewide procedures to implement the new PRCS revocation proceedings, including prescribing minimum contents of supervising agency reports. Proposed rules and a form have been developed by the Judicial Council's Criminal Law Advisory Committee and were recently circulated for public comment. They are designed to prescribe basic procedural requirements to promote uniform statewide revocation procedures while providing courts with sufficient flexibility to implement the new proceedings according to local needs and customs.

21. When will the rules and form be adopted by the Judicial Council?

Due to the volume and complexity of the comments received, review by the Judicial Council's Criminal Law Advisory Committee is ongoing. Although the committee hopes to present its recommendations to the Judicial Council at the earliest possible time, the precise date of adoption is unclear. Please check the Judicial Council's realignment webpage periodically for updates: <http://www.courts.ca.gov/partners/realignment.htm>.

22. Can PRCS violators go back to prison?

No, individuals on PRCS cannot be sent back to state prison as a sanction for a violation of their supervision, unless they have been convicted of a new crime that remains prison-eligible. After county probation has assessed and determined that an intermediate sanction is inappropriate for the PRCS violation, the court may revoke supervision and order a custodial sanction; the maximum term (custodial sanction) the court can impose upon a violation of supervision is 180 days in county jail per event.

23. Under what authority will a supervised person be arrested or detained for a violation of his or her terms or conditions of supervision?

ABX1 17 revised criminal justice realignment to address arrest, warrant, and detention issues.¹

¹ *Detention* – A hearing on the petition for revocation shall be held within a reasonable time after the filing of the petition, and during that time, the supervising agency is authorized to determine that a person should remain in custody pending a revocation hearing, and may order the person confined, without court involvement, on a showing of a preponderance of the evidence that a person under supervision poses an unreasonable risk to public safety, or the person may not appear if released from custody, or for any reason in the interests of justice. (Section 3455(b))

Before a Petition for Revocation has been filed with the court:

- Arrests – A peace officer who has probable cause to believe that a person subject to postrelease community supervision is violating any term or condition of release is authorized to arrest the person without a warrant and bring the person before the supervising agency (Section 3455(a)(4)).
- Warrants – An officer employed by the supervising agency is authorized to seek a warrant from a court; a court or its designated hearing officer is authorized to then issue a warrant for that person's arrest, regardless of whether a petition for revocation has been filed. (Section 3455(a)(4))

After a Petition for Revocation has been filed with the court:

- Warrants – The court or its designated hearing officer is authorized to issue a warrant for any person who is the subject of a petition for revocation of supervision who has failed to appear for a hearing on the petition, or for any reason in the interests of justice. (Section 3455(a)(5))
- Detention – The court or its designated hearing officer is authorized to remand to custody a person who does appear at a hearing on a petition for revocation of supervision for any reason in the interests of justice. (Section 3455(a)(5))

24. *What is the inter-county transfer process for persons on PRCS?*

ABX1 17 establishes an administrative process to be handled between supervising entities. If the PRCS supervisee can establish permanent residence in another county and the supervising entity approves, the receiving county must accept the transfer of jurisdiction for the PRCS supervisee upon verification of residency. The court is not involved in the process.

25. *Can County Probation Departments modify conditions of PRCS?*

Yes. Probation may modify, remove or add conditions to an offender placed on PRCS once he or she is in the community. Conditions placed upon an inmate prior to his or her release will be the standard conditions agreed upon by counties and CDCR. It is important to note that in certain circumstances county probation may communicate to CDCR special conditions that need to be in effect prior to the offender's release. CDCR will include these conditions on the release form intended for signature by the inmate prior to his or her release from state prison. The offender will not be released until he or she signs the form or his or her custody time expires.

26. *What historical information relative to state prisoners will CDCR provide to counties prior to release to local jurisdiction?*

CDCR worked with the counties to formalize the information that would be released to the supervising entities prior to an offender's release. As a general rule, CDCR will provide the release information to the counties four months prior to an offender's release. There will be cases where an inmate is given credit for time served or released on a writ of habeas corpus, so there will be cases where counties do not receive information four months in advance. After receiving the release documents from CDCR, counties will have the ability to review the document and contact CDCR for any significant questions or concerns, including information on medical and mental health transition needs as long as the request complies with HIPAA laws. For an example of information in a typical pre-release packet, please refer to www.cdcr.ca.gov.

PAROLE VIOLATORS/PAROLE REVOCATIONS

27. *Can parole violators go back to prison?*

Only those parolees who have life terms may be sent back to prison to serve their time once the court has sentenced them to at least 30 days in state prison for a revocation.

28. *How are violations handled?*

For the most part, parole supervision and violations will be dealt with as they currently are until June 30, 2013, which is to say that state parole will supervise these offenders and the Board of Parole Hearings (BPH) will handle revocations. The main change is that fewer commitment offenses and/or criminal histories will result in the imposition of state parole. Effective July 1, 2013, state parole will have the statutory authority to issue sanctions up to and including flash incarceration for up to a 10-day period without the involvement of the BPH. Revocations will be referred by state parole to the BPH for processing until June 30, 2013. On July 1, 2013, the courts will assume responsibility for handling petitions for revocation of parole supervision filed by state parole. As of this date, the BPH will no longer be the responsible entity for handling parole violations.

Beginning October 1, 2011, parole violators who are ordered to serve a custodial sanction will serve that time in county jails with the lone exception being parolees who were serving life terms; they are the only category of parolee that may return to prison due to their "lifer" status. Maximum terms for a parole violation are capped at 180 days per revocation; custody credits generally apply.

29. *What is the length of time that flash incarceration can be used for state parolees who violate a term or condition of their supervision?*

Flash incarceration may be for a period of up to 10 consecutive days. There is not an aggregate limit on the use of flash incarceration over the supervision period; therefore, flash incarceration can be utilized as long as time remains in the total supervision period.

30. *Do custody credits apply to flash incarceration?*

No. ABX1 17 amended Section 4019 to clarify that there is no custody credit for time served under flash incarceration.

31. *What entity conducts the revocation proceedings for parole and what is the timeline for that?*

The BPH will continue to conduct parole revocation hearings for offenders on state parole through June 30, 2013. Beginning July 1, 2013, petitions for revocation of parole supervision will be filed in the superior court in the county in which the parolee is being supervised. These petitions will be filed by the state parole agency.

32. *Will the Judicial Council develop rules and forms for revocation procedures?*

Yes. Criminal justice realignment requires the Judicial Council to adopt forms and rules of court to establish uniform statewide procedures to implement the new revocation proceedings, including prescribing minimum contents of supervising agency reports. Proposed rules and a form have been developed by the Judicial Council's Criminal Law Advisory Committee and were recently circulated for public comment. They are designed to prescribe basic procedural requirements to promote uniform statewide revocation procedures while providing courts with sufficient flexibility to implement the new proceedings according to local needs and customs.

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34. How does realignment affect the daily jail rate (DJR) for state parolees?

Realignment contemplates several significant changes to revocation. As it relates to the DJR, counties will continue to receive reimbursement for state parolees who are in local custody serving time for a revocation before October 1, 2011. It is our understanding that on or before September 30, CDCR intends to coordinate with each of the 58 counties to identify the revoked parolee population in local custody in order to mitigate confusion relative to billing when inmates are released.

Prospectively, counties will not be reimbursed through the local assistance program for any parolee who is placed in county detention on or after October 1, 2011 following a revocation of supervision. Instead, these stays in local custody were accounted for in the state's funding model.

35. How do Non-Revocable Parolees (NRPs) fit in to criminal justice realignment? Are NRPs in the funding formula?

Those state inmates released on NRP prior to October 1, 2011 will remain on NRP until their term is completed. Effective October 1 2011 state prison inmates, who would have most likely been placed on NRP absent realignment, will be released into the community on PRCS as they meet the eligibility criteria for the PRCS population. Over time, the NRP population will phase out as no state inmates will be placed on NRP after October 1, 2011. The NRP population was included in the average daily population (ADP) calculation/funding model for realignment.

STATE PAROLE

36. Who remains on state parole after October 1, 2011 and beyond?

CDCR continues to have jurisdiction over all offenders on state parole prior to October 1, 2011 implementation. After October 1, 2011 state parole also will retain jurisdiction over offenders in the following categories:

- The offender's committing offense is a serious or violent felony as described in Section 1192.7(c) or 667.5(c);
- The offender has been convicted of a third strike;
- The person is classified as a high risk sex offender by CDCR; or
- The person is classified as a mentally disordered offender (MDO).

COMMUNITY CORRECTIONS PARTNERSHIP (CCP)

37. Is the CCP subject to the Brown Act?

There is a general view that the CCP is subject to the Brown Act due to the CCP being a legislative body created by a state statute; however, we advise counties to seek guidance from their county counsel as they convene their CCP meetings.

38. Who has the responsibility to develop the criminal justice realignment implementation plan: the entire CCP, the CCP Executive Committee or both?

Section 1230.1 of the Penal Code gives responsibility to develop the realignment implementation plan to the entire 14-member CCP. The section further confers the responsibility to vote on the final implementation plan to be presented to the county board of supervisors to the CCP Executive Committee.

39. Is there a deadline for the CCP to develop an implementation plan and receive approval from the board of supervisors?

No. There is no language in statute requiring the CCP to develop an adult criminal justice realignment implementation plan by a certain date. The only requirement of the CCP is to forward a copy of its final CCP plan within 60 days of its acceptance by the county board of supervisors to the Corrections Standards Authority (CSA) if the county has accepted the CCP planning grant. The county should send a copy of their CCP plan to Kim Bushard of the Corrections Standards Authority at Kim.Bushard@cdcr.ca.gov.

40. When must the CCP provide a copy of the county's implementation plan to the Corrections Standards Authority?

See answer to question 39.

41. Does a CCP plan have to be in place before criminal justice realignment funds can be allocated?

No. A county does not have to have its realignment implementation plan in place in order to receive criminal justice realignment funds.

42. Can a CCP Executive Committee operate with fewer members than those identified in statute?

Statute is silent as to how meetings are to be conducted if a county is missing a member of its CCP Executive Committee. Counties are advised to seek guidance from their county counsel.

43. What is the purpose of the CCP planning grants?

SB 87 (Chapter 33, Statutes of 2011) allocated \$7.9 million to counties "for their local Community Corrections Partnership as established pursuant to subdivision (b) of Section 1230 of the Penal Code, for the purpose of assisting each county's CCP with the development of the CCP's plan to implement AB 109 (Chapter 15, Statutes of 2011)." There is no other direction given to counties about the utilization of these funds. However, there is a requirement that each county that receives these funds shall provide a copy of the county's final CCP plan to the Corrections Standards Authority (CSA) or its successor within 60 days of its approval by the county board of supervisors.

44. Can the CCP planning grants can be rolled over?

Yes. There is no specified deadline by which the CCP planning grants must be expended.

FUNDING CONSTRUCT

45. Is there non-supplantation language included in the realignment legislation?

Yes. There is non-supplantation language in AB 118 (Chapter 40, Statutes of 2011). AB 118 states that funds in the Juvenile Reentry Grant Subaccount and in the Local Community Corrections

Account shall not be used by local agencies to supplant other funding for public safety services as defined in statute.

46. Does statute identify allowable expenditures for criminal justice realignment funding or require funds to be spent within a certain timeframe?

Statute specifies only that the allocation tied to criminal justice realignment is “for the purpose of funding various changes to the criminal justice system” as required by AB 109. The funds are continuously appropriated, and there are no reversion provisions if any of the funding is unspent. Although the one-time startup costs can also be rolled over at this time, counties may wish to consider expending those funds first.

47. What is the purpose of the CCP planning grants?

SB 87 (Chapter 33, Statutes of 2011) allocated \$7.9 million to counties “for their local Community Corrections Partnership as established pursuant to subdivision (b) of Section 1230 of the Penal Code, for the purpose of assisting each county’s CCP with the development of the CCP’s plan to implement AB 109 (Chapter 15, Statutes of 2011).” There is no other direction given to counties about the utilization of these funds. However, there is a requirement that each county that receives these funds shall provide a copy of the county’s final CCP plan to the Corrections Standards Authority (CSA) or its successor within 60 days of its approval by the county.

48. Is the first year allocation for the adult criminal justice realignment intended to be split among the various affected county departments? Can a portion of the realignment funding be given to community based organizations?

Funding can be provided to any entity that will work to address the impacts of the 2011 criminal justice realignment within the county. The intent is for counties to have maximum flexibility in allocating the funds at the local level, with the hope that those allocations will be informed by the CCP implementation plan. Funding levels to support the criminal justice realignment were based on the State’s costs for incarcerating/supervising/treating these offenders at the state level. However, those costing elements are not discrete requirements as to how the ratios should be spent locally. The purpose of the CCP is to evaluate local needs and advise the county board of supervisors as they make their allocation decisions. A county may choose to provide funding to a community-based organization if it is treating/serving any segment of the realigned population.

49. Are Non-Revocable Parolees (NRPs) in the funding formula?

The NRP population was included in the average daily population (ADP) calculation/funding model for realignment. See also question 35.