

Stanford Law School | Stanford Criminal Justice Center

# Court-Ordered Population Caps in California County Jails

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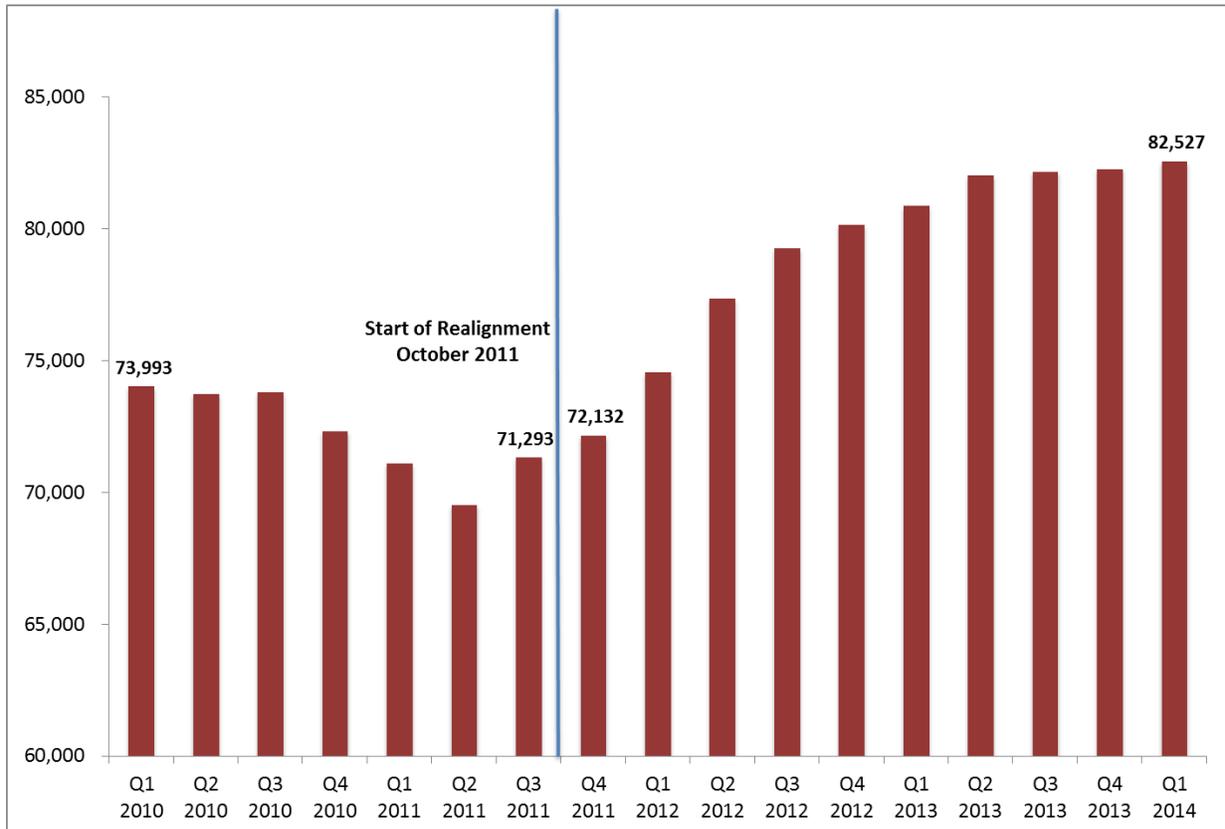


## Introduction

California is in the midst of a reform era that is unprecedented both in depth and in scope. Public Safety Realignment, passed and implemented in 2011, has shifted thousands of non-violent, non-serious, non-sex offenders from state-level jurisdiction to county-level jurisdiction. Arguably, California’s county jail systems have been one of the most significantly altered components of the criminal justice system and Realignment is exacerbating some of the biggest challenges facing jails prior to October 2011 when Realignment began. Since the start of Realignment county jails have experienced increased pressure to house larger populations. In the quarter preceding the start of Realignment the average daily population (ADP) for California’s jails was 71,293 (see Figure 1). By the first quarter of 2014, ADP had increased to 82,527, an additional 11,234 individuals compared to pre-Realignment. The diversity of California’s counties means that the way in which these increased pressures manifest in each county varies greatly and is based on a multitude of factors such as the extent to which the county previously sent people to state prison, the local jail incarceration rate, the operating capacity of the jail, and whether the county jail system is operating under a court-ordered population cap.

This report focuses on court-ordered population caps. Understanding some of the history and current context of existing court-ordered population caps can be helpful as the effects of Realignment continue to unfold. First, as will be discussed below, county court-ordered population caps have generally been in place for decades, long before *Plata v. Brown* and the Public Safety Realignment Act. Are the population caps forcing, or perhaps even allowing, counties to with caps to respond in notably different ways than counties without caps? Second, there is concern that *Plata v. Brown* has the potential to lead to “county-level *Platas*” as a result of increased attention to jail conditions in the context of these growing populations.<sup>1</sup> Some believe that Realignment has created an environment where 58 counties are at risk of developing jail conditions that are unconstitutional and lawsuits related to jail conditions and overcrowding may be on the horizon.<sup>2</sup> In fact, lawsuits related to jail conditions and overcrowding have been filed in several counties since the start of Realignment: Alameda, Fresno, Monterey and Riverside.<sup>3</sup> Can counties at risk of new litigation – or even at risk of a revival of “orphaned jail cases”<sup>4</sup> learn from past experiences?

**Figure 1. Average daily population in California county jails**



**Highlights of California Public Safety Realignment**

*In 2011 Governor Jerry Brown signed Assembly Bill 109, commonly referred to as “prison realignment,” which shifted the responsibility of monitoring, tracking, and incarcerating lower-level offenders previously bound for state prison to counties. In brief, AB 109 (and AB 117, a companion bill) altered both sentencing and post-prison supervision for the newly statutorily classified “non-serious, non-violent, non-sex” offenders. While the legislation is comprehensive and complex, three major groups are affected by Realignment.*

*First, felony offenders who have never been convicted of a “serious” or “violent” crime or an aggravated white collar crime and are not required to register as sex offenders (colloquially referred to as the “triple-nons”) will now serve their sentences in local custody.*

*Second, released prisoners whose current commitment offense qualifies them as “triple-non” offenders are diverted to the supervision of county probation departments under “Post Release Community Supervision (PRCS).”*

*Third, if persons on parole or PRCS violate the technical conditions of their supervision (rather than committing a new crime), they can no longer be returned to State prison but must be sanctioned in local (county) jail or community alternatives, including house arrest, drug treatment, or flash incarceration.*

If this really is the beginning of a larger movement in jail litigation, then it will not be the first time California’s counties have been the defendants in lawsuits over jail conditions, and specifically overcrowded conditions. Currently, 19 of the 58 California county jail systems (33%) are operating under a court-ordered population cap (see Figure 2).<sup>5</sup> Court-ordered population caps are typically issued at a facility level rather than a county level (as many counties operate several jail facilities) and a significant share of California jail facilities currently have a population cap. According to the Board of State and Community Corrections (BSCC) Jail Profile Survey data, as of March 2014 of the 119 county jail facilities, 39 facilities (33%) were operating under a court-ordered population cap. Most notably, as of the beginning of 2014, nearly two-thirds (65%) of jail inmates in California are in custody in counties with a population cap.<sup>6</sup> And because these court orders have been in place for decades, the share of inmates in counties with population orders has been relatively stable since the data started being collected. Given that several of the largest counties are under court orders, including Los Angeles, Riverside, San Bernardino, and San Diego, it is not surprising that such a large share of California’s jail inmates are in custody in cap counties.

**Figure 2. County jail systems with court-ordered population caps, 2014**

Butte	Kings	Riverside	Santa Barbara
Calaveras	Los Angeles	Sacramento	Stanislaus
El Dorado	Merced	San Bernardino	Tulare
Fresno	Placer	San Diego	Yolo
Kern	Plumas	San Joaquin	

These increased pressures on California jails have occurred in a relatively short period of time and counties have been forced to make difficult decisions about how to manage their growing jail populations. In response to historic changes brought on by Public Safety Realignment there are essentially three approaches to dealing with larger populations: counties can increase jail bed capacity, reduce jail admissions, or increase jail releases. There is some evidence that cap counties are responding differently than non-cap counties. Since the quarter preceding Realignment, California’s county jail

population for the state overall has grown by 16% as of the first quarter of 2014. Perhaps surprisingly, the jail population in counties with population caps has increased by 22%, compared to only an 8% increase in counties without caps. All 19 counties with population caps have experienced increases in their jail population since the start of Realignment, ranging from a low of 3% increase in Butte County to a high of 70% increase in Kings County. This growth in the jail population in counties with court orders was in part the result of some counties expanding the number of jail beds such as Kings County and Fresno County. As will be discussed further below, some believe that court-ordered population caps actually facilitate expanding correctional capacity, as they can be factors in board of supervisors' decisions to fund new or expansion projects.

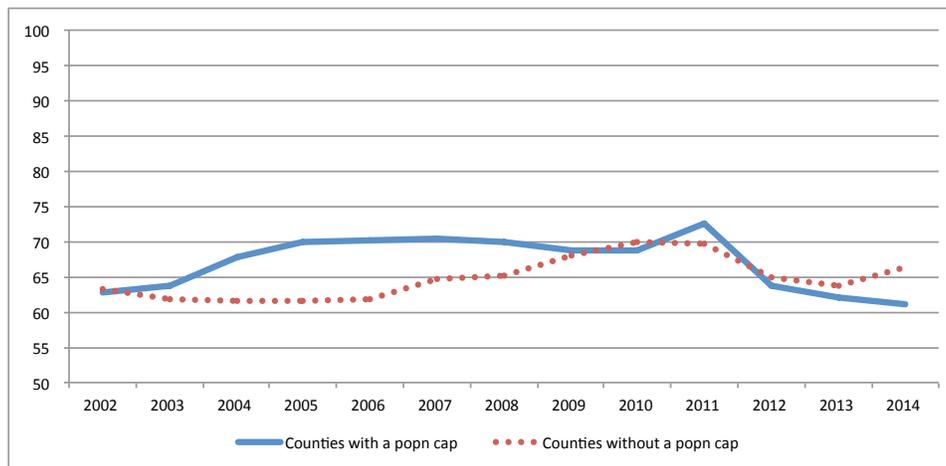
## **Data Sources**

- **Sheriffs' Departments Interviews** – Stanford Criminal Justice Center staff contacted most of the 19 counties currently operating under a court-ordered population cap and representatives from sheriffs departments in seven California counties responded to our request for an interview. Interviewees included sheriffs, deputy sheriffs, and sergeants who were knowledgeable about the county's population cap. The semi-structured interviews were done over the phone and typically lasted 30 to 45 minutes. Topics included the current status of the court order, the operational impacts on the jail facilities, the perceptions of other criminal justice stakeholders about the court order, and any unintended consequences of population caps. Questions included: Are the state or federal courts still actively involved? Are population caps considered a permanent state of the world, or is the ultimate goal to terminate court-ordered caps? Are there any unintended consequences, positive or negative, as a result of these population caps? Interviews were conducted with El Dorado County, Kings County, Los Angeles County, Orange County, Sacramento County, San Bernardino County, and Stanislaus County.<sup>7</sup>
- **Court Documents** - Where available, court documents and other relevant electronic reports were reviewed and coded for basic case-profile information from the 19 counties that are currently operating under a court-ordered population cap. Information collected included the year the case was filed; the general identity of the plaintiffs; the court in which the case was filed; the grounds of the lawsuit; and the nature of the population cap. Given that many of the court cases were filed more than 25 years ago, electronic documentation on several cases was limited and the information presented in this report provides a general overview but should not be considered a comprehensive accounting of all of the cases. Two key sources are:
  - **Civil Rights Litigation Clearinghouse** – For many of the state and federal court cases issuing population caps, court documents and case summaries were available from the Civil Rights Litigation Clearinghouse based at the University of Michigan Law School. Much of the historical information about the relevant lawsuits in this report is taken from the Clearinghouse. ([www.clearinghouse.net](http://www.clearinghouse.net))
  - **LexisNexis CourtLink** – Relevant court documents were reviewed from LexisNexis CourtLink when available. CourtLink is an on-line legal research tool that provides access to a large collection of federal, state, and local court documents.
- **Jail Profile Survey Data** – The Board of State and Community Corrections (BSCC) collects data on a monthly and quarterly basis on counties' jail systems including such metrics as average daily population by sentenced and non-sentenced individuals, the number of early releases, whether a facility is under a court-ordered population cap, and the number of bookings, among others. Some of the data elements date back to 1996 and others began to be collected in a consistent manner in 2002. ([http://bscc.ca.gov/s\\_fsojailprofilesurvey.php](http://bscc.ca.gov/s_fsojailprofilesurvey.php))

Recent research by the Public Policy Institute of California finds that cap counties are making different release decisions than non-cap. First, in response to Realignment, counties with caps are making early releases because of housing capacity constraints at far greater rates than counties without caps. They estimate that for every four “realigned offenders”, one sentenced inmate per month is released early due to housing capacity constraints in counties with a population cap compared to one among every 16 offenders in non-cap counties. In addition, they find that counties with court-ordered population caps are releasing individuals with pretrial status as a result of Realignment at greater rates than non-cap counties.<sup>8</sup>

In the years leading up to Realignment, counties with court-ordered population caps on average had a higher share of non-sentenced inmates in their jails compared to other counties, as shown in Figure 3. While there has been an overall decline in the share of non-sentenced inmates in county jails across the state, since the start of Realignment counties with caps have experienced a greater decline relative to counties without caps. As of the beginning of 2014, 61% of inmates in population cap counties were non-sentenced compared to 66% in counties without caps.

**Figure 3. Share of jail inmates who are non-sentenced**



## California Court-Ordered Jail Population Caps

If new lawsuits related to county jail conditions are looming - and the potential for new court ordered population caps are on the horizon - then a greater understanding of the existing caps and the cases that led to them could be useful. Below we highlight some aspects of the court orders in the 19 counties with population caps. Court-ordered population caps are not new to California county jail systems. The orders currently in place were issued more than 15 years ago in 18 of the 19 counties. The cases were initially filed in court an average of 27 years ago.<sup>9</sup>

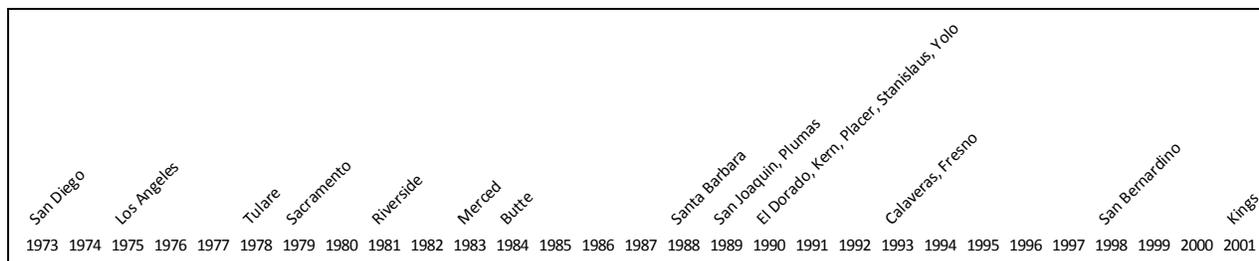
One legal scholar has characterized jail conditions lawsuits in California as happening in three waves: in the early 1970s by the ACLU of Southern California; during the 1980s by John Hagar; and during the 1990s largely by Prisoners Rights Union.<sup>10</sup> Lawsuits related to jail conditions and overcrowding slowed, but did not completely stop, after the passage of the Prison Litigation Reform Act (PLRA) of 1996, as demonstrated in the timeline of filings in California in Figure 3. Two key goals of the PLRA were to reduce prisoner litigation and limit federal courts involvement with state prison systems.<sup>11</sup> By most accounts these goals have been met. The PLRA made new court orders related to prison and jail conditions more difficult to obtain as well as existing court orders more difficult to sustain.<sup>12</sup> Of the counties with court-ordered population caps, only Kings County and San Bernardino County were filed after the passage of the PLRA. In other words, the large majority of population orders currently guiding the counties were issued pre-PLRA. While the PLRA may have slowed the volume of filings, court orders continue to play a large role in California's criminal justice system, as evidenced by two-thirds of California's jail inmates currently being housed in counties under a population cap.

Once a jail population cap is issued in California, historically that cap has remained in place indefinitely, as few California counties cease to operate under a court-ordered population cap once it has been put in place. Said another way, termination of population orders appears to be a very rare occurrence in California. According to the BSCC, since 2002 only four counties reported having a population cap in at least one facility and then reported no longer having a cap at any facility.<sup>13</sup> One legal scholar characterized their tenures as follows: "These orders have functioned for decades as county-specific bail and jail sentencing reform mechanisms."<sup>14</sup>

While caps are rarely lifted, modifications to court-ordered population caps are not uncommon in California. According to the BSCC, most of the 19 counties reported changes in the size of their population cap since 2002. This was also supported by court documents and interviews with sheriffs' departments. Modifications to population caps

were often related to a county closing a facility, opening a new facility, or expanding an existing facility. For example, Kings County opened a new facility in 2006 and the court order, which was initially established in 2001, was modified to cover the new facility. The court-ordered population cap in Los Angeles County currently only applies to one of their seven facilities, the Central Jail, but historically applied to additional facilities that no longer house inmates.

**Figure 3. County court-ordered population caps by year case was filed**



Jail inmates, generally represented by prisoner advocacy groups, were the plaintiffs in all but two of the California lawsuits that resulted in a population cap. During the late 1980s and the early to mid-1990s the Prisoners Rights Union actively litigated lawsuits against county jails related to jail conditions. According to the Civil Rights Litigation Clearinghouse, the Prisoners Rights Union was involved in lawsuits related to jail conditions in over a dozen California cases during that time. The two exceptions are El Dorado County and Kings County, where the sheriffs were the plaintiffs. As one sheriff’s department representative stated: “The sheriff essentially sued himself.” In these cases, the sheriffs sought legal authority to release inmates early.

In all of the cases for which court documents were available the lawsuits involved a whole host of alleged violations, of which overcrowding was just one. Many of the lawsuits included alleged violations related to inmate safety, medical care, staffing levels, access to a library, food service, recreation and exercise, and sanitation. Many, if not all, of these problems can be directly or indirectly linked to overcrowding, which is probably why a population cap was one of the ordered remedies in so many cases.

Population caps are typically not simply a ceiling on the number of individuals that can be housed in a county’s jail system. Jail population caps can be a function of overall rated capacity, vary by housing unit or security level, be tied to square footage, or be tied to gender. Below are a few examples from initial court orders illustrating the different forms they can take.

- El Dorado County: *The population cap of the existing jail in Placerville shall be 243, unless and until the Board of Corrections alters said facility’s rated capacity.*
- Kern County: *[N]o prisoner will be housed in the Kern County Jails who does not receive a bed, bedding, and mattress. There will be no prisoners sleeping on the floor.*
- Merced County: *The Sheriff of Merced County is authorized by this order to release inmates from the Merced County Jail system, or any specific housing unit therein, is within ten percent of being filled. The Sheriff shall release inmates or refuse to accept newly-committed inmates whenever all beds in the Main Jail are filled.*
- Kings County: *The Sheriff of Kings County shall operate the Kings County Jail located at 1570 Kings County Drive in Hanford California at the unit capacities and according to the unit classifications hereinafter set forth:*
  - *POD A1, Holds females only/Gen Pop, capacity of 29*
  - *POD A2, Holds males only/Gen Segr, capacity of 32*
  - *POD A3, Holds males only, Sen Segr/Bulldogs, capacity of 30.<sup>15</sup>*

It is worth noting that in all of the counties in which documentation was available, the population cap was only one of many remedies ordered by the court. The remedies covered a wide range of issues related to jail conditions such as improved medical care, increased staffing, improved training, access to a library, and increased recreation time, among others. For example, the Kern County order stipulates that “all prisoners in the Lerdo Pretrial Facility will be provided with access to the day rooms from at least 6:00 am to 11:00 pm seven days a week, except for those persons who may legitimately be denied such access due to medical and/or disciplinary segregation.” In Sacramento County, “dental services shall be provided at the Main Jail at the Rio Cosumnes Correctional Center eight hours per day, five days per week at each facility.” And in Plumas County “each inmate housed in the Plumas County Jail shall be provided with a personal storage space of sufficient size to hold the inmate’s personal effects.”

The extent to which the court was prescriptive in the decision rules for early releases once capacity was reached also varied greatly across counties. In Plumas County, the order implicitly gives the sheriff discretion to decide who should be granted early release as little detail is provided: “Whenever it is necessary in order to maintain housing units at their rated capacities, as set forth above, the Sheriff will summarily release inmates from the Plumas County Jail.” In other counties, such as El Dorado and Kings, the court order includes the specific criteria the sheriff should use when making early release decisions:

- In El Dorado County inmates are ordered to be released in the following order:
  - *Unsentenced persons charged with misdemeanors;*
  - *Sentenced misdemeanants in descending order of the percentage of their sentence already served;*
  - *Unsentenced persons charged with felonies, in ascending order of the amount of bail; and*
  - *Sentenced felons in descending order of the percentage of their sentence already served for felons sentenced for crimes against property and felons sentenced for crimes against persons.*<sup>16</sup>
- In Kings County the early release criteria are:
  - *Unconvicted and/or unsentenced inmates charged with misdemeanor crimes against property;*
  - *Unconvicted and/or unsentenced inmates charged with misdemeanor crimes against persons;*
  - *Inmates sentenced to jail for misdemeanor charges in descending order of the percentage of total sentence served and in the following order: crimes against property and crimes against persons; and*
  - *Inmates sentenced to jail for felony charges in descending order of the percentage of total sentence served and in the following order: crimes against property and crimes against persons.*

Highlighting selected details of individual court orders issued over 25 years ago is one way to better understand the effects population caps have had and are having on California’s counties. However, language from court orders does not shed much light on the operational ripple effects on sheriffs’ departments in the present day. For that we interviewed a series of departments that are currently operating under a population cap.

## **A View from Sheriffs’ Departments**

Based on the sample of counties we spoke with, sheriffs’ departments’ overall feelings about the population caps are complicated, ranging from negative to positive. In some counties, the cap was viewed as largely burdensome, requiring time and resources for departments that are already stretched thin, especially in this post-Realignment world. One county said that even after all of these years they are still required to submit quarterly population reports to the court. Some perceived the population cap as something that essentially undermined a sheriff’s ability to run the jails. One interviewee noted that any political fallout of the court orders ultimately fell on the sheriff’s department.

Regardless of whether the cap was considered to be overly burdensome, there was at the same time almost universal appreciation expressed about the existence of the cap. Some felt it was really another tool in a sheriff's tool belt. ("With a court order, I have permission to do early release.") Others noted that the biggest benefit of having a population cap is that it gave the sheriff's department political cover. One interviewee commented "judges sometimes feel that they run the jail so the consent decree gives the sheriff the ability to push back on the judges." Another stated "a court order means that the sheriff has judicial approval to overrule a judge. We are respecting the judicial process." And a third said: "Does the court order help us? Yes. Otherwise we are put in a liability situation."

In many counties there was a general resignation about the existence of the cap; that they are here to stay, will never be terminated, and are essentially permanent fixtures of local criminal justice systems. "We could petition the court to terminate the case but would probably get sued again immediately. It would just put us back to where we were before." And while this sense of permanence may have existed prior to Realignment, several counties seem to feel that the increased population pressures that Realignment created mean that any chances of terminating a court order were probably lost with the passage of AB 109. One county reflected on this state of mind from a bigger picture perspective, noting that it was unfortunate that counties were no longer questioning whether it made sense to operate a jail system that is permanently approaching capacity.

Along those lines, interviewees were asked about whether they could ever envision a time when the department moved to terminate the court order. As discussed earlier, the average court order has been in place for 27 years. Nearly every interviewee was of the opinion that there are little to no incentives for sheriffs' departments to return to court for the purposes of terminating a court-ordered population cap. "The likelihood that any sheriff would go back to court is slim. It is easier to deal with a population cap." This sentiment was further supported by research by Margo Schlanger, a law professor at the University of Michigan, and a quote by a jail administrator:

To be sure, we used "court orders" and "consent decrees" for leverage. We ranted and raved for decades about getting federal judges "out of our business"; but we secretly smiled as we requested greater and greater budgets to build facilities, hire staff, and upgrade equipment. We "cussed" the federal courts all the way to the bank.<sup>17</sup>

In fact, one of the sheriff's departments we spoke with is interested in expanding the cap so it applies to all of the facilities in the county jail system rather than just the few that are

currently identified in the existing order. While none of the people we interviewed put it this bluntly, again Schlanger's work found that court-ordered population caps actually helped the sheriffs obtain more county funds through boards of supervisors. As one plaintiff was quoted as saying: "It would turn out to be a collaborative thing. The sheriff saw the lawsuit as a vehicle to get money from the Board of Supervisors. And the Sheriff's saw that the population limit would help them keep control over their jail."

In only one of the counties we interviewed did the department express an interest in working toward a jail system where a court-ordered population cap was no longer necessary and said that the sheriff's ultimate goal was to petition the court to terminate the cap.

We asked about levels of understanding and awareness of the population cap on the part of local stakeholders and the responses varied widely. Some interviewees noted that most of the criminal justice officials were well aware of the order and the constraints it put on the sheriffs and cited the length of time the order had been in place and/or commented that in small counties most everyone knew the situation. In other places, however, sheriffs' departments reported that there were many local stakeholders who were not aware of the details about the court orders or did not fully appreciate the constraints that it put on sheriffs' departments. According to one sheriff, "I spend a lot of time educating the public, media, and Board of Supervisors. And victims do not understand why offenders are released early." Another county said "there is a lot of misunderstanding about the jail and early releases, especially when it comes to the public. They think we are just releasing people and I am constantly speaking to different groups."

Lastly, we asked sheriffs' departments to talk about any unintended consequences, either positive or negative, of court-ordered population caps. Many focused on the ripple effects of sheriffs' inability to keep people in custody. For example, a few counties commented on the challenges of engaging individuals in programs for a few reasons. First, the low level offenders who would be good candidates for alternative custody programs are generally the first in line for early release. Second, inmates are aware that they may be released early so they do not participate in education or treatment programs unless court-ordered to do so. Third, for individuals who are expected to participate in community programs, they are aware that there is no room for them to return to custody and therefore no consequences to them walking away from programs. Sheriffs' departments were not the only criminal justice agency mentioned in the context of unintended consequences, as several sheriffs' departments cited the morale at police departments. A few interviewees commented on how hard it was for a police officer who put significant effort into solving a case and arresting someone and then by the end of

their shift see that person back out on the street. “The lack of accountability for criminal conduct can be demoralizing for police departments.” Only one unintended consequence mentioned by the interviewees could be considered positive. A few counties noted that the court orders had forced them to work together across agencies on creative ways to keep the jail population under the cap. “The court order facilitated collaboration in our county long before Realignment came along and that helped us after AB 109 was passed.”

While the number of sheriffs’ departments we spoke with does not warrant making generalizations across jurisdictions, a few themes did seem to emerge. One was related to the size of the county. In smaller counties, the lack of understanding on the part of other local stakeholders or need for ongoing education and outreach related to the court order was not present. It was primarily in the larger counties where a limited understand of the court order seemed to be an issue. As a second theme, in all but one of our interviews there was a general sentiment that population caps were a permanent state of the world and there was no desire to work towards terminating the cap. It is as if operating at near full capacity under a court order is just assumed to be the way jails will forever be operated in many California counties. If that is the case, then understanding all of the practical consequences and outcomes of having a court-ordered population cap are vitally important, both for those counties that have been operating with a cap for decades and those counties that may be facing new lawsuits.

## Need for a Research Agenda

Research in this area is limited and outdated, as most of it predates the passage of the Prison Litigation Reform Act in the mid-1990s, let alone being conducted in the wake of *Plata v. Brown* and the Public Safety Realignment Act of 2011 in California. During an earlier wave of jail and prison conditions lawsuits in the late 1980s and early 1990s scholars pointed out the serious gaps in research and the need for scholarly attention.<sup>18</sup> Nearly 25 years later, those gaps remain. Margo Schlanger, a law professor at the University of Michigan has lamented that “decades of practical and scholarly experience with institutional reform litigation has not adequately analyzed its causes, its successes, and its failures.”<sup>19</sup> Previous research has also largely focused on prison litigation, and court orders in county jails have been largely neglected.<sup>20</sup>

Given the prevalence of court orders in California and the public safety and budgetary ripple effects of jail population orders, a deep understanding of the implementation and short- and long-term outcomes of population caps seems like a wise investment and good public policy. This is especially true if new county-specific lawsuits are looming.<sup>21</sup> Population court orders have an enormous impact on California’s jail system in myriad ways, both direct (such as early releases) and indirect (such as political pressure to expand capacity). And despite the population caps in California having been in place for over a quarter of a century, we still know very little about the outcomes and whether the court-ordered caps have achieved their goals. Even if they have, is it good public policy to have a court order in place for nearly 30 years with no end in sight? As one pair of researchers put it nearly 25 years ago, “court orders against those who administer jails provide an opportunity to examine one of the supreme ironies of social control: the justice system sanctioning itself for not punishing violators within the boundaries of the law.”<sup>22</sup> In short, government interventions that have been employed for so long with the far-reaching scope of impact deserve to be examined.

The limited research that has been conducted has often focused on specific cases and does not look across jurisdictions or over time at litigation patterns and the extent to which court intervention can be tied to any measurable outcomes.<sup>23</sup> Only a few scholars have delved into county-level assessments to understand context, implementation, and outcomes across jurisdictions. Welsh and Pontell’s work from the 1990’s took an aggregate approach to court orders by systematically coding specific cases and layering that with contextual indicators and outcome measures. This level of analytical rigor is crucial to understanding the many ways population court orders that were issued decades ago are impacting county criminal justice systems in the present day. Some scholars have found that population caps that are intended to reduce overcrowding may actually result

in system expansion rather than reduction, which is what most plaintiffs are arguably interested in.<sup>24</sup> This seems plausible in current day California, given the billions of dollars in state funding being channeled to California counties and a deeper dive into the potential role population orders have on system expansion is warranted.

Our review of existing population court orders in California and interviews with sheriffs' departments has shed some light on the content of court-ordered population caps currently in place in 19 counties, as well as some of the practical – and perhaps unintended – consequences of those orders on day-to-day operations. But many questions remain. Are counties with population orders in California more likely to expand their capacity? To what extent does on-going court involvement matter, if at all? Have some sheriffs' departments become desensitized to operating at capacity at all times and should population orders be considered a permanent state of the world? What can be learned from counties that have been under population orders for decades to help counties facing new litigation or even avoid lawsuits? These questions warranted attention long before Public Safety Realignment became reality in California and they certainly warrant it as this historic era of reform continues to unfold.

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- <sup>1</sup> Petersilia, “Voices from the Field.”
- <sup>2</sup> Schlanger, “Plata v. Brown and Realignment.”
- <sup>3</sup> Loftstrom and Martin, “Key Factors in California’s Jail Construction Needs”.
- <sup>4</sup> Schlanger, “Plata v. Brown and Realignment.”
- <sup>5</sup> Based on the Jail Profile Survey, the first quarter of 2014.
- <sup>6</sup> Note that 23% of all of California’s jail inmates are housed in Los Angeles County alone, which is a cap county.
- <sup>7</sup> Note that Orange County is not one of the 19 California counties currently operating under a cap. However, it used to be under a court-ordered cap and Sheriff Hutchens, the current Orange County Sheriff previously worked in Los Angeles County Sheriff’s Department and could speak to the experiences in both counties.
- <sup>8</sup> Lofstrom and Raphael, “Impact of Realignment on County Jail Populations.”
- <sup>9</sup> Note that the year that the population order was put in place (rather than the year the case was filed) would be a more appropriate metric but given the limited documentation available today the year the cap went into effect is not available for many counties. In places where the information is available, it was typically between one and two years after the filing date, making the year the case was filed a reasonable proxy.
- <sup>10</sup> Schlanger, “Plata v. Brown and Realignment.”
- <sup>11</sup> Belbot, “Report on the Prison Litigation Reform Act: What Have The Courts Decided So Far?”
- <sup>12</sup> For a discussion on the ways in which the PLRA makes this more difficult see Schlanger “*Plata v Brown and Realignment*”.
- <sup>13</sup> They are Orange County, Santa Clara County, Shasta County, and Sutter County.
- <sup>14</sup> Schlanger, “Plata v. Brown and Realignment.”
- <sup>15</sup> Three pods are provided as examples and the full order stipulates capacity constraints for 12 pods.
- <sup>16</sup> These are sub-sets of the full lists for illustrative purposes.
- <sup>17</sup> Schlanger, “Civil Rights Injunctions Over Time.”
- <sup>18</sup> Pontell and Welsh; Feely and Hanson.
- <sup>19</sup> Schlanger, “Civil Rights Injunctions Over Time.”
- <sup>20</sup> Schlanger, “Civil Rights Injunctions Over Time.”
- <sup>21</sup> See “Beyond Litigation: A Promising Alternative to Resolving Disputes Over Conditions of Confinement in American Prisons and Jails,” by Matthew Cate and Robert Weisberg, Stanford Criminal Justice Center (December 2014).
- <sup>22</sup> Pontell and Welsh, “Incarceration as a deviant form of social control.”
- <sup>23</sup> Pontell and Welsh, “Incarceration as a deviant form of social control”; and Schlanger, “Plata v. Brown and Realignment.”
- <sup>24</sup> Simon and Harriman and Staussman as cited in Pontell and Welsh, “Incarceration as a deviant form of social control.”