

# section four

Sentencing practices

❖ This section reviews local sentencing data. The data comes from several sources: from the Case Processing study; from an examination of inmates serving a sentence of 30 days or more in the Placer County Jail; from a review of local Drug Court data; and from a review of judicial decisions regarding Eligibility for Alternatives.

## Expand use of alternatives

**Recommendation: Reduce reliance on incarceration as a sentence & increase use of alternatives**

**High reliance on incarceration as a sentence** 60% of felony offenders and 92% of misdemeanor offenders were sentenced to the County Jail. Nationally, 28% of felony offenders are sentenced to Jail.

Placer County - Sentence Type		
	Felony	Misdemeanor
Jail	60%	92%
Prison	27%	—
Non-custody	13%	8%

Of those felony offenders sentenced to a non-custody alternative, Drug Court and Probation were the most frequently used. However, the number of offenders sentenced to alternative programs, as a primary sentence is so minimal that these numbers represent only a small number of sentences.

Nationally, an estimated 75% of all persons convicted of a felony in state courts are sentenced to a period of confinement, in either state prison or local jail<sup>3</sup>.

Placer County - Sentence Type (Felony Offenders)		
	Placer County	National Average
Prison	27%	41%
Jail	60%	28%
Custody (total)	87%	75%

<sup>3</sup> (Felony Sentences in State Courts: 2008 (December 2009), Bureau of Justice Statistics)

Placer County sentences a higher percentage of felony offenders to custody than the national average. Of those sentenced to custody, Placer County sentences a proportionately higher percentage to Jail than the national average.

To increase use of alternatives several issues should be addressed:

- Increase reliance on probation’s pre-sentence reports
- Integrate risk-information into sentencing
- Strengthen and expand Drug Court and other alternatives
- Collect recidivism data for split sentencing vs. straight sentencing

An expanded use of alternative sentences would help reduce the impact on the jail and support improved offender outcomes.

**In a local sentencing study 40% of offenders were deemed by the courts to be eligible for alternatives:** 57% were considered by the court to be ineligible (there was no record in 3% of the cases). In the majority of cases there was no clear record to reveal the reason that a judge deemed a person ineligible for an alternative. Reasons that were given are outlined below:

<b>Placer County - Reasons Given by Judges for Ineligibility for Alternatives</b>	
	<b>Percent</b>
<b>Court-ordered ineligible</b> (No specific reason given)	<b>74%</b>
<b>Pending charges to resolve</b>	<b>9%</b>
<b>Prior use of alternative sentence</b>	<b>7%</b>
<b>Offense type</b>	<b>4%</b>
<b>Realignment reason: 1170(h) case</b>	<b>3%</b>
<b>Homeless</b>	<b>3%</b>

Overall, Placer County justice system data makes a strong case for the need for expanded use of jail alternatives:

- Only 13% of felony sentences were for an alternative to jail (probation, Drug Court, electronic monitoring, or a fine)
- Existing alternatives (Drug Court) are significantly underutilized
- The majority of offenders serving a 30 days or longer jail sentence did not score as high risk (note: used Ohio risk tool to calculate risk score)
- The local offender population has high drug usage rates (32% of felony dispositions were for narcotic offenses, again not including property and other offenses committed by drug addicted

offenders) an criminogenic risk factor that is not improved by custody time alone

- A high percentage of misdemeanor dispositions are for drunk driving offenses (52%), a challenge to the local system to re-examine its response to repeat drunk driving and consider other models [A 2-tiered DUI court model used successfully in another California County is presented later in this report for review]
- The Vet Court is underutilized, however 12% of jail inmates serving a 30 days or longer jail sentence have served in the military

<b>Charge Category at Disposition</b>		
	<b>Felony</b>	<b>Misdemeanor</b>
<b>Person Offense</b>	<b>31%</b>	<b>21%</b>
<b>Property</b>	<b>27%</b>	<b>11%</b>
<b>Narcotics</b>	<b>32%</b>	<b>12%</b>
<b>Drunk Driving</b>	<b>8%</b>	<b>52%</b>
<b>Public Order / Traffic</b>	<b>2%</b>	<b>4%</b>

**Recommendation: Increase use of Drug Court**

Increasing Drug Court participation would benefit offenders and it would benefit the system, helping to alleviate pressure on an overcrowded jail.

Since 2001, Texas has increased its number of Drug Courts from 7 to 74. Drug Court participants undergo substance abuse treatment, mental health treatment, drug testing and probation supervision while reporting to regular status hearings before a judge. Why has Texas made this investment? Because it works. It reduces cost and it reduces recidivism. Texas has found that re-arrest and recidivism rates of Drug Court participants are generally between 10 and 30 percentage points below those of offenders who are arrested and do not receive this treatment <sup>4</sup>.

Drug Courts allow non-violent substance abuse offenders to become productive and responsible members of the community. It is not the easy road. Those individuals who opt into the program instead of accepting a custody sentence undergo a rigorous and intensive regimen of treatment, case management, drug testing, and probation supervision while reporting to the courts. The court can always impose a custody sentence if the defendant does not successfully complete the program and in the interim this program provides the highest level of supervision, treatment,

<sup>4</sup> Memo from the Office of the Governor Rick Perry, 2013

and surveillance. Sentencing defendants to custody prior to trying Drug Court is almost a guarantee of continued drug use and criminal behavior upon release.

**The Placer County Drug Court is underutilized:** From September 2011 to now there were only 44 active participants.

In a roundtable meeting held with the Drug Court team it was estimated that the program could double in size (we think even larger). Capacity is estimated at 60 individuals. Given that staff are assigned and prepared to serve that number of persons it is a terrible waste not to use the resource — especially given the good outcomes we know that Drug Courts can produce.

**According to a comprehensive national Drug Court study, funded by the National Institute of Justice, at 18-months from program enrollment Drug Courts participants commit half as many crimes as those individuals who go through conventional criminal justice case processing and sentencing.**

The NIJ study found that Drug Courts were successful in reducing both crime and drug use, and that each participant saved the system \$5,680. Other studies have found that the benefits and cost savings can be doubled when programs carefully focus on the higher risk offender.

Of course, not all Drug Courts are effective. Like any Corrections program the results are only as good as conformance with best practices. It is not good enough to simply open the door of a program and expect good results. Under the ‘Treatment & Diversion’ section of this Report we give suggestions for improving the local Drug Court program. However, we have found nothing that would suggest that the system should not have confidence in this program.

The expansion of Drug Court should begin with Pretrial screening. Pretrial staff members are in a position to identify, as part of their interview process, defendants who meet the local criteria for Drug Court participation. These cases can be flagged for prosecution and judicial review and the process of fast track resolutions and entry into the program expedited.

**Few individuals are screened for Drug Court participation:** Over a recent 8-month period only 32 people were assessed for the Drug Court program. Given that 31% of the annual admissions into the local jail are for Narcotic offenses (over 1000 Narcotic admissions) the number of Drug Court participants is shockingly low.

**The Placer County Drug Court has a significant number of low risk participants:** The program is serving a relatively large percentage (33%) of low risk offenders who might not need a program of this length and intensity; and the program lacks differential treatment ‘tracks’ by risk level. 22% of program participants were moderate risk; only 44% were high risk.

In the selection of Drug Court candidates the risk level of the defendant should be taken into account. A gradient of treatment diversion and post-adjudication sentence options should be in place for offenders with varying levels of risk and addiction. Nationally, one of the perceived flaws of Drug Courts has been the inclusion of too many low risk individuals (persons who would be expected to cease criminal behavior on their own) and those with alcohol or drug problems, but no drug dependence issues. It is estimated that over half of Drug Court participants are **not** drug dependent.

Another important consideration to expanding the program is the work with defense attorneys. They also need to understand the benefits of their clients being assigned to this program and work to encourage their participation.

***Recommendation: Increase reliance on pre-sentence recommendations***

**Low use of alternatives:** Overall, 81% of inmates serving a local jail sentence had been deemed by the courts to be ineligible for jail alternatives; only 19% of sentenced inmates were approved by the courts for alternatives.

***Recommendation: Integrate risk-information into sentencing***

Risk information at sentencing allows judges to divert low risk offenders who are good candidates for non-incarceration alternatives. Making this information available at sentencing allows judges to tailor sentences to better protect public safety, to reflect the probability that offenders will reoffend, and to conserve limited custody space for the highest risk offender.

The diversion of low risk offenders is important, given a body of research that shows that intensive or custody sanctions for the lower risk offender has limited benefit and can actually increase recidivism.

**Missed Opportunity to use less restrictive options for lower risk offenders:** 63% of low/moderate risk inmates serving a local jail sentence had been deemed by the courts to be ineligible for jail alternatives.

Risk assessment should also be the first criteria for determining which offenders are prioritized for treatment resources (both in the Jail and the community) and should guide case planning strategies for supervision, treatment, and sanctions – from Pretrial to re-entry.

Pre-sentence investigations by the Probation Department should form the basis for risk-based Alternatives and suggested conditions.

**For sentenced inmates in the Placer County jail (those with a sentence of 30 days or longer) there is no relationship between risk scores and sentence length.** This

highlights the real potential to use risk information to better determine how to prioritize offenders for scarce custody and treatment resources.

<b>Placer County Jail Inmates (30 days or longer sentence)</b> <b>Relationship between Risk Score &amp; Other Factors</b>	
	<b>Relationship</b>
<b>Risk score &amp; eligibility for alternatives</b>	<b>None</b>
<b>Risk score &amp; sentence length</b>	<b>None</b>
<b>Risk score &amp; Jail Classification</b>	<b>None</b>
<b>Risk score &amp; gender</b>	<b>Not significant</b>
<b>Risk score &amp; residency</b> (In-county vs. out-county)	<b>None</b>

**A relationship was found between residency and length of sentence.** For those jail inmates serving a sentence of 30 days or more, individuals who resided outside Placer County had significantly longer jail sentences, even though there was no marked difference in risk score. This is worth review and discussion. If non-Placer County residents are being excluded from consideration for Alternative programs this might be impacting lengths of stay. The disparity between Placer residents and non-residents was not trivial. Non-resident jail sentences were 7 months longer than those of residents.

**The average jail sentence length for felony offenders is almost 7 months, or 198 days.** Nationally, the mean jail sentence for felony offenders is 5 months.

**There is not much variation in sentence length for felony offenders sentenced on a Person offense (211 days) and a Property offense (190 days).** Average sentence length for a Narcotics offense (164 days) is shorter than the average for a felony DUI offense (298 days).

<b>Placer County - Average Days for Jail Sentences</b> (Felony cases)	
<b>Average Sentence Length</b>	<b>Days</b>
<b>Overall Average</b>	<b>198</b>
<b>Person Offense</b>	<b>211</b>
<b>Property</b>	<b>190</b>
<b>Narcotics</b>	<b>164</b>
<b>Drunk-driving</b>	<b>298</b>
<b>Public Order / Traffic</b>	<b>120</b>

**The average jail sentence length for misdemeanants is 42 days:** Misdemeanants with a DUI offense receive an average jail sentence of 38 days.

<b>Placer County - Average Days for Jail Sentences</b> (Misdemeanor cases)	
<b>Average Sentence Length</b>	<b>Days</b>
<b>Overall Average</b>	<b>42</b>
<b>Person Offense</b>	<b>56</b>
<b>Property</b>	<b>28</b>
<b>Narcotics</b>	<b>49</b>
<b>Drunk-driving</b>	<b>38</b>
<b>Public Order / Traffic</b>	<b>28</b>

**Recommendation: Make split sentencing the norm**

In Placer County, for a non-AB109 population (the case processing sample was taken from the period before realignment) 69% of misdemeanants and 80% of felons sentenced to the local jail were also placed on probation at the conclusion of their jail sentence.

High rates of custody + probation support good offender outcomes. This is because research tells us that jail by itself does not reduce future criminal behavior. We know that neither custody by itself nor supervision or treatment by themselves reduce recidivism; it is the balance of both.

Empirical data also reveals that custody sanctions need not be lengthy to have the intended effect. And we know that using detention for low-risk offenders can actually increase future criminality. The field has a body of knowledge that has come together over the last decade pertaining to what works and what doesn't. It has not been well incorporated into sentencing but it deserves full debate and review.

In Placer County, probation is a common condition of a jail sentence, except when it comes to the AB109 population. For that population, a straight custody sentence is the norm. However, research suggests that supervision is important for recidivism reduction.

**The New Jersey parole supervision study**

In what is being called, 'one of the first studies of its kind,' a study in New Jersey took a look at 3-year recidivism for parolees released from custody with and without follow-up supervision. The findings, released December 2013, reveal that inmates released to parole supervision are less likely to be rearrested, reconvicted, and re-

incarcerated for new crimes than inmates who serve or “max out” their full custody sentence and are released without supervision <sup>5</sup>.

After controlling for age, time served, current offense, and criminal history, parolees receiving post-custody supervision are 36% less likely to return to custody for new crimes.

**Placer County Judges make low use of split sentences.** For the period October 2011 (the start of Realignment) and March 2013, 26% of sentences statewide were ‘split sentences.’ For Placer County the average was 6% <sup>6</sup>.

The state average for split sentencing is driven by a low rate in LA County; there is a broad range across counties. Placer is on the low end of that range. The range is driven more by judicial philosophies rather than local crime. For example, San Joaquin County, which has one of the highest rates of violence in the nation, also has one of the highest split sentencing rates. In November 2013, their split sentence rate was 92%.

A recent state survey of a sample of judges in California looked at the use of split sentencing <sup>7</sup>. Presented with theoretical sentencing scenarios, 47% of the time judges chose a split sentence vs. a straight custody sentence. Among the judges who chose a split sentence there was, however, tremendous variation in how the ‘split’ was made between time in jail and time under community supervision.

<b>Split Sentencing as a Percentage of All AB109 Sentences <sup>8</sup></b>	
<b>County</b>	<b>Percent</b>
Lake County	2%
Lassen County	3%
Imperial County	4%
LA County	6%
Placer County	6%
Alameda County	7%
Sacramento County	36%
El Dorado County	51%
Sonoma County	65%
San Joaquin County	71%
Riverside County	76%
Contra Costa County	89%

<sup>5</sup> Christine Zurla, “The Impact of Parole in New Jersey,” PEW, December 2013

<sup>6</sup> CPOC dashboard data, 2014

<sup>7</sup> Petersilia, Joan, “Voices from the Field: How California Stakeholders View Public Safety Realignment,” Stanford Criminal Justice Center, November 2013

<sup>8</sup> CPOC dashboard data, 2014

***Recommendation: Modify sentence to allow probation when sentenced inmate is Fedcap released***

The only thing worse than Fedcap releases is a system inflexible to respond. At this time, an offender who is sentenced to jail on a 'straight' sentence is then released due the Fedcap, the inmate walks free. This does not need to happen. The 'fix' is a blanket court order

modification to shift the offender to mandatory supervision in the event of an unplanned jail over-crowding release. There is nothing tough on crime about letting an offender be released from custody without consequences.

We also recommend establishing a routine jail step-down program. Probation would be empowered to work with the jail to determine inmates who are participating in programs that would be good candidates for a step-down release — release from custody under conditions of program participation and supervision in the community. This is another approach to ending the need to Fedcap release inmates. Let them earn their way for an early release.