

*Breaking the Cycle of*  
**LOW-LEVEL  
CRIME**



Public Safety Innovations During  
an Era of Change

## **ABOUT CALIFORNIANS FOR SAFETY AND JUSTICE**

Californians for Safety and Justice is a nonprofit project of the Tides Center working to replace prison and justice system waste with common sense solutions that create safe neighborhoods and save public dollars. As part of that work, our Local Safety Solutions Project supports innovative efforts by counties to increase safety and reduce costs by providing toolkits, trainings, peer-to-peer learning and collaborative partnerships. Learn more: [www.LocalSafetySolutions.org](http://www.LocalSafetySolutions.org).

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# Executive SUMMARY

Important changes are underway – and opportunities are at hand – for California’s criminal justice system. In recent years, Californians have repeatedly expressed support – to legislators and at the ballot box – for replacing the state’s costly and ineffective over-reliance on incarceration with smart local strategies that stop the cycle of crime.

This shift in public opinion has paved the way for policy reforms (see below) that provide local officials with new responsibilities for managing people convicted of nonviolent offenses — as well as new funds to invest in programs and practices that can effectively break the cycle of crime.



## Recent Reforms Reshaping California’s Criminal Justice System

**Public Safety Realignment:** In 2011, facing a U.S. Supreme Court mandate to reduce prison crowding deemed unconstitutional, California’s Governor and Legislature enacted Assembly Bill 109 (Public Safety Realignment). The law shifted responsibility for people convicted of certain nonviolent, non-sexual, non-serious offenses from the state prison and parole system to county jails and probation. As part of this new responsibility, counties have received, in total, nearly \$3.3 billion from the state from 2011 through June 2015. Many counties have used the new funds to create or expand innovative community programs that focus on changing behavior in ways more effective than traditional incarceration.

**Proposition 36:** California voters overwhelmingly passed Proposition 36 in November 2012, changing the state’s Three Strikes law that voters passed in 1994. Now a life sentence can only be imposed if someone with two prior “strikes” is convicted of a serious or violent offense. The law is also retroactive for individuals incarcerated for certain non-serious, nonviolent convictions.

**Proposition 47:** In November 2014, California voters enacted the “Safe Neighborhoods and Schools Act,” a ballot initiative that changed six low-level, nonviolent crimes from felonies to misdemeanors. These included simple drug possession and petty theft offenses under \$950 in value (petty theft, shoplifting, receipt of stolen property, forgery and writing a bad check). The Legislative Analyst’s Office, an independent agency, estimates that reduced prison terms because of the law will produce savings of more than \$100 million annually. These funds will be reallocated to mental health and drug treatment programs, K-12 programs for at-risk youth and services for victims.

In this era of change, there is a great opportunity to adapt local safety and justice strategies to strengthen crime prevention and recidivism reduction. Bringing new, smarter approaches to scale will require evaluating best practices and increasing collaboration between the community and government.

There are numerous innovative law enforcement and criminal justice models already in existence that offer a roadmap for adapting local practices. This brief highlights some key innovations that, if brought to scale, can replace old ways of doing business with improved public safety, reduced cycles of crime and increased cost-savings.

The opportunity to adapt local safety and justice strategies could not come at a more critical time. A growing body of research reveals that there is scant evidence that decades of increased incarceration have reduced crime. But data does show that over-incarceration has produced high recidivism rates, worsened outcomes and disproportionately impacted communities of color, all while depleting community resources and opportunities.

Today, **research increasingly points to innovation and collaboration as the best strategies to address repeat crime** – without harming communities. The most effective approaches are those that target law enforcement resources for the highest-risk individuals, focus on prevention and address common drivers of crime (like mental health and substance abuse), and tailor interventions to change the behavior of individuals that engage in repeat offenses.

This brief highlights national and California models that emphasize government and community collaboration, address drivers of crime, and tailor interventions to the individual to stop crime cycles without overreliance on incarceration.

**All of these examples could be applied to individuals committing misdemeanors** and certain, nonviolent felonies; the severity of the penalty is less relevant than the strategy employed to change behavior.

The strategies in this brief are based on the stage of the intervention: deterring crime, diversion before

arrest, diversion before conviction and alternatives to incarceration. Examples include:

## **Before a crime takes place – engaging the community to deter criminal behavior** (more on this example and others on page 7)

**In Multnomah County (Portland, OR), the District Attorney's Office** asked residents to help clean up wooded areas that had become a hideout for people continuously committing petty offenses. The result: **reduced crime that added up to \$40,000 in savings** to the city per year.

In 2014, **North Carolina's High Point Police Department (HPPD)** worked to reduce shoplifting by identifying chronic shoplifters and alerting them individually to the fact that police and retailers were watching – and that prosecutors had various charges ready for someone who broke the law (including felony options beyond the misdemeanor citations typically given out). The goal was not new arrests or convictions but rather deterrence, and **the result was an almost immediate drop in shoplifting, dropping below the average for the previous five years.**

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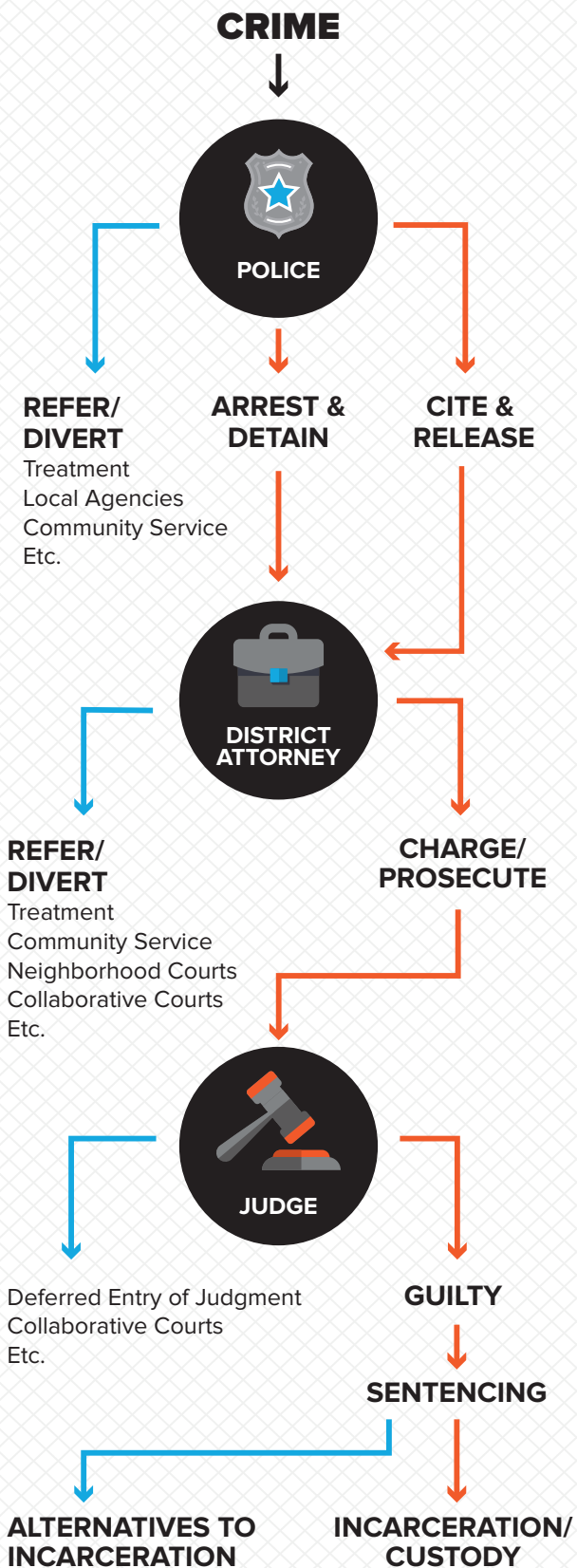
## **What is recidivism?**

Recidivism is when an individual who was recently in custody or the criminal justice system commits a new offense. How agencies measure recidivism differs. For example, the California Board of State and Community Corrections defines recidivism as conviction of a new felony or misdemeanor committed within three years of release from custody or within three years of placement on supervision for a previous criminal conviction.”<sup>1</sup>

The California Department of Corrections and Rehabilitation defines recidivism as returning to prison custody within three years of release (including for parole violations, not just conviction of a new offense). For context, California's prison system's most recent-reported recidivism rate is 61%<sup>2</sup>, meaning six out of 10 people released from prison returned within three years.

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# Potential Pathways for Criminal Offenses



## Before an arrest – reducing recidivism, pressures on police through new partners and sanctions

(more on this example and others on page 12)

**LEAD: Law Enforcement Assisted Diversion** is a program by Seattle police – in cooperation with the District Attorney – that diverts individuals suspected of low-level drug, prostitution or other activity to a case management process focused on reducing repeat offenses. This can include a variety of social services focused on addressing the root causes of criminal behavior (e.g., poverty, homelessness, drug addiction, mental illness). An April 2015 report found that **participants diverted to LEAD case management were 58% less likely to be re-arrested in that evaluation period than people who had actually been arrested and booked for similar offenses.**

Philadelphia’s **Accelerated Misdemeanor Program** successfully intervenes when someone commits a low-level, nonviolent offense. AMP allows eligible individuals to have their case dismissed if they complete community service and/or follow a court-approved recommendation for treatment. **The program now handles 20-25% of all misdemeanor cases and resolves them in an average of 30 days** (compared to six months for other misdemeanor cases), **saving police and courts time – and the city millions of dollars.**

## Before a conviction – reducing recidivism and criminal court pressures through neighborhood courts

(more on this example and others on page 17)

The San Francisco District Attorney’s **Neighborhood Courts** program has volunteer residents resolve cases in order to reduce caseloads at criminal courts, as well as to improve outcomes. The 10 Neighborhood Courts handled 651 cases in a single year, while **reducing the likelihood of rearrests by as much as 10.3%.<sup>3</sup>**

## Before and after incarceration – strengthening probation to reduce repeat offenses (more on this example and others on page 24)

Historically, throughout California, people convicted of misdemeanor offenses have received little attention from the criminal justice system. Changes in state law that reclassified common, low-level crimes from felonies to misdemeanors creates an important opportunity for counties to consider placing some misdemeanants, specifically those who are higher risk, onto supervised probation in an effort to require behavior change and rehabilitation. The Yolo County Probation Department recently revised its **misdemeanor sentencing**

**guidelines to require 18 months probation and mandatory drug treatment and testing for all drug possession convictions.** The guidelines also call for a mandatory 240-day jail sentence for probation failures.

The **Hawaii Opportunity Probation with Enforcement (HOPE)** program gives high-risk probationers prior notice (i.e., warnings at a hearing) of potential sanctions if they fail conditions of their probation. Participants receive frequent, unannounced drug testing, and those who fail are arrested immediately, given new probation and often a short jail stay. Studies show that **HOPE participants were less likely to be arrested for a new crime, to use drugs or to have their probation revoked.**



## Police Legitimacy and Procedural Justice

An important aspect of public safety is how communities experience their interactions with police and criminal justice system. The goal of “Procedural Justice” efforts is to ensure that people feel that their treatment by justice system professionals is fair and just. This contributes to perceptions of “Police Legitimacy” – where residents have trust and confidence in the police, accept police authority and believe officers are fair. Departments can build trust by:

- Treating people with dignity and respect;
- Making decisions fairly, based on facts, not illegitimate factors such as race;
- Giving people “voice” (a chance to share their side of the story); and
- Conveying a lasting commitment to respectful treatment (“trustworthiness”).

### Case Study: California Department of Justice Training Initiative

Spearheaded by California Attorney General Kamala Harris, the Procedural Justice and Implicit Bias Training Initiative will support police and sheriff departments across California to incorporate these concepts into training and operations, with an ultimate goal of strengthening trust with communities. These field-tested trainings, certified by POST (Peace Officer Basic Training), were developed by police for police (in partnership with criminologists) and are adaptable for specific community circumstances. The initiative, building on successful programs in Oakland and Stockton, will provide coaching, technical assistance and other support to departments implementing the training through a partnership between the California Department of Justice, The California Partnership for Safe Communities, Stanford University and the Oakland and Stockton Police Departments.

**For more information** about building trust and legitimacy (and other best practices in policing), see the President’s Task Force on 21st Century Policing ([www.cops.usdoj.gov/policingtaskforce](http://www.cops.usdoj.gov/policingtaskforce)). Established in December 2014 and published in May 2015, the Task Force included input from stakeholders and the public to identify best practices and make recommendations to President Obama.

# Arrest and Jail as Options for Misdemeanor Offenses

When California voters passed Prop. 47, changing six low-level offenses from felonies to misdemeanors, they furthered the movement in public safety to prioritize resources for serious and violent crime – and to use new methods for breaking the cycle of low-level crimes. In addition to new approaches outlined in this brief, law enforcement can utilize previous enforcement tools to pursue and punish misdemeanor crimes.

**ARREST:** Under California law, peace officers have discretion to arrest or “cite and release” an individual suspected of committing most criminal offenses. Prop. 47 maintains these options. Any peace officer may arrest any individual who commits a misdemeanor in their presence<sup>4</sup> (including observing someone in possession of drugs or stolen property) or if the offense occurred in the presence of a civilian who describes the offense to the arresting officer.<sup>5</sup>

**PRETRIAL DETENTION:** Generally, an individual charged with a misdemeanor can be detained for up to 48 hours in county jail pending arraignment. The individual can be held longer if he/she: <sup>6,7</sup>

1. Is likely to commit the same offense or endangers the safety of persons or property if released;
2. Is seen as unlikely to appear at the time and place (i.e., court) specified in the notice;
3. Has outstanding arrest warrants;
4. Cannot provide satisfactory evidence of personal identification;
5. Is so intoxicated he or she could be a danger to him or herself or others;
6. Requires a medical examination or treatment, or is unable to care for their safety; or
7. Demands to be taken before a magistrate or refuses to sign the citation.

“ Police and sheriff deputies have the ability to make arrests for misdemeanor offenses, as well as book individuals into jail. Whether or not they do so is a matter of local policy. Police departments issue guidelines to their officers about how to handle certain offenses based on the willingness of the sheriff department to use jail space and the district attorney’s office to pursue charges. If certain misdemeanor offenses are deemed worthy of arrests and detainment, officers can be directed to act accordingly. ”

— WILLIAM LANSDOWNE, FORMER CHIEF OF POLICE FOR THE CITIES OF SAN DIEGO, SAN JOSE AND RICHMOND

**THE THREAT OF INCARCERATION:** A conviction for a misdemeanor offense can carry a sentence of up to one year in county jail. If an individual is convicted of multiple misdemeanors, the sentencing judge has discretion to impose consecutive sentences.<sup>8</sup> While a growing body of evidence indicates that incarceration is not effective at changing behavior for many people convicted of low-level offenses (and, in fact, can put someone at a higher risk to reoffend), local officials can use the threat of incarceration if they believe it is necessary for public safety and/or an individual’s rehabilitation. Many jurisdictions are starting to incorporate the use of research-based, risk assessment tools to help them reserve jail space for higher-risk individuals.

## **SUPERVISED PROBATION AND REQUIRED**

**DRUG TREATMENT:** Supervised probation can be a critical tool for holding someone accountable and changing their behavior. While California counties have not historically placed individuals convicted of misdemeanors on supervised probation, judges can sentence misdemeanants to probation for up to five years – and threaten incarceration if probation terms are not met. Example terms can include compulsory drug treatment or counseling, community service, drug testing, restitution and/or other sanctions tailored to the specific circumstances. Risk-assessment tools can help determine which individuals should be supervised or sanctioned more seriously.



# DETERRENCE *and* PREVENTION

## #1 Before the Harm – Police, Prosecutor and Community Strategies to Prevent and Deter Crime

The best crime-fighting approaches are those that prevent harm from happening in the first place. That can include investing in long-term approaches focused on reducing low-level crime (e.g., access to drug treatment and mental health services, programs for families in crisis, employment assistance, housing subsidies, education, etc.) as well as short-term prevention strategies for individuals, neighborhoods and agencies (see below).

Another prevention strategy is *focused deterrence*, where law enforcement, in partnership with local communities, aims to prevent crime by targeting individuals committing repeat offenses with personalized warnings that threaten specific consequences – and then make examples out of a few high-profile cases by imposing the threatened punishment.

The following case studies highlight how law enforcement teamed up with community partners to successfully deter low-level criminal activity – as well as reduce reliance on incarceration.

## Examples of Prevention Strategies

Prevention strategies are those implemented by local agencies, community groups or individual residents to reduce the likelihood that they fall victim to crime. A few examples include:



- Accessible health services, e.g, mental health and addiction treatment
- Support in schools for at-risk youth
- Environmental prevention, e.g., well-lit, walkable public places



- Youth mentoring programs
- Reentry programs
- Support groups for families in crises
- Community-Police collaboration, communication



- Neighbor-to-neighbor communication
- Keeping items out of view in parked cars
- Participating in local groups and events to strengthen community



## CASE STUDY

### Prosecutors, Pruning and Prevention

In Multnomah County (Portland, OR), a district attorney's office that has pioneered community partnerships recognized how important neighborhood residents were in reducing the conditions for criminal activity in certain trouble spots. Specifically, homeless individuals known to regularly commit petty offenses were congregating in wooded areas out of view.

The DA's Office asked residents to help clean up those areas, including cutting down overgrown brush and vegetation. Soon afterward, **the area benefited from a reduction in crime, netting a savings to the city of \$40,000 per year.**

## CASE STUDY

### Focused Deterrence to Reduce Property Crimes

Since 2014, the High Point Police Department (HPPD) has used a focused deterrence approach to reduce chronic, low-level shoplifting, an offense that typically resulted in a misdemeanor citation. But a change in law enforcement's approach **resulted in an almost immediate drop in shoplifting larceny – below the rates from the year before and below the average for the previous five years.**



Key components of their strategy included:

- Analyzing data to identify the most chronic shoplifters;
- Partnering with large retailers and other law enforcement agencies to develop credible threats;
- Notifying the first target group of "habitual shoplifters" with a personalized letter from the Police Chief detailing the sentence(s) they would receive if they continued to steal;
- Following through on the threat by prosecuting an initial person or group of persons as a high-profile example of the consequences;
- Eventually expanding the targeted warning letters to a wider group of identified chronic shoplifters; and
- Providing first-time shoplifters with flyers that include information about the recent prosecution examples and warning them about HPPD's new approach to shoplifting.

HPPD's traditional response to shoplifting had been to issue a citation. Under this new approach, the police worked ahead of time with prosecutors and retail stores to identify other potential felony charges not traditionally utilized for shoplifting offenses, such as:

- "Breaking and entering" for an individual returning to a store from which they have been banned;
- "Organized retail theft" if a person steals a threshold amount over a limited time period; or
- "Felony larceny" if the individual runs out of a marked fire exit or tampers with an inventory-control device.

The key to the High Point strategy was *not* to increase arrests or convictions but rather to show or use the option of more punitive approaches for the first few high-profile examples, in order to deter others and reduce shoplifting behavior. As stated above, the approach worked, dropping shoplifting rates to a five-year low.

# Felony Prosecution Options for Chronic Shoplifting in California



California law enforcement officials seeking to implement the High Point strategy have several felony charges at their disposal to threaten or impose, as necessary, more serious punishment for habitual shoplifters:

- “Aggregation” or “bundling” of multiple thefts that add up to over \$950 can allow prosecutors to charge the combined offenses (even if at multiple establishments) as grand theft felony. This aggregation can be applied to larceny and theft by false pretense, trick and/or embezzlement, as well as to possession of stolen items (Penal Code section 496(a)).
- Penal Code section 211: Shoplifters who use “force or fear” to escape apprehension when stealing from stores can be charged with this felony.
- Penal Code section 460(b): Persons committing second-degree burglary can be charged with a felony if the offense happens after business hours.
- “Criminal conspiracy” and “street gang” statutes can be used for organized retail theft if two or more persons conspire to commit any crime, even misdemeanor petty theft.
- Penal Code section 182 is California’s general conspiracy statute. It is a prosecution tool related to “Organized Retail Theft”: If two or more persons conspire to commit any crime, including misdemeanor petty theft, they can be charged with a felony for the conspiracy itself. The felony conspiracy charge can be imposed in addition to any other penalties for the underlying offenses.
- Identity theft (Cal. Penal Code section 530.5 et. seq.) is also chargeable as a felony regardless of the value of the property involved – and can be applied in California for use of stolen credit cards and, under some circumstances, forging a check to steal from a retailer.



## New Resources for Reducing Health Drivers of Crime

The Affordable Care Act (ACA) and California’s commitment to expand Medi-Cal to people previously ineligible is creating new opportunities for local governments to receive federal reimbursement for providing health and behavioral health services to justice-involved populations under community supervision. Based on a survey that Californians for Safety and Justice conducted in the summer of 2014, almost all counties were implementing or planning strategies to enroll people on probation or coming out of jail. This funding can significantly offset the cost of mental health and substance abuse services for local counties, as well as other medical care.

# Interventions to Reduce – and Eliminate – Drug Markets

Many low-level crimes stem from drug use and illegal drug markets. In addition to arrests related to drug possession and the like, many instances of property crime and theft are perpetrated by people under the influence of drugs or in search of money to buy drugs.

The Drug Market Intervention (DMI) strategy has been recognized by the National Network for Safe Communities and the Association of Prosecuting Attorneys as an effective approach for shutting down overt drug markets and improving the quality of life in surrounding communities.

The DMI approach identifies particular drug markets; identifies street-level dealers; arrests violent lawbreakers; suspends cases for nonviolent dealers; and convenes dealers, their families, law enforcement officials, service providers and community leaders to explain how the practices must and will end. (When implemented fully, the strategy also includes a critical process of truth telling and racial reconciliation to address the historic conflicts between law enforcement and communities of color.)<sup>9</sup>

DMI was first implemented by the High Point Police Department (HPPD) in High Point, North Carolina. Based on a previous model that helped to reduce gun and gang violence, HPPD developed a data-driven project to eliminate drug markets. Instead of focusing on individual drug users and sellers, the department worked to shut down drug markets using a strategic data-driven approach.

Once the program began, local residents and the police watched the open-air drug market essentially disappear overnight. A report found that they decreased crime by 57% over four years, and there was not perceived “displacement effect” (i.e., they closed down the open-air drug markets in a targeted neighborhood without that market reopening elsewhere).<sup>10</sup>

The National Network for Safe Communities\* reports that DMI's implementation across the nation produced these results:

- ✓ **East Nashville, Tennessee:** calls for service **dropped by 18%** and drug and narcotic offenses **declined by 55.5%**
- ✓ **Providence, Rhode Island:** Drug calls to police **decreased 81%**, reported drug crime **by 70%**
- ✓ **Hempstead, New York:** Drug arrests **fell 87%** in year one and dropped to single digits a year later
- ✓ **Rockford, Illinois:** **22% reduction** in nonviolent crime

\*The National Network for Safe Communities points out that DMI's results depend on the effectiveness of community involvement and implementation.



## FREQUENTLY ASKED QUESTIONS

### *Can law enforcement deter low-level offenses?*

“ A range of crime problems can benefit from a basic intervention framework: direct communication with high-rate individuals, with a clear message of community standards, the availability of outreach and support, and an explanation of legal risks. It’s been proven to work for gang, gun and drug offenses, so it’s not at all surprising that it could also work for low-level property offenses. At its best, people stop stealing, stay out of jail, and get help – which works for everybody. ”

— **DAVID M. KENNEDY OF THE NATIONAL NETWORK FOR SAFE COMMUNITIES, CENTER FOR CRIME PREVENTION AND CONTROL, AND JOHN JAY COLLEGE OF CRIMINAL JUSTICE**



## **National Network For Safe Communities** Saving Lives, Saving Communities

The National Network for Safe Communities was formed in 2009 as a project of the Center for Crime Prevention and Control at John Jay College of Criminal Justice in New York. The Network issues guides for some strategies outlined in this brief (visit: [www.nnscommunities.org](http://www.nnscommunities.org)), and several California cities have implemented some of these innovative guidelines, including:

- Bakersfield
- East Palo Alto
- Fresno
- Los Angeles
- Oakland
- Oxnard
- Richmond
- Sacramento
- Salinas
- Stockton

# DIVERSION

## #2 Law Enforcement Partnerships with Local Agencies to Reduce Arrests and Change Behavior

Police leaders will often say that we cannot “arrest our way” out of problems, specifically criminal activity driven by underlying factors such as mental illness, drug addiction, poverty, homelessness, etc. While individuals must be held accountable for their actions, public safety officials also recognize that we must tackle the health or social drivers of crime if we are to actually change behavior.

The following examples reflect innovative strategies by law enforcement that leverage existing community resources to both reduce arrests and repeat offenses.



### CASE STUDY

#### Law Enforcement Assisted Diversion (LEAD)

Five years ago, Seattle police officials were in search of better ways to reduce low-level drug and prostitution crimes in the city’s Belltown neighborhood and the Skyway area of unincorporated King County. By collaborating with other community leaders, they developed Law Enforcement Assisted Diversion (LEAD), a diversion pilot program intervening before someone is typically arrested for certain nonviolent offenses.

For example, when police encounter individuals suspected of low-level drug or prostitution criminal activity, they can, in lieu of traditional arrest and booking, divert the person to a case management process focused on reducing harm (i.e., repeat offenses). This can include a variety of social services focused on addressing the root causes of the criminal behavior, whether that be poverty and homelessness, health problems like addiction or mental illness, or more.

In April 2015, a report by the University of Washington found that participants diverted to LEAD case management were **58% less likely to be re-arrested** in that evaluation period than people who had actually been arrested and booked for similar offenses. In July 2015, the LEAD program was recognized as a national model for law enforcement innovation at a special convening at the White House.

## CASE STUDY

# Restorative Policing in Santa Barbara

Santa Barbara has one of the state's largest per capita homeless populations. Many of these individuals struggle with mental health and substance abuse issues. After watching these individuals cycle in and out of jail for low-level offenses, the Santa Barbara Police Department (SBPD) developed a Restorative Policing model to address the causes of homelessness and chronic law breaking.



SBPD's strategy provides care and intervention in lieu of criminal prosecution and incarceration. On a daily basis, the Restorative Policing team (comprised of two sworn officers) makes personal contact with homeless clients – many of whom are well known to officers as a result of years of contact and intervention. The team facilitates or assists with access to a wide range of services and programs, including transportation, detox services, mental health assessments, Medi-Cal, SSI, Veteran Services, residential programs, sober living homes, employment opportunities, places of worship and emergency room care if immediate interventions are needed.

Between November 2011 and May 2012, the Restorative Policing team:

- **Placed 94 people in a treatment program;**
- **Reunited 15 people with their families; and**
- **Made follow-up contact with 3,237 individuals.**

The Police Department has also added six community liaison officers to maintain a presence in neighborhoods where nuisance crime is prevalent. They serve a deterrent function through their presence and stay in communication with local business owners. (In one eight-month period, the part-time officers contacted 9,251 shopkeepers and attended 168 meetings.)

In addition to the police staff, the Restorative Court (through which these individuals' cases are often handled) has three outreach specialists that are paid considerably less than the \$100/hour it costs to put a veteran officer on the street. In a seven-month period, these specialists made 1,020 personal contacts and attended 649 meetings.

If individuals who are cited remain free for six months, their cases are dismissed, and the court works to get those people into drug or mental health treatment programs, housing facilities and more. From 2011 to 2015, the court handled over 300 cases, and an analysis of one year (2011-2012) revealed successful program placement of 107 chronically homeless people.

# Mental Health Response Teams Assist Police, People in Crisis

Mental illness is pervasive in justice populations – and will not change without interventions from health professionals. This includes diverting people with mental health needs from the traditional law enforcement channels when first responders engage with someone in crisis.

## Case Study: Los Angeles

When it comes to responding to mental health crises that law enforcement encounter, Los Angeles has some of the longest-standing response mechanisms in the nation. In the 1970s, the Los Angeles Police Department (LAPD) created the Mental Evaluation Unit (MEU) to assist police officers responding to potential mental health situations.

The MEU includes a Triage Unit that assists officers on the street in real time. The Triage Unit has access to both justice system and mental health system databases to inform street-level responses and to support continuity with services that individuals may have been receiving or will need to receive in the future related to their illness.

In 1993, the LAPD developed a police/mental health co-responder model known as SMART (System-wide Mental Assessment Response Team). SMART created the ability to more intentionally link individuals with mental illness to services in their community. In 2001, the LAPD also implemented a Crisis Intervention Team program that is made up of volunteer community members.

Then in 2005, the department developed the Case Assessment and Management Program (CAMP) to identify individuals who chronically came into contact with law enforcement and develop customized long-term responses and referrals to treatment. CAMP co-locates psychologists and social workers within the police department facility. All of LAPD's response services work closely with one another to identify repeat contacts and to attempt to engage individuals with services in their community.

## Case Study: San Diego

San Diego began its Psychiatric Emergency Response Team (PERT) in 1996. **The program diverts 15,000 people per year away from traditional arrests and bookings to mental health services** that can help to change their behavior.

A local nonprofit manages the PERT program, partnering closely with law enforcement, treatment providers (for mental health care and substance abuse) and community groups. (This includes collaboration on upfront planning as well as daily communication once the program is underway).

When a 911 dispatcher relays a situation where mental health may be a factor, a PERT team (with certified mental health professionals) is deployed. On the scene the team conducts an assessment and recommends a course of action, such as diverting the person to structured supervision and access to health services. Law enforcement has the ultimate say and can also utilize other San Diego diversion programs (e.g., sentencing alternatives, drug education, pre-trial services, participation in specialty courts, etc.).

Program requirements for participants typically last three months, and the criteria for success include appearing in court on time and complying with program requirements. Participants can be rewarded during the process for meeting milestones and can also be punished if they violate terms of the program. If they are ultimately successful, charges are not filed and the case is dismissed.

The program costs approximately \$2.1 million annually, with funding from the San Diego County Health and Human Services Agency and other sources.



# #3

## Innovative Prosecutor Misdemeanor Strategies that Reduce Court Caseloads – and Costs

Law enforcement officials can hold people accountable for misdemeanor offenses through traditional arrest, booking and, if convicted, jail time, but some forward-thinking officials are employing alternative sanctions before those time-intensive steps even take place. This can reduce caseloads for police, prosecutors and the courts while also saving taxpayers money.

### CASE STUDY

#### Philadelphia’s Accelerated Misdemeanor Program

In 2010, Philadelphia’s District Attorney developed an Accelerated Misdemeanor Program (AMP) to address the high number of misdemeanor cases that were creating a backlog in their system. AMP, managed by an Assistant DA and a paralegal, was originally designed for first-time misdemeanor offenses (for individuals without prior convictions), including drug possession, prostitution, retail theft and disorderly conduct.



Eligible individuals are brought to court within one week and offered a pre-plea agreement to complete 12-18 hours of community service within the following weeks. Those who complete that requirement prior to the next court date do not return to court and have their cases withdrawn – without opposition from the District Attorney. All others return to court for a status hearing and may get a limited extension to finish community service. Those who fail to meet the requirements are terminated from AMP and taken to trial.

In 2011, based on the success of AMP, **the Philadelphia DA’s Office created a second tier, AMP2, to address chronic misdemeanor behavior.** Participants are given an evaluation by a social worker from the Philadelphia Health Management Corporation, and the DA’s Office estimates that 90% of these individuals turn out to have a substance abuse, mental health or medical issue.

The social worker recommends a treatment plan (that would be covered by the person’s public or private health insurance) and are given four weeks to return to court with proof that they are following the recommendation. Those that do then make a full or partial “good faith” payment for the program (e.g., current cost is \$215), have their cases closed out and do not have to return to court. (Participants in AMP2 who do not need treatment are offered up to 30 hours of court-approved community service).

In 2012, approximately 5,500 people went through AMP and AMP2, and **20-25% of all misdemeanor cases are now processed through the programs, significantly reducing the burden on Philadelphia’s trial division.** The DA’s Office estimates that only about 10% of AMP participants violate per month and have recidivism rates equal to or better than those placed on formal probation. That combined with **the reduction in court and police costs adds up to millions in savings,** according to the DA. The program also resolved qualifying misdemeanor cases in an average of 60 days, compared to an estimated six months for other misdemeanor cases.

## CASE STUDY

# San Diego City Attorney's Community Court Program



The San Diego City Attorney's Office is responsible for handling misdemeanors and infractions that occur within the cities of San Diego and Poway. In November 2014, the City Attorney's Office launched a Community Court program that offers participants a way to "pay their debt" to society through community service.

Individuals charged with low-level misdemeanors can elect, at their first court appearance (usually arraignment), to have the charge dismissed if they complete 16 hours of community service and meet other program conditions. Participants must enter a guilty plea immediately and pay \$120 to one of two providers that oversee the community service. Indigent slots are available at no cost.

The court is informed once the conditions are met, at which point the case is dismissed. (The participant does not return to court, and the charges never appear on their record.) All others return in 90 days for a sentencing hearing and are immediately sentenced to jail for two-five days.

In addition to keeping their records clear, program participants can take advantage of services available at the program sites, including job referrals, education centers and treatment programs. The City Attorney's Office retains discretion over eligible participants but tries to be as inclusive as possible. Certain categories of crime (e.g., DUI, domestic violence, sex offense, arson) are automatically excluded.

While the program is new, data suggest that approximately 60% of those offered participation accept, and 88% of participants complete the program. Community Court will significantly cut court costs by reducing the number of hearings and law enforcement costs by removing the need for police officers to testify. Next, the City Attorney's Office plans to incorporate a risk and needs assessment into the process to more effectively address individual drivers of reoffending and solicit community input into opportunities for community service.



## FREQUENTLY ASKED QUESTIONS

### *How can local officials fund new programs or approaches?*

“ Aside from existing resources local jurisdictions have for public safety (money typically spent on traditional enforcement and corrections), counties have also received over \$2 billion in funds from the state since 2011 as part of Public Safety Realignment. The law, AB 109, gives more money and responsibility to counties for low-level crime, with the intent to encourage new approaches. Nothing prohibits counties from using these new funds for crime-prevention programs. There is also federal funding for prevention approaches available through the Affordable Care Act. In addition, Proposition 47 is already creating savings at the county level and will bring in millions more in state savings that local jurisdictions can apply for. ”

— **THOMAS G. HOFFMAN, DEPUTY CHIEF OF POLICE OF WEST SACRAMENTO (RET.), AND FORMER DIRECTOR, DIVISION OF ADULT PAROLE OPERATIONS OF THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**

## #4

# Neighborhood Courts – Prosecutor Diversion that Involves Local Residents and Reduces Recidivism, Court Delays

While California’s overcrowded jails and prisons have received much attention – along with its record-high corrections spending and recidivism rates – less publicized has been the heavy workloads of criminal courts in local justice systems. Too many cases – especially those focused on lower-level offenses – have resulted in delayed justice for victims, prolonged jail stays for the accused, and a burden on attorneys, judges and their staff.

To handle low-level offenses more quickly, cost-effectively and with higher rates of satisfaction among victims and residents, San Francisco District Attorney George Gascón in 2011 pioneered the Neighborhood Courts model when he reformed and expanded the San Francisco’s community courts. Some counties are replicating the approach, and there is real opportunity to take this strategy to scale across California to handle low-level cases more efficiently and effectively.

## How Neighborhood Courts Work

The Neighborhood Court model centers on letting local residents decide what forms of accountability best address victim needs and will prevent future harm. Its core principles include the following:

- Restoring the victim by focusing on how the accused can make things right (to the greatest extent possible) with their victims. This can include paying restitution to victims who have suffered monetary losses or property damage.

- Involving the community by giving residents a direct role in resolving offenses in their community. This can include, where appropriate, requiring community service to improve conditions in the area impacted by the offense.
- Informing and changing the person responsible by helping them understand the consequence of their actions and by giving them the opportunity to pay back the community. Those who commit offenses can avoid a criminal conviction if they successfully complete Court requirements, which can include programming on alcohol use, anger management, and other behavior modification education.

A Neighborhood Court’s primary goals include the following:

- **Efficient case resolution** – participants have their case heard within a couple of weeks and fully complete the process before they would have even been arraigned at a criminal court.
- **Community-driven solutions** – residents affected by the crime direct the plan for repairing that harm.
- **Reduced burden on criminal courts** – save time and money for criminal courts and the agencies that work in them.
- **Reduced recidivism** – prevent people who commit low-level offenses from ending up in the traditional system, where they are taken away from employment, their families and rehabilitation opportunities.

## Deferred Entry of Judgment

Another innovative tool used by prosecutors is on display in Orange County, where the District Attorney allows people to plead guilty but not have those convictions finalized if they pay a fine or participate in rehabilitation programs. This is known as Deferred Entry of Judgment, because the individual has been arrested and prosecuted, but an option remains to expunge that offense from their record if they – in accordance with the DA and judge – complete certain requirements. A study in 2011 found that the program reduced recidivism from 22% to 6%.<sup>13</sup>

## CASE STUDY

### San Francisco's Reduction in Caseloads, Recidivism

When San Francisco prosecutors identify eligible misdemeanor cases, they refer them to one of 10 Neighborhood Courts, where a panel of volunteer “adjudicators” hears the case. Adjudicators are volunteers of San Francisco’s diverse neighborhoods (and *not* defense attorneys, prosecutors or judges) who have been trained in restorative justice and problem solving.



After hearing from the victim and the accused, adjudicators discuss the impact of the crime and issue “directives,” such as victim restitution, community service, etc. (Partners like the San Francisco Pretrial Diversion and Community Boards provide ongoing training and support to adjudicators, helping them to infuse restorative principles into the sessions and to craft individualized directives in each case.)

All hearings are confidential and not a criminal court proceeding, and cases successfully resolved by the Neighborhood Court do not proceed to criminal court. They are also voluntary for all involved, and the accused can have their case handled in the criminal court if they wish.

In 2013 alone, the District Attorney’s Office diverted 651 cases to Neighborhood Court, and a study by the Rand Corporation found that there was a 8.9% to 10.3% reduction in the likelihood of re-arrest within a year for participants in San Francisco’s Neighborhood Court.<sup>11</sup> Cases handled by the Neighborhood Courts also are resolved far faster than those handled in criminal courts.



## CASE STUDY

### Los Angeles' Neighborhood Justice Program

In 2014, Los Angeles City Attorney Mike Feuer launched the Neighborhood Justice Program to help the city better handle the more than 120,000 misdemeanor cases it faces each year. For first-time offenses like disturbing the peace, drinking in public or petty theft, individuals can avoid judge and jury by appearing instead in front of a panel of three neighborhood residents, a facilitator and, where possible or appropriate, the victim of the crime.

After a discussion about the impact of the offense, the panel makes a recommendation, and the person responsible has two months to fulfill the recommendations – otherwise their case is filed and they are prosecuted.

Between October 2014 and April 2015, 200 people agreed to participate, and 150 went on to sign agreements to fulfill the recommendations.<sup>12</sup>

# Collaborative COURTS

#5

## Collaborative Courts Can Address the Drivers of Low-Level Offenses

Another approach to reduce the workload of traditional criminal courts is one that also aims to address and solve the specific drivers of crime for certain individuals. Known as Collaborative Courts, this model centers on incorporating social services and treatment into the judicial process for specific populations (e.g., veterans, individuals who are homeless, and those with mental health problems, etc.).

Instead of an adversarial process focused on determining guilt or innocence – and imposing punishment – Collaborative Courts employ a team-based approach where judges, prosecutors, defense counsel, service and treatment providers, and others partner to determine and address the underlying causes of chronic offenses, such as mental health issues, drug addiction, homelessness and/or unemployment.

The Courts often use risk-assessment data to match each individual to the most appropriate program, such as community-based rehabilitation, behavior-change curriculum, etc. Judges take an active role in supervising the treatment or programming process, interacting directly with defendants and holding them accountable by monitoring progress through periodic court appearances.



### FREQUENTLY ASKED QUESTIONS

*Can Drug Courts and other collaborative courts work without the threat of a felony conviction?*

“ There is nothing in the law to prohibit the involvement of Drug Courts and other collaborative courts in misdemeanor cases. For those who continue to believe that leverage of lengthy incarceration is a necessary inducement to encourage participation in treatment, the threat of confinement for six months or one year in jail is serious. If drug courts want to both maintain high levels of participation and decrease addiction, there are many people with substance abuse problems charged with non-violent felonies. Some courts are finding that simply expanding who they serve is a “win-win” for programs and participants. ”

— SANTA BARBARA SUPERIOR COURT JUDGE (RET.) GEORGE ESKIN

## CASE STUDY

# Orange County

Orange County, California's third-most populous county, has a robust Collaborative Courts program that includes, among others, its **Homeless Outreach, Recovery** and **Veterans** courts.



- **Homeless Outreach Court** resolves infractions, low-level misdemeanor offenses and outstanding warrants for homeless individuals. The program replaces fines and incarceration with mandatory, supervised participation in rehabilitative programs and community services. The court is a partnership between the Superior Court, the Public Defender, the Public Law Center, the Veterans Administration, the Health Care Agency, the County Department of Housing and Community Services, local law enforcement agencies, and several community-based homeless services providers.
- **Recovery Court** is a voluntary program for people charged with misdemeanors that have chronic and persistent mental illnesses (e.g., schizophrenia, bi-polar disorder, or a major depressive disorder). The program links participants to psychiatric services, starting when the defendant is in jail and continuing after release. The program requires frequent court appearances, drug and alcohol testing, meetings with an assigned support team and access to specialized services (e.g., psychiatric treatment, mental health counseling, drug and alcohol abuse counseling, residential treatment, and assistance in accessing medical services, job training and placement, government benefits and housing).
- **Veterans Court** recognizes that military personnel returning from combat zones are at high risk for experiencing Post-Traumatic Stress Disorder, Traumatic Brain Injury (TBI) and other mental health problems. Veterans trying to self-medicate for these health problems can additionally lead to – or worsen – existing substance abuse disorders. (Research finds that one-third of all veterans seeking to treat substance abuse also has PTSD.<sup>14</sup>) This court specifically works to address PTSD and TBI through a collaboration with the Veterans Administration, which funds a full-time case manager, and other state and local veteran service providers.

NOTE: Superior Courts operate Veteran Courts in these 12 California counties: Alameda, Los Angeles, Orange, Riverside, Sacramento, San Bernardino, San Diego, San Mateo, Santa Barbara, Santa Clara, Tulare and Ventura.

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## Results of Orange County's Collaborative Courts (per their 2014 annual report)<sup>15</sup> include the following:

- Homeless participants have been given the tools to regain self-sufficiency.
- Combat veterans have overcome deep psychological challenges and re-integrated into society, with a **recidivism rate of only 10%**.
- Participants with mental health problems received the support to lead stable, productive lives. Of the 239 graduates, all of whom had severe mental illness and a co-occurring substance addiction, **only 34% have been re-arrested (nearly half the state average)**.
- The mental health court programs, including Veterans Treatment Court, meant **8,872 fewer jail bed days were needed – a savings of \$1,205,882**.



## CASE STUDY

### Adjusting Drug Court Practices Post-Prop. 47

For over a decade, Humboldt County's Drug Court program focused on people with substance abuse issues who were convicted of felonies, including a significant percentage of the participants ordered to the program for drug possession. Because Prop. 47 changed drug possession to a misdemeanor – meaning fewer participants in the program under the traditional approach – Humboldt officials adapted quickly and began recruiting from a broader pool of felony charges as long as the person's behavior is likely driven by drug addiction.

As a result of this shift, participation in the Drug Court Program is returning to pre-Prop. 47 levels – and treating more people who otherwise would not have been eligible. Specifically, participants are ordered onto formal probation and must participate in drug treatment. According to Humboldt County's Chief Probation Officer, Bill Damiano, "Those that make it to graduation have made very significant lifestyle changes. **For example, at the outset of the program, about 70-80% are homeless or in unstable housing, and are predominantly unemployed. By the time they graduate, they have stable clean and sober housing and 85-90% are employed, going to school or both.**"

## CASE STUDY

### Brooklyn's Community Court

Started in 2000 as the nation's first multi-jurisdictional community court, the Red Hook Community Justice Center in Brooklyn, New York, is in the heart of a geographically isolated neighborhood. One judge hears neighborhood cases from three police precincts (representing more than 200,000 residents) that would otherwise be heard in Civil, Family or Criminal Courts. The judge can utilize various sanctions and services: drug and mental health treatment, community restitution projects, trauma- and evidence-informed approaches to assess and connect individuals to appropriate services, and more.



A 2013 report on the court found that **only 1% of people sentenced there were sent to jail, compared with 15% in Brooklyn Criminal Court for similar offenses.** And approximately 78% of the participants who are found guilty receive ongoing supervision, such as mental or drug treatment. The study found that **the court saves the jurisdiction \$15 million a year.**<sup>16</sup>

Another analysis<sup>17</sup> found that the program:

- **Reduced the use of jail** prior to arraignment in misdemeanor cases by 50%;
- **Increased compliance** with court orders by 50% (versus comparable courts);
- **Tripled its approval ratings** by police, prosecutors and judges since opening; and
- Documented **residents' favorability ratings of local courts increase from 12% to 94%** after opening.

# Community PROSECUTION

#6

## New Strategies, Roles for Prosecutors in Community Efforts to Reduce Low-Level Crime

Community prosecution is based on the concept of prosecutors expanding their work beyond just prosecuting cases to also solve problems, prevent crime and improve neighborhood quality of life (and trust in the justice system).<sup>18</sup> Central to its model and success is collaboration between prosecutors, other justice officials and agencies and, importantly, the community residents, leaders and organizations.

Focused on improving safety and the quality of life in targeted geographic areas, community prosecution's key components include:

- Recognizing the community's integral role in public safety;
- Establishing and maintaining long-term partnerships;
- Engaging in problem solving; and
- Evaluating results and adjusting based on those outcomes.<sup>19</sup>

Community prosecution first arose in the early 1990s. A 2003 survey found that nearly half of all prosecutors' offices engage in some activity defined as community prosecution, especially as federal funds were made available to support this model.

For example, the Hennepin County (Minneapolis) Attorney's Office found that its community prosecutors were getting cases to court more quickly, obtaining better resolutions and proof of accountability, and receiving positive feedback from victims and other community members.<sup>20</sup>

In 2009, Illinois' State Attorney relaunched a community prosecution program to decrease crime and improve relations in Chicago. Targeting four specific neighborhoods, prosecutors moved out of courthouses and into local offices (often in retail establishments). This allowed them to focus on cases and relationship-building with local residents, not just police. A study documented decreases in both violent and property crime after the pilot.<sup>21</sup>



## Resources: Association of Prosecuting Attorneys

The Association of Prosecuting Attorneys provides on-site technical assistance for local prosecutor's offices, conducts webinar trainings, hosts national conferences and maintains a Community Prosecution email forum. Many of the programs in this brief are recognized as innovative models by the APA. [www.apainc.org](http://www.apainc.org)



## CASE STUDY

# Sacramento District Attorney's Community Prosecution Unit

The Sacramento District Attorney's Community Prosecution Unit (CPU) provides proactive responses to community concerns and increases accountability to the community. Located in five county regions, Community Prosecutors go beyond traditional roles to focus on problem solving, prevention and health matters. Focusing on targeted offenses and code enforcement issues, Community Prosecutors:

- Prosecute quality of life crimes (e.g., trespassing, vandalism, graffiti, drug activity, prostitution and disturbing the peace);
- Form partnerships between law enforcement and community members;
- Participate in business and community meetings;
- Address community concerns via the courts;
- Serve as a resource to police and community members; and
- Educate the public about the criminal justice system and crime prevention.

CPU also participates in neighborhood special projects, such as Nuisance & Red Light Abatement (a partnership with multiple agencies to reduce drug houses, prostitution and nuisance properties) and the Serial Inebriate Program (a partnership with health and social service agencies to help homeless people with severe alcohol issues get off the street).



## Federal Funding for “Smart Prosecution”

The federal government has recognized the vital role that prosecutors play in developing local solutions to crime in their communities. To encourage innovation and expansion of best practices, the United States Bureau of Justice Assistance (BJA) established a Smart Prosecution Initiative in 2014 (part of its “Smart Suite” of programs that includes Smart Policing and Smart Supervision) in order to spur practitioners and researchers to use data to create models that will:

- Reduce crime;
- Lower recidivism;
- Improve community safety conditions; and
- Preventing unnecessary confinement.

**The Office of Justice Programs has acknowledged these California grantee examples:<sup>22</sup>**

- The Office of the Los Angeles City Attorney will introduce INTERCEPT (Introducing New Tools based on Evidence and Risk-assessments to Confirm Eligibility for Prosecution Treatment) to use risk assessments to evaluate diversion approaches for misdemeanor offenses. The Office will also implement restorative justice strategies in the form of Community Justice Panels so that victims feel more empowered in the process of securing accountability in those who commit low-level offenses.
- In San Francisco, the District Attorney's Office is using funds to create a Crime Strategies and Intelligence Unit to use statistical tools to identify locations and people associated with chronic, low-level offenses. The program will work closely with Neighborhood Prosecutors to find eligible individuals and cases for its existing Neighborhood Courts.

# Supervised PROBATION

## #7 Revising Sentencing to Include Misdemeanor Supervision

California law authorizes supervised probation as a sentence for misdemeanor convictions, but historically probation departments have not had the resources to provide meaningful supervision or programming for these low-level offenses.

Some counties, however, are recognizing the value of intervening earlier and using formal probation for misdemeanor cases to leverage other services. Counties that experience a reduction in felony caseloads can take the opportunity to rethink how departments determine supervision for higher-risk/higher-need individuals, regardless of whether they have a misdemeanor or felony conviction.

### CASE STUDY



### Updating Sentences to Better Address Misdemeanors

Across California, people convicted of misdemeanor drug offenses have historically spent as little as a few days or weeks in jail, often only the time served in jail after arrest and pending arraignment.

Additionally, many probation departments have formal or informal policies under which misdemeanor probationers are “banked”(technically on probation but with no real supervision or case management). But longer jail sentences (up to one year is possible for misdemeanors) as well as more closely supervised probation terms are also options.

That is why Yolo County recently revised its misdemeanor sentencing guidelines to require 18 months probation and mandatory drug treatment and testing for all drug possession convictions. The guidelines also call for a mandatory 240-day jail sentence for anyone who refuses probation.

## #8 Basing Misdemeanor Probation Supervision, Programming on Individual Risk and Needs

Traditionally law enforcement and sentencing policies/practices have viewed criminal activity by the category of offense it represents, but criminologists and practitioners increasingly view this as a shortsighted way to reduce the underlying causes of criminal behavior. Best practices show that effective sentences should address individual risk factors and needs in order to change each person's motivations and behaviors. These could range from mental health and addiction problems to homelessness, peer networks, unemployment, family dynamics and past history with the justice system.

Risk-needs assessments help counties target resources and interventions by identifying medium- and higher-risk individuals and guiding case management and supervision strategies. This is a much more effective decision-making tool than the traditional method of relying primarily on the type of offense.

Probation departments across California have been increasingly incorporating risk and needs assessments into their regular operations as part of an overall commitment to implement evidence-based practices.



### FREQUENTLY ASKED QUESTIONS

*How can probation be used to address misdemeanor offenses?*

“ We continue to have the full range of local options to respond to misdemeanor drug offenses, including pretrial and post-sentence incarceration, community programs and supervision. The current danger is not a potential loss of sanctions and supervision but rather replicating the status quo. We need to depart from past approaches and seize new opportunities to address the complex, underlying causes of substance abuse. We now have better tools to identify the risk and needs of those charged with crimes, and we must rely more heavily on our health and community partners to identify these opportunities and to address these underlying causes. ”

— SCOTT MACDONALD, FORMER CHIEF OF PROBATION, SANTA CRUZ COUNTY



## CASE STUDY

### Using Risk as Part of the Pre-sentence Investigation

Probation officials in Napa County recognized that individuals charged with misdemeanor crimes are often high-risk (i.e., relatively more likely to commit another crime), meaning the court would need to better assign sanctions, services and supervision levels to reduce the likelihood of repeat offenses.

Therefore, in 2005, Napa’s Probation Department began to:

- Conduct a risk assessment as part of all of their presentence reports – whether for a felony or misdemeanor offense;
- Use the risk score to determine supervision levels;
- Divide levels into Low, Medium and High risk, with some additional specialized caseloads that are mixed risk (when other factors such as gang histories or sex offenses are involved); and
- Supervise accordingly, offering probationers in the Medium and High categories programs with a set number of hours required, typically focused on behavior-change.

“ The best way to assure that individuals are getting the most appropriate programs is by knowing their specific risks and needs. We have seen that the more individualized the services match the person’s needs, the better the results for risk reduction and successfully completing their probation. ”

— MARY BUTLER, CHIEF PROBATION OFFICER OF NAPA COUNTY

## CASE STUDY

### Washington State’s Implementation of Risk-Based Sentences and Swift and Certain Sanctions

Community supervision in California is a function of county probation departments. In Washington, that responsibility falls to the state Department of Corrections (DOC). The DOC uses risk to determine whether someone is eligible for supervision as well as which sanctions to apply for probation violations.

A significant portion of those on community supervision in Washington were given those sentences based on chronic, low-level criminal activity, including drug possession or petty theft with a prior conviction (if the individual was assessed as higher risk and had past incarceration terms).

Washington State, since 2012, has incorporated the strategy of Swift and Certain sanctions (see next page) into their supervision. They define violations as low or high level, with the punishment for low-level violations (e.g., failed drug test or failure to report in) being up to three days of confinement, and sanctions for high-level violations of up to 30 days of confinement. **Note: Washington probation officials are authorized to issue sanctions without having to ask a judge.**

Since implementing this Swift and Certain model, DOC has experienced significant decreases in hearings and the use of jail beds, as well as positive impacts on staff safety for community supervision officers.



# #9

## Using Swift, Certain and Fair Sanctions to Reduce Repeat Offenses

Swift, Certain and Fair sanctions (SCF) is an approach to community supervision and accountability where people considered at high risk for committing new offenses are told clearly what the punishment will be for doing so, and then one or more of those punishments are quickly handed down if the person fails the conditions of their probation. SCF has proven to reduce recidivism, arrest and incarceration rates – and, ultimately, costs.

In a *New York Times* article, UCLA professor and researcher Mark Kleiman said that “programs using swift, certain and fair sanctions have far outperformed treatment mandates in reducing drug consumption, repeat offending and the time offenders spend behind bars.”<sup>23</sup>



### CASE STUDY

#### HOPE in Hawaii

One of the first and most widely studied models for swift, certain and fair sanctions is called Hawaii Opportunity Probation with Enforcement (HOPE). Its success has led to replication in several other pilot programs across the United States.

With HOPE, the judge gives high-risk probationers prior notice (i.e., warnings at a hearing) of the potential sanctions they would face if they fail conditions of their probation. Participants receive frequent, unannounced random drug testing, and those who fail a drug test are arrested

immediately, brought into court within hours and given new terms of probation that often include a short jail term (i.e., “flash incarceration” of a few days).

If someone on probation has a job, they may be allowed to serve their time in jail on the weekends to avoid losing employment, and judges also allow those in need of substance abuse treatment or mental health counseling to access those services (with participants held responsible if they do not attend treatment).

Two evaluations of Hawaii’s HOPE program found that **participants were significantly less likely to fail drug tests or miss probation appointments**<sup>24</sup>.

- Research conducted by UCLA Luskin School of Public Affairs’ Mark Kleiman and Pepperdine University’s Angela Hawken shows that HOPE probationers were significantly less likely to be arrested for a new crime, to use drugs or to have their probation revoked.
- A study by the National Institute of Justice reports that HOPE probationers spend about half as much time in prison as those who are not involved and are 72% less likely to use drugs.

## Other Swift, Certain and Fair Models in the U.S.:

- In 2004, the probation chief of Fort Bend, Texas, implemented a probation model with SCF features at its core. The program, now called SWIFT (Supervision With Intensive EnFORCEment) and in Tarrant County (Fort Worth), provides probationers with the full details on the sanctioning consequences at the start of the program; a progressive schedule of those sanctions (that starts small and ratchets up); positive incentives to change behavior; stringent drug testing; and charges participants for the cost of random drug tests.<sup>25</sup>
- South Dakota's 24/7 Sobriety program has reduced jail time and recidivism by implementing drug and/or alcohol testing for an individuals' first DUI (with a blood alcohol concentration of 0.17 or greater) – or any repeat DUIs. Two studies of the program have shown favorable results in reducing problem drinking and improving public health outcomes. The 24/7 Sobriety Program exists in 60 of South Dakota's 66 counties and has been partially replicated in 13 other states.<sup>26</sup>

# IN CLOSING

As voters and local officials increasingly acknowledge how ineffective and expensive our old approaches to low-level crime have been, there is an important opportunity – and charge – to replicate successful models already in existence in jurisdictions around the state and country.

By using the latest data and public safety science about what changes behavior, these approaches are reducing both crime and costs. California's recent policy reforms giving local governments more resources, flexibility and control over criminal justice matters creates even more incentive – and promise – for smart justice practices that are good for taxpayers and for safety. Learn more at [SafeandJust.org](http://SafeandJust.org).

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