

FINISHING THE JOB: MOVING REALIGNMENT TOWARD COMPLETION IN 2012

In 2011, the Legislature transferred – or “realigned” – responsibility for several public safety, health, and human services programs from the state to the counties based on a framework proposed by Governor Brown. The Legislature also redirected to counties a portion of existing sales tax and Vehicle License Fee (VLF) revenues that are intended to cover the cost of the programs. These two revenue sources are projected to raise \$5.9 billion for realigned programs in 2012-13, rising to a projected \$6.8 billion in 2014-15. Most of the realignment dollars provided to counties – nearly two-thirds of the funds in 2012-13 – support health and human services programs. While realignment is intended to be permanent, the 2011 framework was temporary and was adopted with the understanding that the Legislature and voters would need to address a range of issues in 2012 in order to finalize the framework. Legislators are currently considering a package of changes that the Governor proposed this year. In addition, the Governor has proposed a ballot measure for November 2012 that would place key realignment provisions in the state Constitution to ensure that counties will receive ongoing funding as well as to provide counties and the state with protections against certain unanticipated costs. This ballot measure also would temporarily increase taxes to provide additional funding for schools and help close the state’s budget gap. This *Budget Brief* provides an overview of the 2011 realignment framework, analyzes the proposed statutory changes currently before the Legislature, and provides an overview of the realignment provisions of the proposed ballot measure.

2011 Realignment: Shifting Revenues and Responsibilities to the Counties

In early 2011, Governor Brown proposed a significant shift of revenues and responsibilities for a range of programs from the state to the counties. A primary rationale for this realignment of services, according to the Governor, was that transferring funding and responsibilities to local governments would “allow governments at all levels to focus on becoming more efficient and effective,” helping to ensure that services are “delivered to the public for less money.”¹ Based on the Governor’s proposed framework, the Legislature passed several bills that initiated a process of realignment in 2011-12, in which counties have assumed programmatic and financial responsibility for a number

of public safety, health, and human services programs that previously were funded – and, in some cases, operated – by the state.² In addition, the Legislature redirected to counties two existing revenue streams that are intended to cover the cost of realigned programs: 1.0625 cents of the state sales tax rate and a portion of VLF revenues raised by the base 0.65 percent VLF rate.³ These two revenue sources are projected to raise \$5.9 billion to support realigned programs in 2012-13, rising to a projected \$6.8 billion in 2014-15.⁴

Most Realignment Dollars Support Health and Human Services Programs

Most of the realignment dollars provided to counties support health and human services programs (Figure 1). In 2012-13,

counties will receive a projected \$3.9 billion – nearly two-thirds (65.7 percent) of all realignment funding – to support a range of health and human services programs.⁵ These include:

- Child abuse prevention services;
- The Child Welfare Services (CWS) Program, which provides services to abused and neglected children, foster children, and their families;
- The Foster Care Program, which provides payments for children living with a foster care provider;
- Adoption placement services for children who would otherwise remain in long-term foster care;
- The Adoption Assistance Program, which provides payments for families who adopt children who are difficult to place in an adoptive home;
- The Adult Protective Services (APS) Program, which assists seniors and dependent adults who are functionally impaired, unable to meet their own needs, or are victims of abuse, neglect, or exploitation;
- Drug and alcohol-related treatment services – including perinatal services for pregnant and parenting women – provided to Medi-Cal beneficiaries as well as to those who do not qualify for Medi-Cal;
- Drug courts, which “link supervision and treatment of drug users with ongoing judicial monitoring and oversight”;⁶ and
- Medi-Cal specialty mental health services provided through the Early and Periodic Screening, Diagnosis, and Treatment

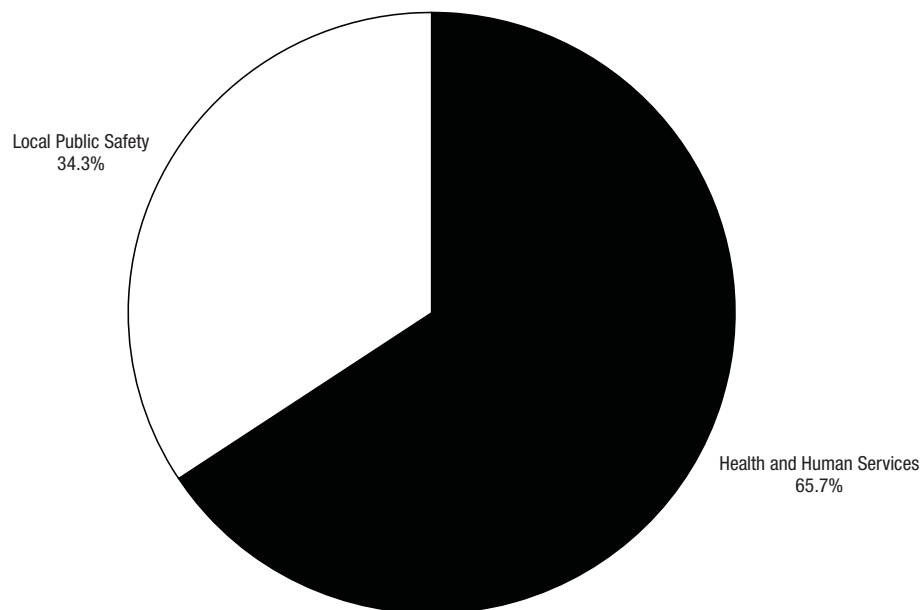
(EPSDT) Program for children and youth under age 21 as well as through Mental Health Managed Care (MHMC).⁷

In contrast to the substantial share of funding going to health and human services, slightly more than one-third (34.3 percent) of realignment dollars – \$2.0 billion – will go toward local public safety in 2012-13.⁸ These realignment dollars partly will support counties’ significant new role in “community corrections” – managing, supervising, and rehabilitating “low-level” offenders and parolees, all of whom previously would have served state prison sentences and been supervised by state parole agents upon their release.⁹ Other public safety services funded with realignment dollars include trial court security and 12 local public safety grant programs, including county probation grants and the Citizens Option for Public Safety (COPS) Program.¹⁰

The Impact of Realignment Varies by Program Area

The impact of the 2011 realignment on counties and the state varies by program area. While community corrections will account for less than 15 percent of total projected realignment spending in 2012-13, it is the most significant policy shift included in the 2011 realignment because it will transform the criminal justice system over the next several years. The shift of responsibility for low-level offenders and parolees to the counties could help improve outcomes for offenders to the extent that counties focus on providing rehabilitative services rather than relying solely or

Figure 1: Nearly Two-Thirds of Realignment Funding Supports Health and Human Services Programs



Proposed 2012-13 Funding for Programs Included in the 2011 Realignment = \$5.9 Billion

Source: Legislative Analyst's Office

primarily on incarceration in local jails. At the same time, increasing counties' responsibilities will *decrease* state spending on prisons, which has risen substantially in recent years, by reducing the number of state prison inmates. The California Department of Corrections and Rehabilitation estimates that realignment will reduce state General Fund spending on corrections by more than \$30 billion over a 10-year period relative to what spending would have been in the absence of realignment.¹¹

In other areas, the effect of realignment, at least in the short term, is primarily financial: substantially increasing counties' share of cost for programs – and eliminating the state's share – without significantly changing counties' responsibilities.¹² This more modest impact of realignment generally applies to health and human services programs that counties operated prior to realignment and that they will continue to administer, including CWS, Foster Care, Adoption Assistance, Drug Medi-Cal, and Medi-Cal specialty mental health services provided through EPSDT and MHMC.¹³ County officials note that many of these programs are federal "entitlements," with "strict federal requirements" that the Legislature "cannot relax."¹⁴ As a result, counties have somewhat limited ability to reduce spending on these programs. While the state no longer provides General Fund dollars to support the realigned programs, it will continue to play a role in providing oversight and technical assistance and ensuring that counties comply with federal laws and regulations.

Realignment Is Intended To Be Permanent, But Key Issues Remain To Be Resolved in 2012

While realignment is intended to be permanent, the 2011 framework was adopted with the understanding that the Legislature and voters would need to address a range of issues in 2012 in order to finalize the framework. Specifically:

- **Some issues must be resolved by the Legislature.** The Legislature divided realignment revenues among programs and counties for 2011-12 only and based county allocations "largely upon historical funding" levels.¹⁵ Therefore, the Legislature must decide how realignment dollars will be allocated across programs and counties in 2012-13 and beyond. In particular, the Legislature must decide whether counties' share of funding for each program will be "locked in" based on historical allocations or provided based on factors that affect counties' cost of delivering services, such as changes in demographics and caseloads. Furthermore, the 2011 legislation created a complicated set of accounts and subaccounts into which realignment revenues are deposited and prohibited counties from transferring funds from one account or subaccount to another. The Legislature must decide whether to simplify the account structure and to provide counties with some flexibility to transfer funds across

accounts or programs in order to best meet the needs and priorities of local communities.

- **Other issues must be resolved by voters at the ballot box.** Key realignment provisions must be placed in the state Constitution – and therefore approved by the voters – in order to ensure that counties will receive ongoing funding as well as to provide counties and the state with protections against certain unanticipated costs.¹⁶ County officials, in particular, argue that the 2011 realignment "would not be workable without the constitutional amendment and its accompanying protections."¹⁷ Counties, for example, lack certainty regarding realignment revenues because the revenue shift adopted in 2011 could be modified or reversed with a simple majority vote of the Legislature and the Governor's signature. Furthermore, counties could face substantial cost increases for realigned programs due to changes in federal law or court orders that require counties to modify policies or practices, expand services, or take other actions to comply with federal law. State law, however, does not require the state to share in those costs, and even if the law did include such a provision, future legislators and governors could amend or repeal it. The state, for its part, lacks protection from county "mandate" claims related to realignment. The state Constitution requires the state to reimburse local governments when the state mandates that they implement a new program or provide a higher level of service for an existing program.¹⁸ According to the Legislative Analyst's Office (LAO), some provisions of the 2011 realignment could be interpreted as mandates for which the state would have to provide additional funding if counties sought reimbursement.¹⁹

The Legislature Must Build a Long-Term Framework for Realignment

In 2011, the Legislature created a temporary framework for the transfer of funding and responsibilities from the state to the counties. With this current framework set to expire at the end of June, the Legislature must build a long-term framework for 2012-13 and beyond. State lawmakers are considering a package of changes that the Governor proposed this year. This proposal, which reflects negotiations between the Administration and the counties, addresses several key issues, including the structure of the accounts and subaccounts into which realignment revenues will flow; the amount of funding that each program will receive in 2012-13 and subsequent years; how revenues will be allocated to counties; and the degree to which counties will be able to move dollars from one program to another.²⁰ All of the proposed changes to the 2011 realignment framework discussed in the following sections would amend state law, rather than the state Constitution, and therefore could be amended or repealed by

future policymakers with a majority vote of the Legislature and the Governor’s signature. The Legislature must consider several issues as it reviews the Governor’s proposal. These issues include:

What Should the Realignment Account Structure Look Like?

The Governor’s proposal simplifies the current realignment account structure into four primary accounts that would receive realignment revenues beginning in 2012-13 (Table 1). Two of these accounts – Support Services and Law Enforcement Services – consist of the key public safety, health, and human services programs that were included in the 2011 realignment (Table 2). The Governor’s proposal includes a:

- **Support Services Account**, which contains two “subaccounts”:
 - *Protective Services*. This subaccount, which is projected to receive \$1.6 billion in 2012-13, provides funding for the various programs that make up the state’s child welfare system, including CWS and Foster Care, as well as protective services for seniors and dependent adults.
 - *Behavioral Health*. This subaccount, which is projected to receive \$964.5 million in 2012-13, funds several

alcohol and drug programs and Medi-Cal specialty mental health services provided through EPSDT and MHMC.

- **Law Enforcement Services Account**, which contains five subaccounts:
 - *Community Corrections*. This subaccount, which is projected to receive \$842.9 million in 2012-13, supports counties’ new responsibilities for managing, supervising, and rehabilitating low-level adult offenders and parolees.
 - *Trial Court Security*. This subaccount, which is projected to receive \$496.4 million in 2012-13, funds court security provided by county sheriffs.
 - *Enhancing Law Enforcement Activities*. This subaccount, which is projected to receive \$489.9 million in 2012-13, provides funding for a dozen local public safety grant programs, including county probation grants and the COPS Program. This is the only set of programs that is currently being funded – and would continue to be funded under the Governor’s proposal – with the VLF revenues dedicated to realignment.²¹

Table 1: The Governor’s Proposed Allocation of Realignment Revenues, 2012-13

Accounts / Subaccounts	Realignment Allocation (in Millions)	Share of Realignment Allocation
Support Services Account	\$2,604.9	44.2%
Protective Services	\$1,640.4	27.9%
Behavioral Health	\$964.5	16.4%
Law Enforcement Services Account	\$1,942.6	33.0%
Community Corrections	\$842.9	14.3%
Trial Court Security	\$496.4	8.4%
Enhancing Law Enforcement Activities	\$489.9	8.3%
Juvenile Justice	\$98.8	1.7%
District Attorney and Public Defender	\$14.6	0.2%
Mental Health Account*	\$1,120.6	19.0%
Sales and Use Tax Growth Account**	\$221.7	3.8%
Support Services Growth	\$144.1	2.4%
Law Enforcement Services Growth	\$77.6	1.3%
Total	\$5,889.8	100.0%

* The Governor proposes to provide counties with \$93.4 million per month – for a total of \$1.1 billion in 2012-13 – as part of a complex interaction between the 2011 realignment and an earlier realignment adopted in 1991. This change is intended to be permanent.

** Excess sales and use tax revenues received above “base” allocations are deposited into this account and redistributed as “growth” funds.

Note: Of the funds in the Protective Services and Behavioral Health subaccounts, counties may transfer up to 10 percent of the lesser amount between these two subaccounts each year. The transfer, however, would not permanently increase the base of any program that received additional funding or reduce the base of any program from which funding was shifted. Funds may not be transferred among the various Law Enforcement Services subaccounts or between the Law Enforcement Services Account and the Support Services Account. Subaccount percentages do not sum to account percentages due to rounding.

Source: Department of Finance and Legislative Analyst’s Office

Table 2: Programs and Responsibilities Included in the Governor's Proposed Realignment Account Structure

	Programs / Responsibilities
Support Services Account	
Protective Services	Adoptions Adoption Assistance Adult Protective Services Child Abuse Prevention Child Welfare Services Foster Care
Behavioral Health	Drug Courts Drug Medi-Cal Early and Periodic Screening, Diagnosis, and Treatment Mental Health Managed Care Non-Drug Medi-Cal Perinatal Drug Services
Law Enforcement Services Account	
Community Corrections	Management, supervision, and rehabilitation of low-level offenders and parolees
Trial Court Security	Court security provided by county sheriffs
Enhancing Law Enforcement Activities	County probation grants, Citizens' Option for Public Safety, and 10 other local public safety grant programs
Juvenile Justice	Juvenile Reentry Grant Youthful Offender Block Grant
District Attorney and Public Defender	Participation in local parole revocation proceedings

Source: Department of Finance and Legislative Analyst's Office

- *Juvenile Justice.* This subaccount, which is projected to receive \$98.8 million in 2012-13, consists of the Juvenile Reentry Grant and the Youthful Offender Block Grant, which support counties' responsibilities for housing and supervising most juvenile offenders.
- *District Attorney and Public Defender.* This subaccount, which is projected to receive \$14.6 million in 2012-13, provides funding to support district attorneys' and public defenders' new roles in local parole revocation proceedings.
- **Mental Health Account**, which would receive \$93.4 million per month – for a total of \$1.1 billion in 2012-13 – as part of a complex interaction between the 2011 realignment and an earlier realignment adopted in 1991.²²
- **Sales and Use Tax Growth Account**, which receives any excess sales tax revenues available after each subaccount is provided its “base” funding allocation each year.²³ The Sales and Use Tax Growth Account is projected to receive \$221.7 million in 2012-13, with these “growth” revenues deposited into two subaccounts:

- *Support Services Growth.* This subaccount would receive just under two-thirds (65 percent) of any growth revenues – a projected \$144.1 million in 2012-13. Initially, CWS would receive a disproportionate share (40 percent) of growth revenues each year, up to a cumulative total of \$200 million, in recognition of the fact that the program is significantly underfunded due to budget cuts. After that \$200 million total is reached, growth revenues deposited into this subaccount would be distributed as follows: 50 percent to the Behavioral Health Growth special account, 45 percent to the Protective Services Growth special account, and 5 percent to the Mental Health Growth subaccount to support counties' community mental health responsibilities.
- *Law Enforcement Services Growth.* This subaccount would receive slightly more than one-third (35 percent) of growth revenues – a projected \$77.6 million in 2012-13. Law Enforcement Services Growth revenues would be allocated as follows: 75 percent to the Community Corrections Growth special account, 10 percent to the Trial Court Security Growth special account, 10 percent to the Juvenile Justice Growth special account, and 5 percent to the District Attorney and Public Defender Growth special account.²⁴

Under the Governor's proposal, growth revenues would be provided to the various accounts and subaccounts on top of any base funding. According to the Department of Finance (DOF), “the previous year's allocation level plus growth will equal the new base for the following year,” thereby creating a “rolling base” for each account and subaccount.²⁵

How Much Flexibility Should Counties Have To Modify Programs and Move Funding Around?

One of the key goals of realignment, according to the Governor, is to “provide as much flexibility as possible to the level of government providing the service.”²⁶ “Flexibility,” however, is left undefined. It could mean programmatic flexibility, in which counties are provided wide latitude to implement programs and services with relatively few restrictions. Counties already have this kind of flexibility with respect to their new responsibilities for low-level offenders and parolees. Each county decides whether to emphasize rehabilitative strategies that can break the cycle of recidivism or incarceration in jails, and the Governor's plan maintains this local flexibility. Counties, however, have relatively little ability to modify realigned programs that are subject to strict federal laws and regulations, including Drug Medi-Cal, Foster Care, and Medi-Cal specialty mental health services. Moreover, the Legislature cannot, as the counties point out, “relax” federal

requirements in order to provide counties with greater flexibility to implement these services.²⁷

Flexibility could also mean financial flexibility: the ability to move realignment dollars from one program or set of programs to another, with the goal of increasing funding for certain services in response to local needs and priorities. The Governor's proposal includes this kind of funding flexibility for health and human services programs in the Support Services Account. The proposal, as noted above, consolidates APS and various child welfare programs into a Protective Services subaccount. It also combines several mental health and alcohol and drug programs into a Behavioral Health subaccount. Under the Governor's proposal, counties would be allowed to move dollars across programs *within* each subaccount, such as by shifting funds from APS to Foster Care within the Protective Services subaccount. Some advocates have expressed concern that this flexibility could lead, in some counties, to the elimination of APS and other programs that counties operate at their discretion, particularly if a county needed to address a funding shortfall affecting a federal "entitlement" program, such as Adoption Assistance or EPSDT.²⁸ The Governor's proposal also would allow counties to transfer funds once per year *between* the Protective Services and Behavioral Health subaccounts. The size of this shift, however, could not exceed 10 percent of the value of the *smaller* subaccount.²⁹ Counties argue that this flexibility is "absolutely critical" because "it will allow counties to move funds in situations where caseloads may be declining within one subaccount, while increasing in the other subaccount."³⁰

In contrast to this funding flexibility for health and human services programs, the Governor's proposal would *prohibit* counties from shifting funds between Law Enforcement Services subaccounts – for example, from Trial Court Security to Community Corrections. Furthermore, counties would not be allowed, under the Governor's plan, to transfer funds between the Support Services Account and the Law Enforcement Services Account, effectively creating a "firewall" between health and human services, on the one hand, and law enforcement programs, on the other.³¹

How Should Community Corrections Dollars Be Allocated to Counties?

In 2011-12, realignment dollars for community corrections were divided among counties based primarily on "the number of offenders historically sent to state prison" by each county, according to the LAO.³² This formula penalized counties that had sent fewer offenders to state prison and had chosen to focus on rehabilitation strategies or other alternatives to incarceration.³³ The LAO recommended that the Legislature revise the formula to reflect two factors: each county's share of adults ages 18 to 35 – those most likely to be involved in the criminal justice system –

and its share of adult felony dispositions, excluding those in which adults receive state prison sentences. These factors would "reflect each county's potential correctional workload following realignment" and provide a "fiscal incentive for counties that have historically sent a higher proportion of offenders to prison to be more innovative and bring down their costs."³⁴

The Governor's proposal, by contrast, takes an incremental approach to allocating Community Corrections subaccount dollars – base funding – to counties. The Governor adopted the counties' recommended allocations for 2012-13 and 2013-14, which are based on the "best result" for each county from among several options, including the current allocation formula or an allocation based on the county's share of California adults ages 18 to 64.³⁵ This approach reflects counties' assessment that it is "premature to set [a] permanent allocation formula" and that the state needs "to create a bridge to [a] final allocation methodology."³⁶ The Governor further recommends that county allocations for 2014-15 and beyond be determined by the DOF in consultation with the counties. The Governor's proposal, however, does not include criteria that could help inform allocation decisions over the long term or, more specifically, reward counties that adopt innovative, evidence-based practices to reduce recidivism and provide alternatives to incarceration. State lawmakers should consider whether this open-ended approach to allocating community corrections dollars is appropriate over the long term, particularly in light of the Legislature's recent declaration that "California must reinvest its criminal justice resources to support community-based corrections programs and evidence-based practices that will achieve improved public safety returns on this state's substantial investment in its criminal justice system."³⁷

Community corrections also would receive "growth" funding to the extent that excess sales tax revenues were available. Under the Governor's proposal, the DOF – beginning in 2012-13 – would determine each county's share of dollars from the Community Corrections Growth special account based on seven factors. These factors would take into account "a minimum allocation for every county," the "different needs" of urban and rural counties, "data collected by counties, and ability to track outcomes," the "provision of incentives for innovations," and other considerations.³⁸ Some of these factors could potentially provide counties with incentives to adopt innovative and cost-effective alternatives to incarceration. The proposal, however, appears to include too many factors and gives no direction to the DOF in terms of the relative weight each factor should receive in the allocation formula. Moreover, the two key factors proposed by the LAO – counties' share of adults ages 18 to 35 and their share of felony dispositions – are not included on the Governor's list. The Legislature should consider which set of factors would be most appropriate in allocating growth funding to counties in a way that encourages counties to focus on providing rehabilitative services

rather than relying solely or primarily on incarceration in local jails.

How Should Health and Human Services Dollars Be Allocated to Counties?

The Governor's proposal generally does not specify how or on what basis dollars from the Protective Services and Behavioral Health subaccounts – which provide base funding for health and human services programs – would be divided among counties.³⁹ Instead, the proposal requires the DOF to determine each county's share of revenues in consultation with the counties and other state agencies. The proposal, however, includes no criteria that could help inform allocation decisions over the long term or reward counties that achieve specified outcomes. The only restriction pertains to the Protective Services subaccount: The state, beginning in 2013-14, would have to allocate to any county at least as much Protective Services base funding as that county received in the prior year. This restriction would effectively set a floor below which Protective Services funding in any county could not fall, which would make it difficult to reallocate funds across counties to reflect future changes in caseloads and other factors.⁴⁰

Health and human services programs also would receive "growth" funding to the extent that excess sales tax revenues were available. The Governor's proposed process for allocating Behavioral Health growth revenues to counties would be open-ended: The DOF would work with counties and other state agencies to determine each county's share, but it appears that decisions would be made without reference to any specified criteria. In contrast, counties' share of Protective Services growth funding generally would be proportional to their share of base funding under the Governor's proposal.⁴¹ The Legislature should consider whether these approaches to allocating health and human services base and growth dollars among counties are appropriate, including whether it makes sense to establish minimum base funding thresholds for individual counties and whether the DOF should be required to apply specific criteria related to program outcomes in allocating base and growth funding.

What Happens if Realignment Revenues Are Insufficient To Support Program Costs?

The realignment framework enacted in 2011 assumes that revenues dedicated to realignment – most of which come from a portion of the sales tax rate – will generally grow from year to year and will be sufficient to fund the programs that were transferred to the counties.⁴² It is conceivable, however, that growth in program costs could outpace revenue growth even in relatively good economic times. County mental health directors,

for example, argue that there is "uncertainty about the overall adequacy of resources being provided to counties" under the 2011 realignment framework.⁴³ This is particularly the case for programs – such as Medi-Cal specialty mental health services and Drug Medi-Cal – that are subject to stringent federal requirements, provide relatively few options for counties to control costs, and may be starting out with base funding levels that are too low to address future needs.⁴⁴

The Governor's proposal, as noted above, would allow counties to move realignment dollars across health and human services programs and accounts, which would help counties address a potential funding shortfall affecting one or more federal entitlement programs. That solution, however, could mean that discretionary programs that were realigned to the counties, such as APS and drug courts, could face reductions or even elimination in many counties if realignment revenues were insufficient to support all realigned programs. Moreover, if revenues dropped steeply due to an economic downturn, counties would potentially have to "backfill" the lost realignment dollars with their own local revenues or risk litigation and/or penalties related to one or more federal entitlement programs.⁴⁵ The Legislature should consider amending the realignment framework to include at least a temporary state General Fund backfill that would be triggered if program costs significantly outpaced revenue growth due to factors outside of counties' control or if realignment revenues were to drop sharply due to an economic downturn.

What Kind of Oversight Should the State Provide?

The state will continue to play a role in providing some degree of oversight as counties take on greater responsibilities for realigned programs. The Governor's proposal appears to increase the role and scope of state oversight of certain health and human services programs, although counties contend that "the state already maintains a comprehensive statutory framework for oversight mechanisms for each of the realigned health and human services programs."⁴⁶ In contrast, the Governor's proposal generally lacks oversight and accountability measures with respect to public safety programs, including counties' new community corrections responsibilities for low-level offenders and parolees.⁴⁷ Prior to the release of the Governor's May Revision, some advocates recommended that counties be required to "collect and report standardized data on public safety outcomes" in order to "identify successful [community corrections] programs worthy of further study, replication, or investment."⁴⁸ The Governor's proposal includes no such provision. Clearly, the state, counties, and advocates need sufficient, uniformly collected data across program areas in order to evaluate program quality and help ensure improved services and outcomes; the Legislature should aim to strike a balance between requiring too much or too little of counties.

The Governor's Proposed Ballot Measure Would Provide Constitutional Protections to Counties and the State

In March, Governor Brown and the California Federation of Teachers (CFT) announced a compromise to merge their two proposed ballot initiatives into a single measure. This measure, which is expected to appear on the November 2012 ballot, would ask voters to impose three new temporary income tax rates on the highest-income Californians and a temporary one-quarter cent sales tax increase in order to provide additional funding for schools and help close the budget gap.⁴⁹ Less well known are the measure's provisions regarding realignment. Specifically, the measure would complement the statutory framework of the 2011 realignment by placing key legal protections for both the state and the counties in the state Constitution, thereby making permanent many aspects of the shift of programs to the counties.⁵⁰

If the measure passes in November, future legislators and governors would continue to have the authority to revise any provisions of realignment that are reflected in state statute, including the structure of the accounts and subaccounts into which revenues are deposited and the extent to which counties are able to move funds from one program to another. If the measure fails, the realignment provisions in state law would remain in force unless modified or repealed by future policymakers with a majority vote of the Legislature and the Governor's signature. Neither the state nor the counties, however, would have the kinds of robust and enduring protections regarding revenues, unanticipated costs, and mandate claims that they would have if the ballot measure were approved.

The ballot measure would:

- **Constitutionally dedicate a portion of sales tax and VLF revenues to counties.** The sales tax and VLF revenue shift that currently funds counties' realignment responsibilities was established in state statute and therefore can be modified or reversed with a majority vote of the Legislature and the Governor's signature. The ballot measure would add the revenue shift to the state Constitution, thereby ensuring counties ongoing, dedicated funding to support the realigned programs.⁵¹
- **Require the state to provide counties with alternative funding if current realignment revenues are eliminated.** The Legislature or the voters could reduce or eliminate the portion of the sales tax rate and/or the VLF rate dedicated to realignment, thereby reducing revenues available to support the programs realigned to counties. If such a change were to

occur, the ballot measure would require the state to provide alternative funding that is "equal to or greater than" the amount by which realignment revenues were reduced. Moreover, if the Legislature were to fail to provide the funds, the measure would require the state Controller to transfer the funds from the state's General Fund to the counties.

- **Protect the state from mandate claims related to realignment.** California's Constitution, as noted above, requires the state to reimburse local governments when the state mandates that they implement a new program or provide a higher level of service for an existing program. Some provisions of the 2011 realignment could be interpreted as mandates for which the state would have to provide additional funding.⁵² The ballot measure declares that the realignment legislation as well as any regulations or executive orders issued to implement the legislation "shall not constitute a mandate."⁵³ This change would prohibit counties from using the state's mandate process to seek reimbursement from the state for realignment-related costs.
- **Allow counties to disregard state policy changes that increase realignment program costs if the state does not provide funding to offset those costs.** Counties' costs of operating realigned programs could increase as a result of new state laws, regulations, or executive orders. Under the ballot measure, counties would not be obligated to implement laws enacted after September 30, 2012 that have the "overall effect" of increasing counties' costs and for which the state has not provided "annual funding for the cost increase." Moreover, absent state funding, counties could disregard state regulations or executive orders that both increase counties' costs for realigned programs and "are not necessary to implement" the 2011 realignment legislation.⁵⁴
- **Require the state to pay at least half of any realignment program cost increases that stem from changes in federal law or regulations.** Counties' costs for realigned programs could increase due to changes in federal law or regulations. The ballot measure would require the state to pay at least 50 percent of those additional costs.
- **Require the state to pay at least half of any monetary penalties or realignment program cost increases that stem from federal court or administrative decisions.** Federal courts or administrative agencies could issue orders – or settlements could be reached – that impose monetary penalties or increase the cost of realigned programs by requiring counties to modify policies or practices, expand services, or take other actions to comply with federal law. The ballot measure would generally require the state to pay at least 50 percent of those additional costs.⁵⁵

- **Constrain the state’s ability to submit federal plans or waivers that would increase counties’ costs for realigned programs.** The state periodically submits plans to the federal government outlining how it will implement joint state-federal programs. The state also occasionally requests waivers from federal requirements. The ballot measure would prohibit the state from submitting plans, waivers, or amendments that increase counties’ costs for realigned programs unless required by federal law or the state “provides annual funding for the cost increase.”

potentially realizing reduced costs as well as improved program quality and outcomes. State lawmakers initially created a temporary framework for realignment, with the understanding that many details would be finalized in 2012. Finishing the job of realignment this year will be up to the Governor and the Legislature, as well as to the voters. A ballot measure proposed by the Governor for November 2012 would ask Californians to amend the state Constitution in order to ensure that counties continue to have the funding needed to successfully manage realigned programs. The ballot measure also would provide both counties and the state with constitutional protections against certain unanticipated costs for realigned programs. These protections, as well as legislation that resolves key issues regarding realignment, are central to building a long-term framework for realignment in 2012 and beyond.

Conclusion

Realignment presents an opportunity for the state and counties to work together to provide a range of services more efficiently,

Scott Graves prepared this Budget Brief with the assistance of Sam Sellers. The CBP was founded in 1994 to provide Californians with a source of timely, objective, and accessible expertise on state fiscal and economic policy issues. The CBP engages in independent fiscal and policy analysis and public education with the goal of improving public policies affecting the economic and social well-being of low- and middle-income Californians. General operating support for the CBP is provided by foundation grants, subscriptions, and individual contributions. Please visit the CBP’s website at www.cbp.org.

ENDNOTES

- ¹ Department of Finance, *Governor’s Budget Summary 2011-12* (January 2011), p. 15.
- ² Counties operated the majority of realigned programs prior to the 2011 realignment, with the state and counties generally sharing program costs along with the federal government. As discussed below, the primary effect of realignment for these programs has been financial: shifting the nonfederal cost of programs entirely to the counties, without significantly changing counties’ responsibilities. Realignment took effect on July 1, 2011 for most programs. Counties’ new responsibilities for certain offenders, parolees, and parole violators (discussed below) took effect on October 1, 2011.
- ³ The sales and use tax is actually two separate taxes: A tax on the sale of tangible goods in California – the “sales tax” – and a tax on goods purchased outside of the state for use in California – the “use tax.” Because sales and use taxes are complementary, they are typically referred to as the sales tax and this *Budget Brief* will use the term “sales tax” to refer to both taxes.
- ⁴ Department of Finance, *Governor’s Budget May Revision 2012-13* (May 2012), p. 68. The 1.0625 cent sales tax rate is projected to raise \$5.4 billion and the portion of the VLF rate dedicated to realignment is projected to raise \$455.1 million in 2012-13. The sales tax revenues shifted to counties are excluded from the calculation of the Proposition 98 minimum funding guarantee for schools and community colleges. As a result, the guarantee is \$2.1 billion lower than it would have been absent the sales tax shift. Under the 2011-12 budget agreement, the exclusion of these sales tax revenues from the calculation of the Proposition 98 guarantee shall remain in effect only if voters approve a ballot measure before November 17, 2012 that authorizes the exclusion and provides a level of Proposition 98 funding that is equal to what would have been provided without the sales tax shift. The ballot measure that Governor Brown and the California Federation of Teachers aim to place on the November 2012 ballot (discussed below) intends to fulfill those requirements. For more information about the Proposition 98 minimum guarantee, see California Budget Project, *School Finance in California and the Proposition 98 Guarantee* (April 2006).
- ⁵ The \$3.9 billion includes both “base” and “growth” funding as proposed in the Governor’s 2012 May Revision.
- ⁶ Legislative Analyst’s Office, *2011 Realignment: Addressing Issues To Promote Its Long-Term Success* (August 19, 2011), p. 25.
- ⁷ The Governor also proposes to provide counties with \$93.4 million per month – for a total of \$1.1 billion in 2012-13 – as part of a complex interaction between the 2011 realignment and an earlier realignment adopted in 1991. This interaction, which the Administration has not fully explained, involves 1991 and 2011 realignment revenues, counties’ community mental health responsibilities under the 1991 realignment, and counties’ new, increased share of cash assistance costs in the CalWORKs welfare-to-work program. The Governor’s proposed change, which is intended to be permanent, modifies a similar interaction between the 1991 and 2011 realignment plans in effect during 2011-12. County mental health directors have expressed concern that the Governor’s proposed change “reintroduces a significant amount of unpredictability for 1991 community mental health funding” and “could also result in substantially diminished funding for counties’ ongoing 1991 Realignment mental health responsibilities” relative to the 2011-12 funding level. Memo from California Mental Health Directors Association to Senate Budget and Fiscal Review Subcommittee No. 3 and Assembly Budget Subcommittee No. 1 (May 25, 2012), p. 1. See also memo from California State Association of Counties to county administrative officers and county executives (May 29, 2012).
- ⁸ The \$2.0 billion includes both “base” and “growth” funding as proposed in the Governor’s 2012 May Revision.
- ⁹ The term “low level” generally refers to offenders or parolees who have committed non-violent, non-serious, non-sex crimes. Counties also assumed responsibility for parole violators, who may or may not be classified as low-level parolees. This is because, under realignment, counties are responsible for a range of parole violators, including both the low-level parolees who counties now supervise and the serious and violent felons who remain under state supervision. The major exception relates to parolees who are released from prison after serving a life sentence with the possibility of parole – these individuals may be returned to state prison if they violate a condition of their parole. For a review of counties’ new community corrections role, see California Budget Project, *Steady Climb: State Corrections Spending in California* (September 2011).

- 10 In addition to the public safety programs highlighted in this paragraph, the 2011 realignment provides counties with funding to support district attorneys' and public defenders' new role in the parole revocation process as well as to fund counties' existing responsibilities for juvenile offenders. Specifically, counties are required to house most juvenile offenders and to supervise "all offenders upon their release from state youth correctional facilities, including some who previously were state responsibility." Legislative Analyst's Office, *2011 Realignment: Addressing Issues To Promote Its Long-Term Success* (August 19, 2011), p. 23.
- 11 Prior to realignment, the state and counties shared the cost of health and human services programs along with the federal government. Under realignment, the cost is shared between counties and the federal government, with counties using realignment revenues to pay for their increased share of cost.
- 12 Letter from California State Association of Counties to members of the California State Assembly and the California State Senate (May 8, 2012), pp. 2-3.
- 13 The 2011 realignment "changed very little" about health and human services programs, "other than the source of funding." Letter from California State Association of Counties, California Mental Health Directors Association, County Alcohol and Drug Program Administrators Association of California, and County Welfare Directors Association of California to Senator Mark DeSaulnier, Chair, Senate Budget and Fiscal Review Subcommittee No. 3 (May 15, 2012), p. 3.
- 14 Letter from California State Association of Counties to members of the California State Assembly and the California State Senate (May 8, 2012), pp. 2-3.
- 15 Legislative Analyst's Office, *2011 Realignment: Addressing Issues To Promote Its Long-Term Success* (August 19, 2011), p. 12.
- 16 Realignment provisions added to the state Constitution could not be unilaterally amended or repealed by the Legislature or the Governor, but could be changed by the voters at a subsequent statewide election.
- 17 Letter from California State Association of Counties to members of the California State Assembly and the California State Senate (May 8, 2012), p. 1.
- 18 California Constitution, Article XIII B, Section 6a.
- 19 Legislative Analyst's Office, *2011 Realignment: Addressing Issues To Promote Its Long-Term Success* (August 19, 2011), p. 11.
- 20 Unless otherwise noted, all references in this section to the Governor's realignment proposal refer to the Governor's proposed trailer bill #1009 ("Realignment Superstructure"), downloaded from http://www.dof.ca.gov/budgeting/trailer_bill_language/corrections_and_general_government/documents/ on May 27, 2012.
- 21 The Enhancing Law Enforcement Activities subaccount would receive sales tax revenues only if dedicated VLF revenues fail to provide at least \$489.9 million. In that event, sales tax revenues would be provided in an amount needed to reach the \$489.9 million base funding level. The May Revision assumes an estimated \$35 million backfill in 2012-13.
- 22 This interaction, which the Administration has not fully explained, involves 1991 and 2011 realignment revenues, counties' community mental health responsibilities under the 1991 realignment, and counties' new, increased share of cash assistance costs in the CalWORKs welfare-to-work program. The Governor's proposed change, which is intended to be permanent, modifies a similar interaction between the 1991 and 2011 realignment plans in effect during 2011-12. County mental health directors have expressed concern that the Governor's proposed change "reintroduces a significant amount of unpredictability for 1991 community mental health funding" and "could also result in substantially diminished funding for counties' ongoing 1991 Realignment mental health responsibilities" relative to the 2011-12 funding level. Memo from California Mental Health Directors Association to Senate Budget and Fiscal Review Subcommittee No. 3 and Assembly Budget Subcommittee No. 1 (May 25, 2012), p. 1. See also memo from California State Association of Counties to county administrative officers and county executives (May 29, 2012).
- 23 Base years would vary by program, with 2011-12 being the base year for many health and human services programs. Department of Finance, *Governor's Budget May Revision 2012-13* (May 2012), p. 69.
- 24 The Enhancing Law Enforcement Activities subaccount does not receive growth funding from realignment sales tax revenues. Rather, additional funding for this subaccount above the \$489.9 million base funding level comes from growth in the share of VLF rate dedicated to realignment.
- 25 Department of Finance, *Governor's Budget May Revision 2012-13* (May 2012), p. 69.
- 26 Department of Finance, *Governor's Budget Summary 2012-13* (January 2012), p. 72.
- 27 Letter from California State Association of Counties to members of the California State Senate and the California State Assembly (May 8, 2012), pp. 2-3.
- 28 Under the Governor's proposal, counties that wanted "to eliminate or significantly reduce the levels or types of optional or discretionary behavioral health or adult protective services" would have to do so "at a duly noticed meeting of the Board of Supervisors in an open session action item." Counties that wanted to eliminate or significantly reduce other optional or discretionary services funded from the Protective Services subaccount would be required to follow the current public notification requirements outlined in state law.
- 29 Such a transfer would not permanently increase the "base" funding level of any program that received additional dollars or reduce the base funding level of any program from which dollars were shifted.
- 30 Letter from California State Association of Counties to members of the California State Senate and the California State Assembly (May 8, 2012), p. 3.
- 31 Legislative Analyst's Office, *Evaluating the Governor's Realignment Fiscal Superstructure Language* (May 25, 2012), p. 1.
- 32 Sixty percent of each county's allocation was based on the number of offenders historically sent to state prison, 30 percent was based on the size of each county's adult population, and 10 percent was based on each county's share of grant funding under SB 678 (Leno, Chapter 608 of 2009). Legislative Analyst's Office, *The 2012-13 Budget: The 2011 Realignment of Adult Offenders – An Update* (February 22, 2012), p. 13.
- 33 ACLU of California, *Public Safety Realignment: California at a Crossroads* (March 2012), pp. 10-11.
- 34 Legislative Analyst's Office, *The 2012-13 Budget: The 2011 Realignment of Adult Offenders – An Update* (February 22, 2012), pp. 16-17.
- 35 County Administrative Officers Association of California, *AB 109 Allocation: Recommended Approach for 2012-13 and 2013-14* (May 14, 2012), p. 10.
- 36 County Administrative Officers Association of California, *AB 109 Allocation: Recommended Approach for 2012-13 and 2013-14* (May 14, 2012), p. 9.
- 37 Penal Code, Section 17.5, as amended by AB 109 (Committee on Budget, Chapter 15 of 2011). AB 109 was one of the bills that shifted responsibility for low-level offenders and parolees from the state to the counties.
- 38 The other factors included in the Governor's proposal are "any higher than projected population impacts on a county," "impacts of prisons on particular counties," and "other special considerations impacting county costs."
- 39 The Governor's proposal specifies county allocations only with respect to Protective Services revenues in 2012-13, although the specific percentages were not listed in the proposed legislation at the time this report was prepared.
- 40 Legislative Analyst's Office, *Evaluating the Governor's Realignment Fiscal Superstructure Language* (May 25, 2012), p. 4.
- 41 Nine out of 10 Protective Services *growth* dollars would be allocated according to each county's share of Protective Services *base* funding. The remaining 10 percent of growth dollars would be set aside for counties that meet spending thresholds that would have allowed them to access the CWS Augmentation fund. The Governor's proposal, however, would allow counties with fewer than 50,000 residents to access this smaller share of growth funding without meeting the spending requirement.

- ⁴² The Governor's May Revision, for example, shows realignment revenues and expenditures rising in tandem from \$5.9 billion in 2012-13 to \$6.8 billion in 2014-15. Department of Finance, *Governor's Budget May Revision 2012-13* (May 2012), p. 68.
- ⁴³ Memo from California Mental Health Directors Association to members of Senate Budget and Fiscal Review Subcommittee No. 3 and Assembly Budget Subcommittee No. 1 (May 25, 2012), p. 2.
- ⁴⁴ The LAO notes that the Governor's proposed base funding levels reflect historical patterns, which "may not adequately address future programmatic needs." Legislative Analyst's Office, *Evaluating the Governor's Realignment Fiscal Superstructure Language* (May 25, 2012), p. 3.
- ⁴⁵ As noted below, the ballot measure that the Governor aims to place on the November 2012 ballot would provide counties with some protections against unanticipated costs in realigned programs due to changes in federal law or federal court decisions or settlements. Specifically, the state would be required to share at least half the cost. However, the ballot measure would prohibit counties from using the state's mandate process to seek reimbursement for general costs related to operating realigned programs.
- ⁴⁶ Letter from California State Association of Counties, California Mental Health Directors Association, County Alcohol and Drug Program Administrators Association of California, and County Welfare Directors Association of California to Senator Mark DeSaulnier, Chair, Senate Budget and Fiscal Review Subcommittee No. 3 (May 15, 2012), p. 3.
- ⁴⁷ Legislative Analyst's Office, *Evaluating the Governor's Realignment Fiscal Superstructure Language* (May 25, 2012), p. 5.
- ⁴⁸ ACLU of California, *Public Safety Realignment: California at a Crossroads* (March 2012), pp. 12-13.
- ⁴⁹ All references in this section to the ballot measure are from section 4 of the initiative, which is called *The Schools and Local Public Safety Protection Act of 2012* (version 3). The tax provisions reflect the Governor's compromise with the CFT, which had proposed its own ballot measure to increase taxes on high-income Californians. The CBP will analyze the compromise ballot measure's tax provisions in a forthcoming publication.
- ⁵⁰ The voters, however, could subsequently modify or repeal the realignment provisions added to the state Constitution in November 2012.
- ⁵¹ The revenues shifted to counties to support the realigned programs would be permanently excluded from the calculation used to determine the Proposition 98 minimum funding guarantee.
- ⁵² Legislative Analyst's Office, *2011 Realignment: Addressing Issues To Promote Its Long-Term Success* (August 19, 2011), p. 11.
- ⁵³ Realignment legislation refers to legislation enacted on or before September 30, 2012.
- ⁵⁴ This provision applies to regulations or executive orders issued after October 9, 2011.
- ⁵⁵ With respect to court orders or settlements, the state would not have to contribute toward additional costs "if the State determines that the settlement or order relates to one or more local agencies failing to perform a ministerial duty, failing to perform a legal obligation in good faith, or acting in a negligent or reckless manner."