

May 5, 2008

Hon. Denise Moreno Ducheny  
Senator, 40<sup>th</sup> District  
Room 5035, State Capitol  
Sacramento, California 95814

Dear Senator Ducheny:

## **RE: LAO PAROLE REALIGNMENT PROPOSAL—ADDITIONAL OPTIONS**

### **Introduction**

The Legislative Analyst's Office's (LAO's) *2008-09 Budget: Perspectives and Issues*, released in February 2008, included a proposal to realign the responsibility for supervising lower-level parolees from the state to counties. Over the past several weeks, we have participated in legislative hearings and met with Members of the Legislature and various stakeholder groups to discuss the details of our proposal. In these discussions, we have received some favorable responses about the policy merits of our proposed approach, though various parties have raised reasonable questions about how to implement parole realignment successfully.

While we believe our proposal for parole realignment continues to have merit, we recognize that there is no single way to implement parole realignment and that there is value in considering alternative approaches. With that in mind, we are writing this letter to identify for the Legislature the key concerns that have been raised, options for addressing these concerns, potential tradeoffs with each of these options, and other implementation issues. We hope that this letter will serve the Legislature by furthering the discussion regarding parole realignment.

This letter is organized into two parts. The first section discusses parole realignment program policy issues. The second section addresses financing issues and concerns.

### **Options for Changing the Parole Realignment Program**

Based on our conversations with many parties, we have identified five issues that the Legislature may wish to consider regarding the caseloads and costs for parole realignment: (1) the responsibility for deported (illegal immigrants) parolees, (2) the exclusion of parolees with prior serious or violent offenses, (3) the most appropriate revocation process, (4) funding for substance abuse programs, and (5) the size and structure of the incentive fund. We discuss each of these issues in more detail below, as well as

show how these changes could affect the total population and costs for parole realignment.

### **Options Affecting the Realigned Population**

Based on our conversations with many parties, we have identified two issues that could potentially affect the size and type of the offender population realigned to local supervision. These are the realignment of deported parolees and the exclusion of offenders with prior serious or violent offenses.

***Realignment of Deported Parolees.*** The original LAO realignment plan identified about 71,400 parolees who would be eligible for transfer to county supervision. Based on data from the California Department of Corrections and Rehabilitation (CDCR), we have subsequently determined that about 10 percent of this group are illegal immigrants who would be deported upon release from prison and, therefore, would not be supervised by the counties. Accordingly, funding to the counties should be reduced to reflect a lower caseload.

***Exclusion of Parolees With Prior Serious or Violent Offenses.*** In our original parole realignment proposal, we noted that, in some respects, parolees and probationers are very similar offenders, particularly with respect to the type of offense for which they were convicted. We limited our proposed realignment population to those with specified nonserious, nonviolent current offenses to better ensure that those offenders who would be sent to county supervision would be lower-level offenders most similar to current probationers.

While we still believe that our original arguments are valid, some local stakeholders have indicated that it would be challenging for local probation departments to add the 71,400 offenders proposed for realignment to their existing caseloads. They have also expressed concerns that some of the offenders that we proposed to be supervised by local probation might in actuality be more dangerous than current probationers, particularly if those parolees have prior serious or violent offenses in their criminal history. Based on a review of available data and our discussions with CDCR, we estimate that about 21 percent of the offenders we originally identified as candidates for realignment have a prior serious or violent offense (although their current offense is not). We do not have data on the percentage of probationers with prior serious or violent offenses. However, if the Legislature agreed with these concerns, limiting realignment to those parolees with no prior serious or violent offense would reduce the number shifted to county supervision by an additional 13,500 offenders. Such a reduction in the population realigned to county supervision would, however, result in a commensurate reduction in state savings.

***Summary of Population Options.*** In total, we estimate that excluding offenders with prior serious or violent offenses, as well as deported parolees, would reduce the caseload of offenders to be realigned to county supervision from about 71,400 to 50,700. Figure 1 shows how these options would reduce the population of offenders being realigned.

<b>Figure 1</b> <b>Options for Reducing</b> <b>The Population of Offenders Being Realigned</b>	
Option	Parole Realignment Population
LAO original proposal	71,400
Exclude deported parolees	-7,100
Exclude parolees with prior serious or violent offenses	-13,500
Adjusted parole realignment proposal	50,700
Detail may not total due to rounding.	

**Options Affecting the Per Parolee Cost of Realignment**

Based on our conversations with many parties, two issues—the revocation process and substance abuse funding—could affect the average cost per parolee for counties to carry out realignment.

*Appropriate Revocation Process.* In our original proposal, we estimated the total cost for counties to take on the responsibility for 71,400 offenders in the community would be about \$483 million, or about \$6,770 per parolee. This estimate did include costs associated with reincarcerating offenders who violated their terms of supervision, but it did not include the costs associated with establishing a local process to revoke these offenders who got into trouble while under supervision in the community. The current revocation process for parolees is handled administratively by the Board of Parole Hearings (BPH), an office within CDCR.

Based on conversations with many parties, we have identified two general options for counties to administer the revocation process for offenders who violate the conditions of their supervision. One option would be for each county to create a local administrative revocation board, similar to BPH. Alternatively, revocations could be managed through the state’s court system.

Each of these two options has its advantages. Establishing county administrative revocation boards similar to BPH would probably be a less expensive approach than utilizing the criminal court system. Based on our estimate of what BPH currently spends per revocation case, we estimate that a similar system at the local level would likely cost an average of about \$280 per offender realigned from parole. By comparison, we estimate that the average cost for using the court system would be about \$750 per realigned offender. Of this amount, about \$270 would be incurred by the state courts and \$480 would be for county court-related costs, primarily for prosecution and defense attorneys.

On the other hand, based on our conversations with many parties, there may be some procedural benefits with having the criminal courts handle the revocation cases. In particular, there could be a perception that the outcomes are more fair if handled in the court

system because the process would be administered by a sworn judge rather than an administrative employee, and because there would be attorneys for both the prosecution and defense. The current state revocation process does not include prosecuting attorneys. In addition, using the criminal courts for revocations could provide some efficiencies over using an administrative board. If counties used an administrative process for revocations, some offenders subject to revocation might have hearings before both the administrative board as well as a criminal court. This would be the case if their new offense was a crime rather than a technical violation, such as failure to appear for a meeting with their probation officer. Relying on the courts for revocation could provide a more unified and streamlined approach to managing offenders facing revocation. It is also possible courts would have more options than an administrative board when determining what actions to take in response to violations. In particular, courts could place offenders in drug courts and mental health courts to divert them from reincarceration when appropriate.

*Funding for Substance Abuse Treatment.* Based on further analysis of these issues, we found that our original estimate of parole realignment funding did not include funding the state currently spends for drug treatment for parolees. We estimate that providing funding for substance abuse treatment similar in amount to what the state spends now for the realigned population would increase annual realignment funding by an average of about \$850 per offender.

We estimate that the addition of the costs for drug treatment and the revocation process could increase the average local cost per parolee for realignment from about \$6,770 to as much as \$8,100, depending on how the Legislature chose to structure the revocation process. Figure 2 shows the average county cost per realigned offender under these different options.

<b>Figure 2</b>		
<b>Average County Costs for Realignment Under Different Options</b>		
	<b>Costs</b>	
	<b>Option 1: Administrative Revocation Process</b>	<b>Option 2: Criminal Court Revocation Process</b>
LAO original proposal	\$6,770	\$6,770
Substance abuse treatment	850	850
Revocation process	280	480 <sup>a</sup>
<b>Totals</b>	<b>\$7,900</b>	<b>\$8,100</b>

<sup>a</sup> Does not include additional state cost (\$270 per parolee) for state courts.

**Size and Structure of the Incentive Fund**

Our original proposal identified \$483 million in local costs for parole realignment and \$495 million in revenues to pay for the program shift. We proposed that the \$12 million in additional revenue be used to provide an incentive for counties to reduce recidivism. (However, during the first three years of the realignment, we suggested this funding be used to address administrative costs likely to be incurred in transitioning this program from the state to counties, such as for information technology modifications and increased recruitment and hiring activities.)

As the Legislature considers parole realignment and the various options identified in this letter, two questions should be addressed regarding this incentive fund. First, what is the right amount of funding to be provided in the incentive fund? The amount available will depend on the costs of the realignment based on the program options discussed above, as well as the amount of revenue raised under various options, as discussed below. It is important to recognize, though, that the larger the incentive fund, the more revenues must be raised.

Second, the structure of the incentive fund is important, particularly as it relates to what specific activities are funded and what accountability measures are implemented to ensure that the right outcomes are incentivized. For example, the funding could be provided as an award to counties that demonstrate the lowest recidivism rates among realigned offenders, or it could be used to develop a grant program to help counties pilot new and innovative approaches to reducing the number of offenders sent back to state prison.

**Parole Realignment Alternatives: County Costs and State Savings**

Each of the various options outlined above would, if adopted, affect the total amount of funding needed to implement parole realignment, as well as the amount of state savings. For illustrative purposes, Figure 3 compares the original LAO proposal with two other possible approaches. One approach provides a lower-end estimate based on using an administrative revocation process and providing a smaller incentive fund. The second approach provides an upper-end estimate based on using the state courts for revocation hearings and providing a larger incentive fund. Both options result in the same level of state savings because they assume that deported parolees and those with prior serious and violent offenses would be excluded from realignment.

<b>Figure 3</b>			
<b>Parole Realignment Alternatives: Two Examples of County Costs and State Savings</b>			
	<b>LAO Original Proposal</b>	<b>Option 1: Lower End<sup>a</sup></b>	<b>Option 2: Upper End<sup>b</sup></b>
Number of offenders	71,400	50,700	50,700
County cost per offender	\$6,770	\$7,900	\$8,100
County realignment costs (in millions)	\$483	\$401	\$411
Incentive fund (in millions)	12	10	20
Total funding to counties (in millions)	\$495	\$411	\$431
<b>State Savings in 2008-09 (in millions)</b>	<b>\$483</b>	<b>\$386</b>	<b>\$386</b>
<sup>a</sup> Option 1 excludes deported parolees and those offenders with prior serious or violent offenses, assumes use of administrative revocation process, and provides relatively small incentive fund. <sup>b</sup> Option 2 excludes deported parolees and those with prior serious or violent offenses, assumes use of state courts for revocation process, and provides a larger incentive fund.			

**Options for Modifying Financing of Parole Realignment**

Three concepts underlie the LAO’s February parole realignment financing proposal: (1) counties receive the same level of resources to supervise parolees that the state currently spends, (2) counties receive additional resources to offset transition costs and as incentive payments, and (3) no new taxes are raised, but existing revenues are reallocated. Based on conversations with Members of the Legislature, counties, and other stakeholders, there is some agreement regarding these general financing concepts. Various parties have expressed concerns, however, regarding two of the revenue sources included in the proposal. Below, we summarize our February proposal, discuss concerns that have been raised, and outline an alternative financing approach.

**Overview of LAO Parole Realignment Financing Proposal and Concerns**

The LAO’s February financing proposal provides counties with a total of \$495 million for parole realignment by redirecting: about one-half of all waste and wa-

ter enterprise special district property taxes (\$188 million), city Proposition 172 sales taxes (\$178 million), and a portion of the vehicle license fees (VLF) retained for administrative purposes by the Department of Motor Vehicles (DMV) (\$130 million).

In discussions regarding this financing proposal, various concerns have been expressed about two of its funding sources. Specifically, policy concerns have been raised about the redirection of Proposition 172 public safety sales taxes. In addition, because parole realignment might be found to be a state-reimbursable mandate, legal concerns have been raised about the proposal's reliance on property taxes—a revenue source that the State Constitution prohibits the state from using to pay for mandates. Finally, governance concerns have been raised about the role counties would play in allocating enterprise special district property tax revenues. Over the last 30 years, the state has made *all* policy decisions regarding the allocation of property tax revenues. Under our parole realignment-financing proposal, part of this responsibility would shift to counties. Some county officials have expressed reluctance to assume this responsibility.

### **Overview of Alternative Financing Package**

The alternative financing approach we outline below is conceptually similar to our February proposal. That is, the alternative reallocates existing tax revenues and provides counties with somewhat more resources than the state currently spends to supervise parolees. This alternative, however, does not include Proposition 172 sales taxes. Instead, it relies on VLF that currently go to DMV as well as cities—a revenue source that we are advised is not subject to constitutional restrictions regarding mandate payments.

What role would water and waste district property taxes play in this financing approach? Our alternative includes an optional element for the Legislature's consideration. Specifically, depending on the Legislature's policy preferences, enterprise special district property taxes could (1) be excluded fully from the financing package or (2) play a role in offsetting city VLF revenue losses and/or supplementing county resources.

Below, we discuss the use of VLF in this alternative financing approach and an optional element regarding water and waste district property taxes.

### **Greater Reliance Upon VLF Revenues**

Under current law, most VLF revenues are deposited in the Local Revenue Fund and are used to support the 1991 health and social services program realignment. Over \$510 million of VLF, however, is allocated to (1) the DMV for administrative purposes (about \$363 million in 2007-08) and (2) cities for general purposes (about \$149 million in 2007-08). Under the LAO alternative, these DMV and city VLF revenues would be reallocated to support parole realignment. These funds would be deposited in a new Parole Realignment Subaccount in the Local Revenue Fund and the resources would grow an-

nually, along with growth in the VLF. We note that Proposition 1A does not restrict the Legislature's authority to reallocate VLF revenues among these uses.

*Fiscal Effect on DMV and Cities.* The amount of DMV and city VLF revenues that would be reallocated would depend on the Legislature's decisions regarding the scope of the realigned program and the amount of incentive payments. Under the scenarios discussed earlier in this letter, DMV and city VLF revenues would be reduced by about 80 percent. To address this reduction in DMV administrative funding, the vehicle registration fee would need to increase by about \$9 per vehicle. City revenue reductions, on the other hand, could be partially offset by property taxes shifted from water and waste districts (as described below in the optional element).

### **Optional Element:**

#### **Greater City and County Authority Over Waste and Water District Property Taxes**

Notwithstanding the Legislature's direction to enterprise special districts in 1978 to end their reliance upon property taxes and begin shifting to user fees, some water and waste districts continue to receive property taxes today. Under current law, we estimate that these districts will receive about \$370 million in 2008-09 as their share of property taxes collected under the base 1 percent rate allowed by Proposition 13. (In most parts of the state, cities, counties, and special districts provide these identical water and waste services *without* relying on property taxes.)

Under this optional element, the Legislature would change state law to specify that water and waste districts no longer receive property taxes under the base 1 percent rate to support their enterprise functions. This change is permitted under Proposition 1A. (Districts would continue to receive property taxes raised from voter-approved measures in excess of the 1 percent rate or to support nonenterprise functions, such as fire protection.)

What would happen to the water and waste property taxes? Under this optional element, we recommend the Legislature give cities and counties the authority, flexibility, and responsibility to determine how these revenues are allocated to best meet the needs and preferences of their local communities. Under this optional element, each county board of supervisors would hold a public hearing within six months to determine whether these property taxes would be:

- Allocated to cities and/or the county for general purposes. This would allow (1) cities to offset their VLF revenue reductions and/or (2) counties to supplement their parole realignment or other program resources.
- Allocated to the county to allow it to contract with enterprise special districts to provide services. This could allow water and waste districts to continue receiving all tax funds they currently receive.
- Eliminated, with taxpayers offered commensurate property tax rate reductions. This option would serve as the default in case cities and counties did

not reach an agreement regarding the allocation of water and waste district property taxes.

Following the public discussion, supervisors would enact an ordinance specifying the allocation of the property tax. To ensure that the board's decisions regarding the allocation of local property taxes have broad support throughout the county, the ordinance would become effective only upon the approval by the city councils of cities representing at least one-half of the cities in the county and at least 50 percent of the population living in the incorporated area.

To allow for periodic local reconsideration of this issue, but provide a measure of revenue stability, we recommend that the county's property tax allocation ordinance be effective for four years before being subject to revision.

### **Summary of Parole Realignment Financing Approach**

Under this alternative financing approach, counties would rely on VLF to pay for their realigned parole responsibilities. These VLF revenues would be deposited in the Local Revenue Fund—the same fund that counties use to support the 1991 health and social services program realignment.

Water and waste district property taxes would not play a direct role in the financing of parole realignment under this alternative, but could be made available for other purposes. Under this optional element, the state would make the decision to remove water and waste districts from the list of agencies eligible to receive property taxes under the base 1 percent rate. Cities and counties, in turn, would have the authority, flexibility, and responsibility to redirect some or all these property taxes to mitigate city revenue losses, supplement county revenues, contract for water or waste district services, and/or provide tax relief.

I hope this information is helpful as you consider the merits of parole realignment and options for implementing it. Given the interest of various stakeholder groups in this issue, we will post this letter on our website ([www.lao.ca.gov](http://www.lao.ca.gov)) shortly. If you have any questions, please contact Brian Brown at (916) 319-8351 (criminal justice issues) and Marianne O'Malley at (916) 319-8315 (financing issues).

Sincerely,

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Legislative Analyst