





































**TABLE 1.3**  
**Common Criteria Used to Exclude Cases from Resentencing Consideration**

Exclusion Criterion	A	B	C	D	E	F	G	H	I
Serving a sentence for domestic violence								✓	
Sex offender registrant		✓		✓		✓		✓	
Serving a sentence for murder or manslaughter								✓	
Serving a sentence for assault		✓							
Serving a sentence for an offense listed in Penal Code Sections 667.5(c) or 1192.7(c) <sup>a</sup>	✓		✓	✓		✓	✓	✓	✓

NOTE: For confidentiality purposes, we use letters to denote the individual pilot counties' exclusion criteria.

<sup>a</sup> California Penal Code Section 667.5(c) lists specific violent felonies that are treated as "extraordinary crimes of violence" that should receive additional consideration for sentencing enhancements. California Penal Code Section 1192.7(c) lists specific serious felonies for which sentencing cannot be substantially reduced through a plea bargain. Some counties indicated they will consider resentencing of certain serious offenses, such as burglary and robbery.

The county DA office will review the identified cases to determine whether a case should be referred to the court for sentencing. For a case to be considered by the court, it must have support from the DA, who initiates the referral to the court. As discussed in Chapter Four, the county DA offices take into account a number of factors (such as evidence of rehabilitation, a strong reentry plan, or the victim's statement) in deciding whether to support referral of a case to the court for resentencing consideration.

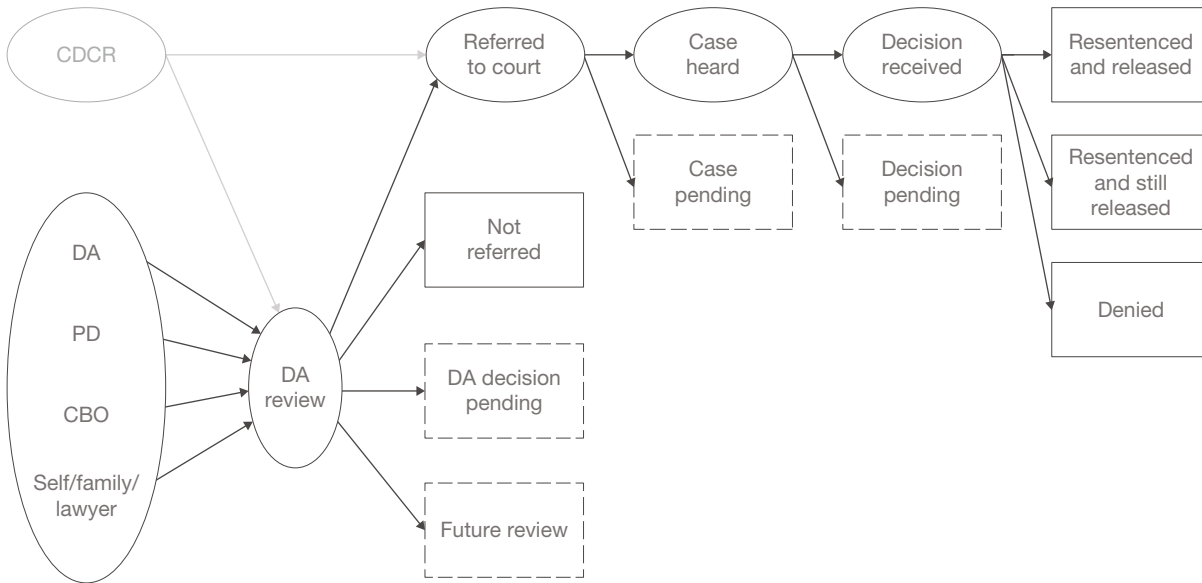
Because this interim report is published early in the resentencing process, cases may still be under review (i.e., DA decision pending) (see Figure 1.2). It is also possible that an outcome of the county DA's review is the decision not to proceed with referring a case to the court for resentencing consideration. And in some instances, as discussed in Chapter Four, the county DA office may decide to revisit the case in the future to determine whether anticipated changes have materialized that place the case in a more favorable light.

This pilot program is specifically about prosecutorial discretion in resentencing. However, we also include in Figure 1.2 a box indicating that the California Department of Corrections and Rehabilitation (CDCR) too may initiate referral of a case to the court for resentencing consideration.<sup>4</sup> The legislation that gives CDCR this authority is discussed further below. Because our research to date focuses on the process for the county DA initiating the resentencing review, we discuss the results of DA-initiated (i.e., prosecutor-initiated) cases in this report. Our second and final report will include a discussion of the results of CDCR-initiated cases, along with the context of experiences regarding how these cases are handled and processed by the county DA and PD offices.

As shown in Figure 1.2, cases referred to the court for resentencing are eventually heard and a decision rendered. The decision may result in the resentencing of an individual, or the motion may be denied. Resentencing may result in an immediate release or immediate parole eligibility when current time served, along with credits earned during incarceration, exceeds the requirements of the new sentence. Alternatively, the new sentence may shorten the time remaining until the individual's earliest possible release date or minimum eligible parole date (MEPD). Because the pilot counties are still early in the resentencing process, results for cases referred to the court for resentencing will be presented in the next annual report.

<sup>4</sup> The county DA office does not necessarily review these cases; however, as discussed in Chapter Four, there may be overlap where both the county DA office and CDCR refer the same case to the court for resentencing consideration or where the county DA office has determined that a case does not meet its criteria even though CDCR has referred that case to the court for resentencing consideration.

**FIGURE 1.2**  
**The Prosecutor-Initiated Review and Resentencing Process**



## Evaluation Goals and Research Questions

RAND, a nonprofit research organization, was selected as the independent evaluator of the pilot program. The pilot term is September 1, 2021, through September 1, 2024; the evaluation term is September 1, 2021, through January 31, 2025. The evaluation comprises three components: analysis of data collected by the DA office, a qualitative implementation assessment, and a cost study to estimate the resources required to implement the pilot activities. Specifically, the evaluation is intended to determine how the pilot is implemented in individual counties, whether the pilot is effective in reducing criminal justice involvement (e.g., recidivism), and whether it is cost-effective. RAND is conducting an implementation assessment, a rigorous outcomes flow analysis, and a cost-benefit analysis to answer the following four research questions:

1. What were the key implementation challenges experienced by the programs, and how did prosecutors and PDs overcome these barriers?
2. What are the characteristics and outcomes of cases identified for possible resentencing at each stage of the resentencing process?
3. What is the impact of the resentencing pilot on case outcomes and recidivism?
4. What is the tangible and intangible cost of the pilot program?

## Approach

Below, we summarize our overall approach. Appendix B contains the detailed evaluation design and methods.

## Outcomes and Other Measures Study

This component of the study will measure the characteristics and outcomes at each phase of the resentencing process, including characteristics of the incarcerated individuals; offenses and sentences of the reviewed individuals; current information, such as time served and time remaining, that is relevant to resentencing;

and the resentencing outcomes. The full-term pilot study will inform the extent to which an individual's earliest possible release date or MEPD is advanced through resentencing. Because the pilot is early in the process, this interim report focuses primarily on characteristics and outcomes at the time of initial review of cases by the pilot DA offices.

### Recidivism Outcomes

The legislation required that the evaluator collaborate with the pilot sites to determine a measure of recidivism. Project team members met (virtually) with representatives from all the DA offices in the pilot sites to discuss four key issues related to measuring recidivism: (1) what is the preferred measure of recidivism (e.g., arrest, filing, conviction); (2) what would be the time frame to measure recidivism outcomes (e.g., 6, 12, 24 months post release to the community); (3) what sources would be best to use to gather recidivism outcomes; and (4) which of the required reports would contain recidivism outcomes. The overwhelming consensus by DAs was that convictions be the measure of recidivism, especially since low-level misdemeanor arrests might not be recorded in data systems. Representatives agreed that it would be most informative to report convictions broken down by type. Because this report contains cases that have just started the pipeline from DA consideration, it is too early to have cases for a recidivism analysis. However, we anticipate that we will have enough cases for the second and final report.

### Implementation Study

The implementation assessment documents the different strategies the pilot sites are using, the development and implementation of resentencing policies and procedures, which cases are prioritized for resentencing and the referral and resentencing process, and factors that are facilitating or hindering implementation. The pilot counties are required to provide quarterly updates to RAND on any implementation challenges, delays, and steps taken to address them, as well as updates on factors and criteria used to identify cases to be considered for prosecutor-initiated resentencing. In addition, the implementation assessment includes in-depth interviews with the pilot sites to understand the planning and implementation process and the support needs of the pilot sites and to capture lessons learned. In future years of the evaluation, site visits will be conducted to the pilot counties.

### Cost Study

The legislation requires that the evaluation include a cost study to estimate the resources required to implement the pilot activities, including both new expenditures on personnel and other goods and services, so that resources can be reallocated from prior activities to the pilot activities. The data for the cost study will come from the implementation interviews and from the quarterly updates on expenditures the pilot sites are required to provide as part of the data collection template as mandated by the legislation. Since the counties are still in the early stages of hiring staff and, in some cases, are planning to use the grant funds to hire staff once they have identified their pilot needs and individuals to hire, it is premature to present any analyses of the cost data collected to date. Instead, we report in Chapter Four the findings from our interviews and implementation log summaries of what resources the counties are using, challenges encountered, and plans for hiring legal assistants and other staff.

## Road Map for This Report

This interim report documents the initial evaluation results, focusing on the first year of implementation of the California County Resentencing Pilot Program from September 1, 2021, through July 2022. Specifically, the report focuses on the first research question (implementation challenges) and the second research question (characteristics of cases identified for possible resentencing).

The following road map outlines each chapter in the report and the accompanying appendixes:

1. **Introduction** provides an overview of the California County Resentencing Pilot Program and the evaluation.
2. **California County Resentencing Pilot Program: Context** provides a short review of recent resentencing efforts in California and summarizes other relevant sentencing initiatives to provide context for the pilot program experience.
3. **Early Interim Results** summarizes the key findings from the descriptive analysis of the outcomes and other measures the legislation has identified as important to track.
4. **Qualitative Implementation Findings** summarizes the key findings from the qualitative analysis of the data from the implementation—specifically, the experiences of the counties in implementing the pilot program, resources needed, and successes and challenges—and identifies what factors may influence implementation and impacts moving forward.
5. **Conclusions and Next Steps** describes initial findings and outlines next steps for the evaluation.

In addition, Appendix A contains the 1172 legislation. Appendix B contains a detailed discussion of the evaluation design, analytic approach, and data sources for each study component. Appendix C contains supplemental tables that provide the controlling offense results discussed in Chapter Three. Appendix D contains the implementation interview instrument.

# California County Resentencing Pilot Program: Context

This chapter reviews recent resentencing efforts and summarizes other relevant sentencing initiatives in California to provide context for the pilot program experience.

## Recent Resentencing Efforts

Other resentencing efforts have been taking place prior to the initiation of the California County Resentencing Pilot Program in September 2021. The impact of the pilot program needs to be understood in the context of these recent resentencing efforts. Since the 1960s, courts and CDCR have been able to make referrals for resentencing (Ella Baker Center for Human Rights, 2022). California Penal Code Section 1170(d)(1) authorized the courts, CDCR, the Board of Parole Hearings, and local correctional administrators (for individuals in jails) to refer individuals back to the trial court for recall and resentencing to a lesser sentence. In 2018, resentencing was expanded by AB 1812 to provide additional funds to CDCR to make referrals to courts and allow the courts to recall sentences after plea agreements, as well as sentences imposed after trials. In addition, Section 1170(d)(1) was modified to allow for resentencing in the “interests of justice” and for consideration of postconviction factors, such as disciplinary actions and rehabilitation while incarcerated and time served (Prison Law Office, 2018). That same year, AB 2942 also expanded recall and resentencing by authorizing DAs and other prosecuting agencies to recommend cases to the courts (Legislative Analyst’s Office, 2020). According to the Ella Baker Center for Human Rights, only since June 2018 has CDCR been referring cases for resentencing with any frequency (Ella Baker Center for Human Rights, 2022).

In November 2021, AB 1540 was approved by Governor Gavin Newsom. This legislation added Section 1170.03, which recodified Section 1170(d)(1), provided more clarity on the process courts were to follow upon recommendations for recall from CDCR and DAs, and expanded and clarified factors courts could consider in resentencing. These changes were made to reduce delays and possible dismissals of requests because courts did not have clear guidance under Section 1170(d)(1) (California Legislative Information, 2021). SB 483 removed enhancements for prior prison terms under Penal Code 667.5(b) imposed prior to January 1, 2020, and Health and Safety Code Section 11370.2 imposed prior to January 1, 2018; the court has until December 31, 2023, to resentence eligible current inmates. Table 2.1 summarizes these recent resentencing efforts.

## Prison Downsizing Efforts

The California County Resentencing Pilot Program is occurring in the context of other reform efforts. California has a history of using various propositions and implementing legislation to reduce the size of the prison population. Table 2.2 shows key legislation and policies related to prison downsizing in California

**TABLE 2.1**  
**Select Resentencing in California**

Policy	Year	Description
AB 1812	2018	Allowed courts to consider postconviction factors (such as disciplinary records) to reduce sentences upon recommendation by CDCR or jail administrator
AB 2942	2018	Authorized DAs to recommend reductions in same process as above
AB 1540	2021	Requires court to provide counsel for the defendant when there is recommendation from CDCR, Board of Parole Hearings, or sheriff of prosecuting agency; creates presumption favoring recall when made from these sources; clarifies other procedural actions
SB 483	2021	Removes enhancements for prior prison terms under Penal Code 667.5(b) imposed prior to January 1, 2020, and HSC § 11370.2 imposed prior to January 1, 2018; eligible current inmates will be resentenced by December 2023
AB 140	2021	Establishes California County Resentencing Pilot Program to recall cases under Penal Code 1170(d)(1)/1170.01; provides funding to DA and PD offices and CBOs; requires evaluation and reporting annually until 2025. <sup>a</sup>

NOTE: HSC = Health and Safety Code.

<sup>a</sup> § 1170.01 was renumbered in June 2022 to § 1172.

over the past dozen or so years. Many of these changes have been in response to the Three Judge Panel decision in 2009 that California reduce its prison population to bring medical and mental health care into constitutional compliance.<sup>1</sup>

Before the Three Judge Panel decision, California prisons had reached a high of over 170,000 inmates in October 2006, when then-Governor Arnold Schwarzenegger declared a prison state of emergency because of overcrowded conditions, authorizing the transfer of thousands of inmates to out-of-state prisons (Warren, 2006). The situation had not improved over the next several years, prompting the Three Judge Panel ruling requiring that California reduce its prison population to 137.5 percent (or about 116,000 inmates) of total design capacity—a reduction of between 30,000 and 40,000 inmates. The panel did not specify how California was to reduce the population—it was up to the state.

SB3X 18 and SB 678 were early responses to reduce the size of the prison population.<sup>2</sup> Although estimates of the discrete impact of SB 678 were confounded by changing funding mechanisms and subsequent policy changes, a report by the Judicial Council of California showed a reduction in the percentage of individuals on probation who were returned to prison, without a negative impact on public safety (Judicial Council of California, 2021).<sup>3</sup> The largest impact by far on the prison population, however, was Public Safety Realignment (commonly referred to as AB 109), which affected three major drivers of the prison population. First, certain individuals convicted of lower-level offenses were to serve their sentences locally rather than be sent to state prison. These individuals were referred to as “non-non-nons”—nonserious, nonviolent, non-sex offenders. Second, certain individuals convicted of lower-level offenses leaving prison would no longer be placed on state parole but would instead be placed on Post Release Community Supervision, handled by probation

<sup>1</sup> *Coleman v. Schwarzenegger*, 922 F. Supp. 2d 882, E.D. Cal., 2009. *Plata v. Schwarzenegger* and *Coleman v. Schwarzenegger* were the underlying lawsuits that led to the Three Judge Panel.

<sup>2</sup> The Justice Reinvestment Initiative, spearheaded by the Pew Charitable Trusts, has worked with 30 states since 2007 to enact policies designed to reduce prison populations, save taxpayer money, and assure public safety. Many of the policies in these states are similar in concept to policies enacted in California (e.g., downgrading felonies to misdemeanors, reducing revocations to prison) (Pew Charitable Trusts, 2021).

<sup>3</sup> The state changed the formula that was used to fund counties after early implementation of the program. SB 678 was passed in 2009; Public Safety Realignment, Proposition 47, and Proposition 57 changed the criminal justice system landscape in California after SB 678, so the effects of SB 678 could not be measured separately from concomitant impacts of other legislation.

**TABLE 2.2**  
**Select Changes Impacting Sentencing in California**

Policy	Year	Description
SB3X 18	2009	Increased credit that inmates earn to reduce sentences; established nonrevocable parole so that certain lower-level parolees are ineligible for return to CDCR; reduced felony convictions by raising the dollar threshold for various theft crimes
SB 678	2009	Provided fiscal incentive to counties to reduce number of individuals with probation revocations who are sent to prison
AB 109 (Realignment)	2011	Required lower-level offenders to serve sentences locally (jail and/or jail plus community supervision) rather than in prison; lower-level offenders who are released from prison are supervised by counties (on Post Release Community Supervision) rather than by state parole; most parole violators serve revocation time locally rather than being returned to prison
Prop 36	2012	Eliminated life sentences for certain offenders with two prior serious or violent felony convictions whose most recent offenses were nonserious, nonviolent felonies; allowed offenders to apply for reduced sentences
Prop 47	2014	Reduced sentences for certain offenders convicted of nonserious and nonviolent drug and property crimes; allowed certain offenders who had been previously convicted of such crimes to apply for reduced sentences
Various court-ordered population reduction measures	2014	Increased credits certain inmates earn for maintaining good behavior; created release consideration for certain nonviolent inmates with third-strike sentences
Prop 57	2016	Expanded inmate eligibility for release consideration; increased CDCR's authority to reduce inmate sentences through credits (e.g., for completion of rehabilitation programs)
Various modifications to sentencing enhancements	2017–2019	Made changes to reduce enhancements, including eliminating the three-year enhancement for people convicted of drug offenses who had a prior drug offense; allowed judges to choose not to impose certain enhancements in cases where a firearm is used in commission of an offense; allowed judges to choose not to impose five-year enhancement for people convicted of a serious felony who had a prior serious felony conviction; generally limited one-year enhancement for individuals who had previously served a prison or jail term for a felony

NOTE: Adapted from Legislative Analyst's Office, 2020.

departments at the county level. A third prong of the legislation was that most parole violators would serve their time in local jails rather than returning to state prison to serve what had been relatively short revocation sentences. These short prison terms for revocations represented a large portion of prison admissions each year prior to Realignment. According to the Public Policy Institute of California, Realignment was successful in reducing the size of the prison population by 27,400 by September 2012, but the prison population was still at 150.5 percent of capacity and was leveling off (Lofstrom and Martin, 2015).

Proposition 47 was another attempt to reduce the prison population. It focused on reducing penalties for property and drug offenses so that certain offenses that were once felonies were reduced to misdemeanors.<sup>4</sup> Prop 47 dropped the population by almost 7,800, resulting in reaching the target reduction by January 2015 (CDCR, 2022c). Prop 57, which allowed increased credit earning by inmates for participating in rehabilitation programs, as well as parole consideration for eligible individuals (convicted of nonviolent crimes who have served the full term of their primary offense and would not pose an unreasonable risk of violence to the community), was passed by California voters in November 2016, to help the prisons stay below the Three

<sup>4</sup> We chose to include Proposition 47 in Table 2.2 as a sentencing policy rather than in Table 2.1. Prop 47 has a resentencing component for individuals to “clean up” their prior records; however, much of the focus has been on the reclassification of property and drug crimes to misdemeanors.

Judge Panel cap. CDCR estimated that Prop 57 would result in a reduction of upward of 500 inmates between July 2017 and July 2018. Estimates for the impact on the population were much smaller than Realignment and Prop 47. Additional senate bills passed between 2017 and 2019 reduced or made optional the use of certain sentencing enhancements for individuals.

The inmate population has been under the Three Judge Panel cap since 2015—over seven years. As of early June 2022, the prison population was just under 93,000, or 113.1 percent of design capacity. Recent drops in the population were due in part to the coronavirus disease 2019 (COVID-19) pandemic, when prison admissions slowed because of temporary suspension in receiving individuals from jail and expedited releases for certain offenders by CDCR (CDCR, 2022b). California remains under the Three Judge Panel order.



## Early Interim Results

This chapter documents key findings to date from descriptive analyses of the outcomes and other measures the legislation has identified as important to track. Based on the intent of the legislation, the California County Resentencing Pilot Program is expected to change certain outcomes for individuals who have been resentenced. An important part of this evaluation is to examine and track a variety of key indicators of the pilot program's resentencing process and outcomes.

The pilot evaluation measures the characteristics and outcomes for individuals considered for resentencing by the DA at each phase of the resentencing process. Quarterly, each of the nine DA offices provides case-level data to the evaluation. This process is discussed in Appendix B, along with details on the data fields contained in the quarterly reporting. More generally, the DA-provided case-level data contain information on characteristics of the reviewed individuals; offenses and sentences of the reviewed individuals; current information, such as time served and time remaining that is relevant to resentencing; and the resentencing outcomes. Complementing the data provided by the DA offices, CDCR is providing additional data on background information and sentencing, time served, time remaining, and estimated risk of recidivism (see Appendix B for additional details). The full-term pilot study will inform the extent to which individuals' earliest possible release dates or MEPDs are advanced through resentencing. Because the pilot is early in the process, this interim report focuses primarily on characteristics and outcomes at the time of initial review of cases by the pilot DA offices.

We report on 259 cases of individuals incarcerated in state prison for whom the county DA has initiated a review for resentencing during the pilot period.<sup>1</sup> Given the timing of receipt of quarterly data from the DAs and subsequent request and receipt of data from CDCR, data available for this report cover the span between September 1, 2021, and February 28, 2022 (see Appendix B for additional detail on available data and timing). Most cases were still in the early stages of the process at the end of this period. Therefore, we focus discussion of early results primarily on the DA review portion of the resentencing process.<sup>2</sup> Figure 3.1 replicates the illustration of the prosecutor-initiated review and resentencing process first presented in Figure 1.2, with the portions of the process discussed in this chapter highlighted and the remainder of the process grayed out.

Because the available data comprise only the first six months of the three-year pilot period, the information on reviewed cases reported below should be viewed as an early snapshot. Importantly, early trends in the data may change in important ways as the pilot evolves, counties bring their efforts fully to scale, review criteria evolve, and cases in the early stages of the resentencing process continue to progress. Therefore,

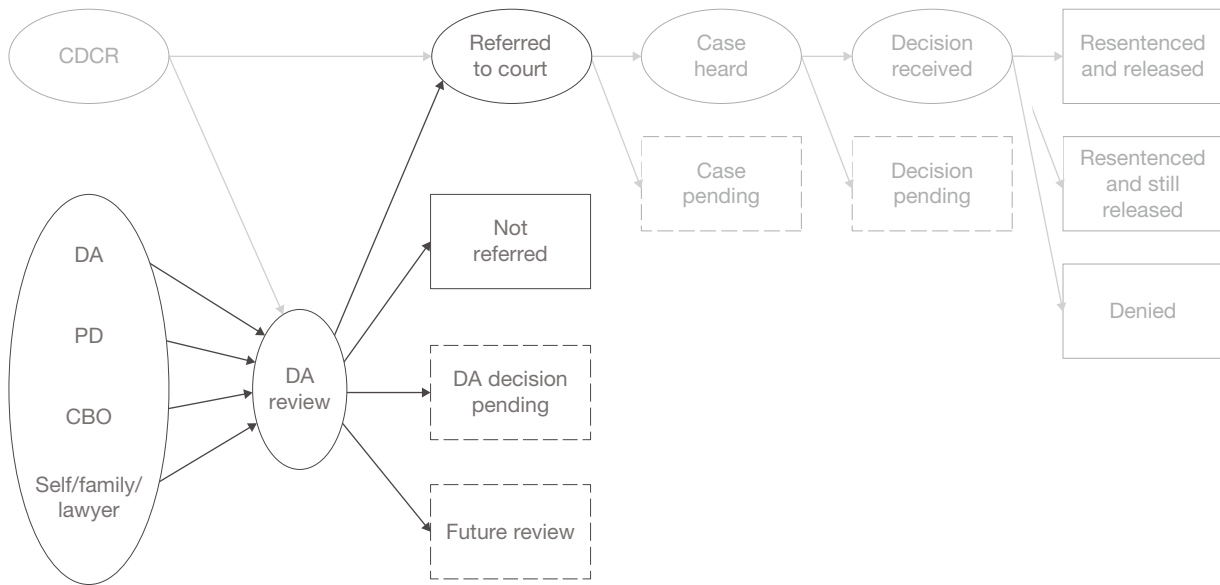
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<sup>1</sup> A minor anomaly in DA data reporting of one case resulted in CDCR not being able to match and provide data. Thus, some of the results below exclude that case, reporting on 258 cases.

<sup>2</sup> In addition to the 259 cases reported here, a single county DA office referred 97 cases of individuals incarcerated locally in county jail for resentencing in November 2021, all of whom were released that month. Additional information is needed on these items to determine whether they fall under the pilot and, if so, a full accounting of the time-related consequences of these cases.

One of the pilot counties also reported cases for which DA review began prior to the beginning of the pilot. Those cases are excluded from these analyses as they fall outside of the pilot evaluation period.

**FIGURE 3.1**  
**Portion of the Prosecutor-Initiated Review and Resentencing Process Discussed in This Report**



although we present observations as required by the predetermined structure of the pilot evaluation, we refrain from drawing any preliminary conclusions on the information reported.

## DA Resentencing Review Results

The pilot counties differ in size, resources, and size of the state prison population originating from each. Table 3.1 illustrates the state prison population from each county as of August 31, 2021, the day prior to the start of the pilot. At the start of the pilot program, individuals convicted in Los Angeles County made up over 30 percent of the state prison population while the other eight pilot counties accounted for over 20 percent of the prison population. Given the variety of prison population sizes and county DA resources, the number of case reviews initiated would naturally be expected to vary across counties.

Table 3.2 displays the referral sources for 259 cases for which a referral review was initiated by the nine pilot county DA offices. Nearly four out of five cases were identified for review internally within the DA offices. Among other sources of referral, self-identification by the incarcerated individual or identification by their family or their attorney was most likely (grouped together as “Other” in the table), followed by identification by CBO. In the first six months of the pilot, three cases were referred by the PD offices. As discussed in Chapter Four, the counties were still in the process of deciding the role of the PD offices with respect to helping to identify cases.

Tables 3.3 and 3.4 display the number of case reviews initiated by the pilot DA offices by county and by month. Larger case counts tended to occur in larger counties where staff tasked with resentencing had already been established. Some counties did not receive their funding until November 2021, and those relying on that funding to put resentencing staff in place were delayed in initiating their efforts. These delays are reflected in the number of cases each month, with over 70 percent of case reviews initiated after November 2021. Having staff in place also did not necessarily imply that new case reviews started immediately during the pilot period or were immediately at full capacity. Ongoing case reviews initiated pre-pilot (and thus not

**TABLE 3.1**  
**California State Prison Population Originating from Each of the Nine Pilot Counties as of August 31, 2021**

	Contra Costa	Humboldt	Los Angeles	Merced	Riverside	Santa Clara	San Diego	San Francisco	Yolo
State prison population	1,585	345	30,009	879	8,010	3,350	6,530	573	486
Percentage of prison population	1.6	0.3	30.2	0.9	8.1	3.4	6.6	0.6	0.5

SOURCE: CDCR, 2022d.

**TABLE 3.2**  
**Source of Case Identification for DA Resentencing Reviews: September 1, 2021, Through February 28, 2022**

	Percentage DA	Percentage PD	Percentage CBO	Percentage Other	Total Cases
Cases considered by DA	78.4	1.2	6.9	13.5	259

SOURCE: Data provided by county DA offices, March and April 2022.

NOTE: "Other" includes self-identification by the incarcerated individual or identification by their family or their attorney.

**TABLE 3.3**  
**Number of DA Reviews by County: September 1, 2021, Through February 28, 2022**

	Los Angeles	Riverside	San Diego	San Francisco	Yolo	All Other Counties	Total Cases
Number of case reviews initiated	71	27	29	63	39	30	259

SOURCE: Data provided by county DA offices, March and April 2022.

NOTE: "All Other Counties" includes Contra Costa, Humboldt, Merced, and Santa Clara. These counties are grouped together because of the small number of cases initiated within each during the reporting period.

**TABLE 3.4**  
**Number of DA Reviews by Month: September 1, 2021, Through February 28, 2022**

	September 2021	October 2021	November 2021	December 2021	January 2022	February 2022	Total Cases
Number of case reviews initiated	37	14	21	60	76	51	259

SOURCE: Data provided by county DA offices, March and April 2022.

included in this reporting) may still have been occupying staff already in place. For example, Los Angeles initiated a large batch of reviews pre-pilot in April 2021, and it was not until November 2021 that the county's first reviews under the pilot period commenced at scale. In addition, where staff were already in place pre-pilot, funding from the pilot may still have been relied upon to build capacity with additional staff.

Among the 259 case reviews initiated during the reporting period, the pilot county DA offices had yet to make a determination on 163 (63 percent). Table 3.5 displays the individual case outcomes. Through the end of February 2022, only eight cases had been referred to the court with a motion to resentence the individual, while the DA offices had decided not to proceed with 88 cases (34 percent). Given the high percentage of

TABLE 3.5

**Outcomes of DA-Initiated Resentencing Reviews: September 1, 2021, Through February 28, 2022**

	Referred to Court for Resentencing	Not Referred for Resentencing	Decision Pending	Designated for Future Review	Total Cases
Number of cases	8	88	163	0	259

SOURCE: Data provided by county DA offices, March and April 2022.

pending cases, the ratio of cases referred to not referred may not be indicative of final review outcomes. In particular, some cases for which the DA review outcome is to decline to proceed may be identified early in the review process. That is, the DA's staff may pull a batch of cases that fit general parameters that they would like to review for potential resentencing. As individual cases within the batch are initially screened, there may be some cases that do not meet eligibility criteria or that at first review have issues (e.g., Rules Violation Reports [RVRs] within the past three years) that eliminate the individuals from consideration. Beyond that, decisions to dismiss or proceed take some time. For example, as discussed in Chapter Four, it can take quite a bit of time for the DA (and PD) office to obtain the central file for an individual to review, to obtain other supporting documents, and so forth. Thus, the DA review time captured in Table 3.5 likely contains such early dismissals while the remaining DA reviews are still pending; this would inflate the proportion of dismissals relative to referrals to resentence in the early preliminary data. Whether this is the case will be the focus of future reporting as the pilot proceeds. In the interim, we focus the remainder of this chapter on the characteristics of the individuals considered for resentencing and the circumstances of their cases.

## Characteristics of Reviewed Individuals

Individuals reviewed by the pilot DAs for resentencing were overwhelmingly male. As reported in the county DA data, only three of 259 individuals were female.<sup>3</sup> Table 3.6 displays the distribution of race and ethnicity of the individuals reviewed by the pilot DA offices over the reporting period. Over 43 percent of the people whose cases were reviewed were Black incarcerated individuals, while over 26 percent were Hispanic. As of the beginning of the pilot, the state prison population, of which over 50 percent originates from the nine pilot counties, was 28.6 percent Black and 44.9 percent Hispanic (CDCR, 2022d). This early pattern could be a consequence of factors used to identify cases for eligibility for resentencing independent of race and ethnicity; we examine the factors used by the DAs to identify cases in the next chapter.

Table 3.7 displays the ages of individuals reviewed by the pilot DA offices for resentencing at the time they were committed to prison. Just under 13 percent of the individuals reviewed for resentencing were minors at the time they started their prison sentences. Just over 13 percent of reviewed individuals were over 50 when committed, and none were over 65; these older individuals were over 19 percent of those who were not referred for resentencing. Whether this pattern for the youngest and oldest committed individuals continues as more pending cases are decided by the DAs and additional cases are identified and considered by the pilot DAs will be a subject of future study as the pilot continues.

Individuals' ages when their cases were first considered by the pilot DAs are displayed in Table 3.8. Nearly 70 percent of reviewed individuals were over 50 when the DA review of their sentencing began. At least in the early stages of the pilot, a clear preference to consider older individuals for resentencing is emerging.

<sup>3</sup> Although a nonbinary gender option was available, no cases were indicated as such.

**TABLE 3.6****Distribution of Race and Ethnicity Among Cases Reviewed by Pilot DAs for Possible Resentencing Referrals: September 1, 2021, Through February 28, 2022**

	Percentage Black	Percentage Hispanic	Percentage White	Percentage Other	Total Cases
Cases considered by DA	43.6	26.6	22.4	7.3	259

SOURCE: Data provided by CDCR, June 2022.

NOTE: All individuals with Hispanic ethnicity are included in the "Hispanic" category. "White" is non-Hispanic White. "Black" is non-Hispanic Black. "Other" is non-Hispanic other. Percentages might not sum to 100 because of rounding.

**TABLE 3.7****Age at Time of Commitment Among Cases Considered by a County DA for Resentencing: September 1, 2021, Through February 28, 2022**

	Percentage 15 to 17	Percentage 18 to 35	Percentage 36 to 50	Percentage 51 to 65	Total Cases
Cases considered by DA	12.7	35.1	38.6	13.5	259
By DA review outcome					
Pending or referred for resentencing	9.9	39.8	39.8	10.5	171
Not referred for resentencing	18.2	26.1	36.4	19.3	88

SOURCE: Data provided by county DA offices, March and April 2022, and CDCR, June 2022.

NOTE: Percentages might not sum to 100 because of rounding.

**TABLE 3.8****Age at Time of DA Review for Resentencing: September 1, 2021, Through February 28, 2022**

	Percentage 21 to 35	Percentage 36 to 50	Percentage 51 to 65	Percentage over 65	Total Cases
Cases considered by DA	14.7	15.9	51.6	17.8	258
By DA review outcome					
Pending or referred for resentencing	13.5	19.4	57.1	10.0	170
Not referred for resentencing	17.0	9.1	40.9	33.0	88

SOURCE: Author's calculations from data provided by county DA offices, March and April 2022, and CDCR, June 2022.

NOTE: Age calculations are accurate to within one year. Percentages might not sum to 100 because of rounding.

## Offenses and Sentences of Reviewed Individuals

Table 3.9 displays the types of controlling offenses for which the individuals considered by the DAs for resentencing were convicted, grouped into the four major categories typically reported by CDCR. A more detailed table is included in Appendix B that breaks these offenses out into greater detail among 25 groupings. Over 60 percent of the cases with reviews initiated during the reporting period were for crimes against persons. This grouping includes offenses such as murder (first and second degree) and manslaughter, as well as rapes, robberies, and assaults (see Appendix B for a full listing).

The types of original sentences received by individuals considered by pilot DAs for resentencing are reported in Table 3.10. These include fixed-term determinate sentences, with second-strike convictions

**TABLE 3.9**  
**Category of Controlling Offense Among Cases Considered by Pilot DAs for Resentencing:**  
**September 1, 2021, Through February 28, 2022**

	Percentage Crimes Against Persons	Percentage Property Crimes	Percentage Drug Crimes	Percentage Other Crimes	Total Cases
Cases considered by DA	61.8	19.3	7.3	11.6	259
By DA review outcome					
Pending or referred for resentencing	66.1	16.4	7.0	10.5	171
Not referred for resentencing	53.4	25.0	8.0	13.6	88

SOURCE: Data provided by CDCR, June 2022.

NOTE: "Other crimes" consists of arson, driving under the influence, escape, possession of a weapon, and all remaining offenses not otherwise categorized. Percentages might not sum to 100 because of rounding.

**TABLE 3.10**  
**Type of Original Sentence Among Cases Considered by a County DA for Resentencing:**  
**September 1, 2021, Through February 28, 2022**

	Percentage Determinate	Percentage 2nd Strike	Percentage 3rd Strike	Percentage Life with Parole	Percentage Life Without Parole	Total Cases
Cases considered by DA	15.8	12.4	45.2	20.8	5.8	259
By DA review outcome						
Pending or referred for resentencing	14.0	15.8	43.3	22.2	4.7	171
Not referred for resentencing	19.3	5.7	48.9	18.2	8.0	88

SOURCE: Data provided by CDCR, June 2022.

NOTE: Second-strike cases carry determinate sentences, while third-strike cases carry indeterminate sentences. Percentages might not sum to 100 because of rounding.

reported separately from all other determinate sentences, and sentences of indeterminate length, including life without parole, life with parole, and third-strike convictions, the latter of which carries a minimum term of 25 years to life. Nearly half of all cases reviewed over the first six months of the pilot were third-strike convictions.<sup>4</sup> The second most common category of sentence is life with the possibility of parole, with just over 20 percent of cases. These two sentence types tend to capture longer sentences and thus have a higher potential for including older incarcerated individuals or individuals who have already served a relative larger number of years.

Table 3.11 displays the minimum sentence length for cases with indeterminate sentences, and Table 3.12 displays the full sentence length for cases with determinate sentences. Nearly 60 percent of reviewed cases with indeterminate sentence length had a minimum sentence of 30 years or more (cases with sentences of life

<sup>4</sup> As shown in Table 1.2, only one county explicitly had in its inclusion criteria "served a third-strike sentence."

**TABLE 3.11**  
**Minimum Sentence Length Among Cases with Indeterminate Sentences Considered by a County DA for Resentencing: September 1, 2021, Through February 28, 2022**

	Percentage 10 or Fewer Years	Percentage 10+ to 20 Years	Percentage 20+ to 30 Years	Percentage Over 30 Years	Total Cases
Cases considered by DA	1.6	6.5	32.8	59.1	186
By DA review outcome					
Pending or referred for resentencing	1.7	5.8	28.3	64.2	120
Not referred for resentencing	1.5	7.6	40.9	50.0	66

SOURCE: Data provided by CDCR, June 2022.

NOTE: Cases with sentences of life without parole are contained in the "Over 30 Years" category. Percentages might not sum to 100 because of rounding.

**TABLE 3.12**  
**Sentence Length Among Cases with Determinate Sentences Considered by a County DA for Resentencing: September 1, 2021, Through February 28, 2022**

	Percentage 10 or Fewer Years	Percentage 10+ to 20 Years	Percentage 20+ to 30 Years	Percentage Over 30 Years	Total Cases
Cases considered by DA	2.7	41.1	35.6	20.5	73
By DA review outcome					
Pending or referred for resentencing	3.9	43.1	39.2	13.7	51
Not referred for resentencing	0.0	36.4	27.3	36.4	22

SOURCE: Data provided by CDCR, June 2022.

NOTE: Percentages might not sum to 100 because of rounding.

without parole are included in this category). One-third of all reviewed cases with indeterminate sentence length had a minimum length of over 20 years up to 30 years. Determinate sentence length was most likely to be either over ten to 20 years or over 20 to 30 years.

CDCR provided information on sentence enhancements for each of the individuals for which DA review was initiated during the reporting period. As displayed in Table 3.13, just under 75 percent of reviewed cases had at least one sentence enhancement attached to their sentence, and 36 percent of cases had at least three enhancements. Cases with the greatest number of enhancements (five or more) were more likely to encounter a DA decision not to proceed with resentencing than cases with one or two enhancements or cases with three or four enhancements. The two most common types of enhancements were nickel enhancements (five years for a subsequent conviction after a serious or violent felony), which were present for 36 percent of all cases, and firearms enhancements, which were present in 27 percent of all cases. Table 3.14 shows the total years added to the sentence for enhancements. Among cases with enhancements present, the most common time added is between five and ten years, although a wide variety of enhancement time totals were observed, from as low as one year to over 20 years.

**TABLE 3.13**  
**Number of Original Sentence Enhancements Among Cases Considered by a County DA for Resentencing: September 1, 2021, Through February 28, 2022**

	Percentage 0 Enhancements	Percentage 1 to 2 Enhancements	Percentage 3 to 4 Enhancements	Percentage 5 or more Enhancements	Total Cases
Cases considered by DA	26.4	37.6	26.4	9.7	258
By DA review outcome					
Pending or referred for resentencing	23.5	43.5	27.1	5.9	170
Not referred for resentencing	31.8	26.1	25.0	17.0	88

SOURCE: Data provided by CDCR, June 2022.

NOTE: Percentages might not sum to 100 because of rounding.

**TABLE 3.14**  
**Years Added to Original Sentence Length for Enhancements Among Cases Considered by a County DA for Resentencing: September 1, 2021, Through February 28, 2022**

	Percentage 0 Years	Percentage 1 to 5 Years	Percentage 5+ to 10 Years	Percentage 10+ to 15 Years	Percentage 15+ to 20 Years	Percentage 20+ Years	Total Cases
Cases considered by DA	26.4	16.3	23.6	14.7	7.4	11.6	258
By DA review outcome							
Pending or referred for resentencing	23.5	14.1	27.1	18.2	6.5	10.6	170
Not referred for resentencing	31.8	20.5	17.0	8.0	9.1	13.6	88

SOURCE: Data provided by CDCR, June 2022.

NOTE: Percentages might not sum to 100 because of rounding.

## Current Information Relevant to Resentencing

Complementing the original sentencing information, CDCR also provided data on the time served and time remaining for each individual reviewed by the pilot DA offices for resentencing. As seen in Table 3.15, time served among the reviewed individuals varies from incarcerations of ten or fewer years up to over 25 years served. Time remaining is not a simple difference calculation between sentence length and time served. Individuals may earn credits toward their sentences while incarcerated, thus shortening their time to release or time to parole eligibility. Table 3.16 indicates the years remaining among reviewed individuals with indeterminate sentences until they reach their MEPDs. As parole is not necessarily granted as soon as eligibility is reached, some reviewed individuals with indeterminate sentences were beyond their MEPDs at the time of review; this includes nine percent of all reviewed individuals with indeterminate sentences who were more than five years beyond their MEPDs, and another 20 percent of reviewed indeterminate sentence cases that were within five years beyond their MEPDs. Consistent with the distribution of time served, no one cat-



egory of time remaining to MEPD stands out with highest frequency relative to the others. A similar, mostly uniform, pattern can be seen for time remaining among reviewed individuals with determinate sentences (Table 3.17), although having over five and up to ten years remaining presents with a relatively higher frequency of 30 percent of all reviewed cases with determinate sentences.

In addition to time served and time remaining, Table 3.18 reports the CSRA risk group (Turner, Hess, and Jannetta, 2009) at the time that the DA review commenced as an indicator of the risk of reconviction within three years of release. Over 75 percent of the individuals reviewed were categorized as low risk at that time, with another 20 percent in the moderate-risk category. As of the end of the reporting period, no cases from any of the three high-risk groups had been referred for resentencing.

**TABLE 3.15**  
**Years Served by Individuals Considered by a County DA for Resentencing: September 1, 2021, Through February 28, 2022**

	Percentage 10 or Fewer Years Served	Percentage 10+ to 15 Years Served	Percentage 15+ to 20 Years Served	Percentage 20+ to 25 Years Served	Percentage Over 25 Years Served	Total Cases
Cases considered by DA	14.7	24.4	19.0	25.2	16.7	258
By DA review outcome						
Pending or referred for resentencing	17.1	24.7	19.4	25.3	13.5	170
Not referred for resentencing	10.2	23.9	18.2	25.0	22.7	88

SOURCE: Data provided by CDCR, June 2022.

NOTE: Percentages might not sum to 100 because of rounding.

**TABLE 3.16**  
**Minimum Years Remaining for Individuals with Indeterminate Sentences Considered by a County DA for Resentencing: September 1, 2021, Through February 28, 2022**

	Percentage Over 5 Years Past MEPD	Percentage 0 to 5 Years Past MEPD	Percentage 0+ to 5 Years Until MEPD	Percentage 5+ to 10 Years Until MEPD	Percentage 10+ to 20 Years Until MEPD	Percentage Over 20 Years Until MEPD	Total Cases
Cases considered by DA	8.8	20.0	20.0	15.3	16.5	19.4	170
By DA review outcome							
Pending or referred for resentencing	9.0	15.3	19.8	14.4	21.6	19.8	111
Not referred for resentencing	8.5	28.8	20.3	16.9	6.8	18.6	59

SOURCE: Data provided by CDCR, June 2022.

PERCENTAGES might not sum to 100 because of rounding.

**TABLE 3.17**  
**Years Remaining for Individuals with Determinate Sentences Considered by a County DA for Resentencing: September 1, 2021, Through February 28, 2022**

	Percentage 1 Year or Less Remaining	Percentage 1+ to 3 Years Remaining	Percentage 3+ to 5 Years Remaining	Percentage 5+ to 10 Years Remaining	Percentage Over 10 Years Remaining	Total Cases
Cases considered by DA	15.1	23.3	21.9	30.1	9.6	73
By DA review outcome						
Pending or referred for resentencing	17.6	25.5	23.5	25.5	7.8	51
Not referred for resentencing	9.1	18.2	18.2	40.9	13.6	22

SOURCE: Data provided by CDCR, June 2022.

NOTE: Percentages might not sum to 100 because of rounding.

**TABLE 3.18**  
**CSRA Scores of Individuals Considered by a County DA for Resentencing: September 1, 2021, Through February 28, 2022**

	Percentage Low Risk	Percentage Moderate Risk	Percentage High Risk, Drugs	Percentage High Risk, Property	Percentage High Risk, Violent	Total Cases
All cases considered by DA	75.8	19.5	0.8	0.4	3.5	256
By DA review outcome						
Pending or referred for resentencing	75.1	19.5	1.2	0.0	4.1	169
Not referred for resentencing	77.0	19.5	0.0	1.1	2.3	87

SOURCE: Data provided by CDCR, June 2022.

NOTE: Percentages might not sum to 100 because of rounding.

## Future Considerations

The summaries presented in this chapter provide an initial snapshot of the cases considered by the pilot DA offices over the first six months of the pilot. Aggregated across the nine pilot counties, the initial early-pilot cases reviewed by the DA offices for potential resentencing tended to involve individuals who were over 50 at the time of review. The controlling offense most often involved a crime against persons. Nearly half of the cases reviewed involved third-strike sentences, and nearly three-fourths of reviewed cases had a sentence enhancement. Reviews of individuals with a high risk of reconviction within three years of release were rare, and over 75 percent of cases had a CSRA score in the lowest risk category.

As the pending cases advance, additional cases are identified for review, and case identification criteria evolve, it is possible that the interim values portrayed in the initial tabular descriptions in this chapter may significantly change over the course of the pilot. Thus, we caution against drawing any concrete conclusions about

the pilot from this initial set of data beyond understanding the initial scale-up period. As cases progress and the DAs' efforts expand to full scale, we will be able to track the progression of cases beyond initial DA review, through the court hearing stages and to final resentencing outcomes, as illustrated in Figure 1.2, enabling an understanding of how the pilot efforts have impacted the incarcerated population, including resentencing outcomes and the impact of resentencing on a reduction in time individuals are required to serve.

Future reporting on the pilot will contain information on recidivism for individuals who are resentenced and released. We will obtain automated criminal history records from the California Department of Justice (DOJ) and record convictions at one-year post return to the community. We will break down convictions into any conviction, felony, and misdemeanor, as well as serious and violent felonies.



## Qualitative Implementation Findings

This chapter summarizes the key findings from the qualitative analysis of the pilot counties' Year 1 experiences in implementing the California County Resentencing Pilot Program. Here, we focus on the early experiences of the counties in implementing the pilot program, resources needed, and successes and challenges and identify what factors may influence implementation of the California County Resentencing Pilot Program and impacts moving forward. We draw on interview data and the implementation logs for this assessment (see Appendix B).

### Factors Taken into Account in Identifying Cases as Candidates for Resentencing Consideration

In Chapter One we summarized the inclusion and exclusion criteria that the nine pilot counties are initially using to identify cases as possible candidates for resentencing consideration. In addition, the interviews with the county DA and PD offices revealed that there were other factors that also were taken into consideration, as discussed below.

#### Counties Emphasized that a Strong Reentry Plan Is a Key Consideration

In addition to the inclusion criteria discussed in Chapter One, a critical factor that the DAs and PDs emphasized was the importance of having a strong reentry plan for a resentenced individual who will be released from prison, especially for those who have served long sentences. They noted that the courts wanted evidence of a well-developed reentry plan, recognizing that for a resentenced individual to succeed it was imperative that they have the reentry supports in place to help them do so. A weak reentry plan, some noted, could make the difference between a judge being willing to resentence an individual or not. As one interviewee said, "If you present a weak reentry program and weak risk factors, then it is going to be a no. We don't want to present a case where the judge is going to reject it based on this."

It varied whom the counties felt were responsible for ensuring the development of a strong reentry plan. For example, some PDs emphasized that they devoted a lot of resources to those individuals who needed a lot of help in developing a robust reentry plan and a strong application for resentencing consideration. They also noted that it was time intensive to do so but felt it was important to help an individual put together a compelling application as to why they should be resentenced and their likelihood of success. Some interviewees noted that FTP was helpful in working with some individuals to develop a robust application and reentry plan. Still, one county DA felt that it is the job of the individual to develop a strong application packet, including a reentry plan. This interviewee did not feel that it was necessarily the role of the DA to provide individuals with a lot of support in doing so, noting that their county has limited reentry resources and that they were struggling with identifying CBOs to contract with for reentry services.

## Other Criteria for Resentencing Consideration

In California, parole eligibility depends primarily on (1) what type of sentence the inmate received and (2) how “Good Conduct Credit (GCC)” will be applied to that sentence to help incentivize participation in rehabilitative and educational opportunities. With few exceptions, inmates are entitled to earn GCC while in prison (CDCR, undated-c). In calculating an individual’s earliest possible release date or MEPD, CDCR factors in the good conduct and program credits an individual may have already earned.<sup>1</sup>

The pilot counties recognized that for individuals who have served long sentences, when they are released from prison, they might not be placed on parole. Although one interviewee acknowledged that it may seem counterintuitive, at least two counties plan to request that individuals being considered for resentencing agree to waive any excess credits they may have to increase the likelihood that when CDCR does its recalculation of how much time an individual has left to serve, the individual is more likely to be placed on parole upon release from prison. The reason for this is that these DAs emphasized the importance of individuals having access to reentry resources (e.g., transitional housing) available primarily via parole. These county DAs recognize that the court has no jurisdiction over what CDCR’s Division of Adult Parole Operations (DAPO) decides, but their hope is that if excess credits are waived, resentenced individuals who are being released will be more likely to spend time on parole, which would facilitate their access to reentry services. One interviewee commented,

I think no matter who the person is and how wonderful they’ve done in custody, there’s just a transitional period that it’s really important to go into a residential program. . . . If you’re not on parole, you’re not eligible for the reentry services that parole offers.

Another interviewee said,

The thing is, these people have been in prison for a long time, twenty-plus years in some cases. So, they’re not necessarily getting the same programming as people that are in the front of the line for release. Yet what we do by prosecutor-initiated resentencing is we are putting them at the front of the line. Once CDCR receives that abstract of judgment, they’re basically walked out the door within five days. In my opinion, we are handicapping these people; we are depriving them of some of the preparation that goes with reentry planning and being on parole.

## Current Status of Implementation of the Pilot Program

To conduct the work of resentencing efficiently, counties need access to resources (e.g., staff, funding, data) and must develop processes and systems to support the effort. Counties have a fair amount of flexibility regarding how they implement the pilot program. Policies and procedures will also vary from county to county because of the different priorities of each county. Because of this, individual counties might not engage in all of the same activities, but there are some activities that most or all counties will engage in. Table 4.1 reflects these activities and provides some insight into the implementation progress made across the counties.

The individual county DA offices do not have data systems that would allow them to conduct a comprehensive search to identify all individuals in state prison from their county who fit the county’s current parameters for review and possible resentencing. Additionally, the counties do not have records of the expe-

<sup>1</sup> For an overview of recent changes by CDCR to GCCs, see CDCR, 2021.

periences of individuals while incarcerated. Thus, the counties have set up data sharing agreements (DSAs) with CDCR so that each may request the data fields from CDCR that the county deems necessary. The set of data fields provided to each county DA office is unique to that office's data use agreement and data requests. General types of person-level information that could be provided by CDCR include information regarding current and past state prison incarceration; demographics; experiences while incarcerated, including programming, credits and certifications earned, and rule violations; and certain (nondiagnostic) assessment/classification information.

Each of the nine counties has been receiving CDCR case-level data and has engaged in a review of the data at some level. This important aspect of the pilot program allows the DA offices to identify cases to consider based on their selected criteria. To review this data, identify cases, and assemble information packets for cases of interest, six counties indicated that they have hired staff, such as law clerks, paralegals, and new attorneys, specifically to focus on resentencing work.

Seven of the nine counties indicated that they are actively collaborating with other organizations, such as FTP or university-based law clinics, to identify cases. PD offices have also been collaborating with the DA offices in six of the counties. The PD office is often involved in referring cases for consideration, reaching out to resentencing candidates and helping them complete any required applications and waivers, and identifying reentry support services. The level of PD office involvement, though, varies across the counties; some PD offices meet regularly with the DA office, and others meet rarely. Counties with a history of engaging in resentencing work and DA/PD office collaboration tend to be further along in their implementation of the pilot program.

Having a dedicated court to hear resentencing cases may allow DA offices and judges opportunities to streamline the resentencing process. Currently, only one county has a court designated specifically to hear resentencing cases. With this arrangement, the assigned court will hear all resentencing cases unless the original sentencing judge is still actively presiding over a court, in which case that judge will receive the resentencing petition. Counties are also working on putting in place supports for resented individuals who are or will be released. As part of the grant funding, counties received funds to be used to contract with a CBO to help inmates prepare for release or to provide support after the release. More than half of the pilot counties are in the process of identifying and contracting with a CBO for this purpose, but none of the counties have yet entered into such an arrangement.

**TABLE 4.1**  
**Common Implementation Activities Engaged in by Counties**

Implementation Activity	County									Count
	A	B	C	D	E	F	G	H	I	
Hiring additional staff	✓	✓	✓		✓	✓			✓	6
Receiving data from CDCR	✓	✓	✓	✓	✓	✓	✓	✓	✓	9
Collaborating on case identification	✓		✓	✓	✓	✓	✓	✓		7
Collaborating with PD office	✓	✓	✓		✓			✓	✓	6
Actively seeking CBO	✓	✓			✓			✓	✓	5
Actively working with CBO										0
Policies and procedures on website	✓		✓		✓	✓	✓	✓	✓	7
Dedicated court assignment					✓					1

NOTE: For confidentiality purposes, we use letters to denote the individual pilot counties.

At this point, we do not have a full account of the written resentencing policies and procedures from each of the DA offices. However, all but two counties have some description of their resentencing policies and procedures, along with any applications, available on the DA office website. Several offices have indicated that their criteria and policies are still in development, and we anticipate that they will become more concrete as the programs mature.

## Organization of Offices

Eight of the DA offices have a postconviction unit that provides dedicated attorneys to work on these pilot program cases. Attorneys in these units are also working on other resentencing cases outside of the pilot. The same situation is true for the PD offices—some of the counties have dedicated attorneys or are in the process of hiring attorneys to work specifically on these cases.

## Resentencing Processes

### Identification and Referrals

The DA generally takes the lead in identifying cases that meet their county's eligibility criteria and determining possible candidates for resentencing consideration. Specifically, the pilot counties obtain from CDCR a list of all individuals incarcerated within the county. The DA office then analyzes the data to identify individuals who fall within their tier of cases for review.

The pilot counties vary as to whether they will accept referrals for cases to be considered from a single source (e.g., the PD or cases that the DA has identified) or from multiple sources, such as family members, CBOs, or attorneys. Several counties discussed how they had received numerous unsolicited requests to consider cases that did not meet their eligibility criteria. For this reason, they decided to limit what sources of referral they would accept, and it spurred them to post online their eligibility criteria and application forms. Multiple counties discussed the need to be as clear as possible about eligibility criteria because they did not want to get anyone's hopes up. The PD offices in particular stressed the need to be as transparent as possible so that they could have discussions about eligibility with their clients. One county discussed how private attorneys appeared to be soliciting money from incarcerated individuals to prepare their resentencing requests which prompted the DA office to note in its list of frequently asked questions (FAQs) that it is not considering recommendations for resentencing by outside counsel. It also made clear that a lawyer cannot initiate or accelerate the review process for an individual case and that, once a case is identified for resentencing consideration, the DA office will work with the PD office or nonprofit organizations to ensure that every person recommended for resentencing has access to free legal services.

One county indicated that it was still working out the procedures for obtaining CDCR data to identify potential cases for consideration. Meanwhile, as of May 2022, it had received about eight to ten referrals from FTP and was considering three of those cases as possible resentencing candidates. Another county indicated that it takes recommendations from the PD as well and would consider external applications from individuals who wanted to apply. Because many inmates do not have access to the internet, the county also mails these individuals a copy of the application form to fill out.

As discussed further in the "Implementation Challenges" section, in addition to the prosecutor-initiated resentencing cases, CDCR refers incarcerated individuals to the courts to be considered for resentencing. In some instances, CDCR may refer a case that the DA also has referred to the courts for consideration; in other instances, CDCR may refer a case that the DA decided not to refer or, after review, determined did not meet eligibility criteria.



## Case Review

The DA offices in seven of the nine counties have posted information on their websites with respect to the resentencing guidelines, an application form, and/or FAQs to provide guidance to individuals who would like to be considered for resentencing.

When a case has been identified as eligible for resentencing consideration, the DA will work with the PD office or last known counsel to contact the incarcerated individual and to obtain additional information about their case. The DA or PD will also request that the individual sign a waiver for release of their CDCR offender central file (C-file) so that their prison records can be obtained to inform the review of their case.<sup>2</sup> In addition, the DA may work with the PD or nonprofit organizations to ensure that the individual has access to free legal services to help them navigate the application process.

In addition to the eligibility criteria, other factors that inform the review process are evidence of in-prison rehabilitation; disciplinary history; reentry plans; evidence that reflects whether age, time served, or diminished physical condition, if any, have reduced the risk for future violence; and evidence that reflects that circumstances have changed since the original sentencing so that continued incarceration is no longer in the interest of justice (Los Angeles County District Attorney's Office, undated). As part of putting together the application or packet of information for the court's consideration, the DA or PD will attempt to reach out to the victim(s) as required under Marsy's law to notify them about the potential for a resentencing and to give them a chance to voice their own opinion if they wish to do so.

Because of resource issues, one DA office has partnered with a law school clinic to do the case reviews, which allows the law students to complete a full, in-depth review of the C-files, under supervision from the law professor. The students make presentations to the DA at the end of the semester. The DA office reviews the information and makes the final determination. The DA office has also made an effort to have the students get certified so that they can argue the motion under supervision, giving them the opportunity to follow through and do the oral advocacy.

## Final Decision

All but one of the counties have established resentencing units or committees to handle the pilot program cases or are using existing units, such as a conviction and sentencing review unit. One of the pilot counties does not have a specific unit, but instead has tasked attorneys and legal assistants within their DA and PD offices to handle these cases. These units and attorneys are tasked with reviewing the CDCR data to identify individuals who meet their county's eligibility criteria, working with the PD or outside counsel to develop the packets for review, determining which cases to recommend for resentencing, and then preparing and filing the resentencing requests to be sent to the courts for consideration.

When the DA files a resentencing request, a court date may be set to hear evidence and arguments on whether to reduce an individual's sentence. The packet of information is presented to the judge. In some instances, the judge will request additional information, such as evidence that the victim(s) have been notified and their input obtained, additional information regarding the rehabilitation programming an individual has participated in, or information about the reentry plan. In other instances, the judge may be unfamiliar with the resentencing pilot program and request more information to understand the legislation and intent. In addition, the incarcerated individuals and/or their legal representatives can present evidence as to why continued incarceration is no longer in the interest of justice, including evidence of rehabilitation and

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<sup>2</sup> The C-file is the master file maintained by CDCR containing reports, evaluations, and correspondence regarding an individual in the custody of CDCR. The C-file includes information received from courts, law enforcement, probation officers, and other relevant agencies. It also contains information regarding the classification, treatment, employment, training, and discipline of each prisoner (CDCR, 2022a).

adequate reentry support. Although the DA is authorized to request and recommend resentencing of a case, the judge makes the final decision as to whether to grant or deny such a request.

Some of the pilot county DAs have asked the courts to designate a specific court or judge to handle the resentencing cases. For example, in one pilot county, the presiding judge over the criminal division decided that the veterans' court and judge would be responsible for handling the prosecutor-initiated resentencing cases. Per the DA, this meant that only one judge had to be oriented to the resentencing pilot program, and it also helps ensure uniform treatment of these cases. In another county, the original plan was to send these cases to the original trial court or sentencing court; however, for many of the cases, it has been many years since the sentencing, and the judge is no longer serving or on the bench. Instead, the presiding judge was open to assigning a specific court for the prosecutor-initiated resentencing cases. However, the judge felt there was not a large enough volume of resentencing cases being filed by the DA office to warrant doing so, and these cases are sent to different courts within the county.

For those individuals who submitted an application for consideration but did not meet the eligibility criteria, the DA will send them a letter stating that they did not qualify for the program and, therefore, their application was denied. For those individuals that the DA determines are good candidates for resentencing but who did not have a strong enough application (e.g., their reentry plan was weak, they had an RVR within the past three years), some DAs will let an individual know what the issues are and that if they address those deficits, then the DA will reconsider them in a year. For other DAs, the appeals process may be more informal—if an individual is notified that they are not eligible for resentencing, they can appeal to the head of the resentencing unit.

## Implementation Challenges

### Collaboration Between DA and PD Offices

According to the Section 1172 legislation, participants in the pilot program are to include a county DA office and a county PD office and may include a CBO in each county pilot site. The legislation directed that participating DA offices do the following:

1. Develop and implement a written policy that, at minimum, outlines the factors, criteria, and processes that shall be used to identify, investigate, and recommend individuals for recall and resentencing. The district attorney's office also may take into account any input provided by the participating public defender's office or a qualified contracted community-based organization in developing this policy.
2. Identify, investigate, and recommend the recall and resentencing of incarcerated persons consistent with its written policy.
3. Direct all funding provided for the pilot to be used for the purposes of resentencing individuals pursuant to the pilot, including, but not limited to, ensuring adequate staffing of deputy district attorneys, paralegals, and data analysts who will coordinate obtaining records and case files, support data entry, assist in the preparation and filing of pleadings, coordinate with victim services, and any other tasks required to complete the processing of resentencing petitions and to comply with the requirements of the pilot. In addition, a participating district attorney's office may contract with a qualifying community-based organization with experience in working with currently or formerly incarcerated individuals and with expertise in the areas summarized below. (Section 1172)

In addition, the Section 1172 legislation directed that participating PD offices support

the resentencing of individuals pursuant to the pilot, including, but not limited to, ensuring adequate staffing of deputy public defenders and other support staff to represent incarcerated persons under consider-

ation for resentencing, identifying and recommending incarcerated persons to the district attorney's office for resentencing consideration, and developing reentry and release plans. A participating public defenders' office also may provide input to the county district attorney's office regarding the factors, criteria, and processes to be used by the DA. (Section 1172)

So, although the pilot program is prosecutor-initiated resentencing, the intent of the legislation was that the participating DA and PD offices would work collaboratively on this initiative as summarized above. Overall, these two agencies in each of the pilot counties are trying to collaborate and set up a protocol to work together. The level of collaboration, however, varies widely.

The DAs vary in how they view the role of the PD. All of the DAs indicated that the PDs make referrals to them of cases to consider. Most of the DAs, though, saw the primary role of the PDs as working with an individual to help them put together their application and supporting materials and to help develop a strong reentry plan after the DA has identified them as a candidate for resentencing. As one interviewee put it, "When we start making petitions to the court for resentencing, that's really when the PDs will come in and be appointed by the court to represent each of these petitioners." This same interviewee also said that the PD could get involved earlier in the process and play an advocacy role: "There might be something that the DA office is not seeing, that the inmate forgot to tell us, that the PD can talk [about] with the individual and get further information and advocate on their behalf."

From the PDs' perspective, they would like to play a more proactive role from the beginning of the process, including discussing the eligibility criteria, identifying cases for consideration, and helping to decide which cases the DA should refer to the courts for resentencing consideration. Several PDs commented that they felt the DA's eligibility criteria were too strict and ultimately excluded good candidates for resentencing who may have had, for example, a serious or violent felony charge but had been incarcerated for 30 years with extensive rehabilitative programming and were in their 60s. As one PD interviewee noted, "The DA office needs to do a much better screening process, go through the CDCR data and pull out whomever they think has a shot, obtain those individuals' C-files and exclude another batch based on their review of the C-files; then we're left with individuals whom they actually are hoping we can put together a plan for and get them across the finish line."

There has been some disconnect in how this collaboration has played out. One county DA noted that the PD identified too many cases early on that the DA was not interested in or that did not fit their eligibility criteria. From the PDs' perspective, they are trying to encourage the DA to be more liberal with their criteria. Another example was that the DA hoped the PD would work up the cases that the DA sent to them (e.g., obtain the defendants' C-files, provide summaries of these cases to the DA, help the individuals develop reentry plans and put together the supporting documentation for their applications). Instead, the DA felt that, early in the pilot, the PD did not fully understand the DA's eligibility criteria and instead reached out to a number of their clients and obtained their C-files, bringing forward too many cases to consider. Also, the interviewee noted that there was disagreement on some of the cases as to whether they should be considered for resentencing. The DA and PD offices subsequently were able to reach an agreement about how to move forward. In at least one county, the PD office reported getting cases referred to them and not realizing the DA was also working on those cases or had already decided that those cases were not suitable for resentencing consideration.

One PD explained that the way the legislation is written, their role is more advisory; however, they are trying to make it more than that while also acknowledging that there is a limited amount they can do. This interviewee wanted to see the PD office get more involved on the front end and in helping the DA identify resentencing candidates. As the interviewee put it, although they were not involved in setting the eligibility criteria, they can push the DA office to expand those criteria. In the PD interviewee's view, looking at only

the charges or the C-file, as opposed to taking an individual's entire prison record into account, is a concern because doing so identifies too few individuals.

As mentioned earlier, the DAs and PDs vary in how regularly they meet. In one county, the DA and PD have a history of collaboration and have been meeting regularly since the start of the pilot program. In another county, the DA stated that they had a good relationship with the PD office and with outside attorneys, meeting with them often. The PD noted, however, that turnover in the DA office has hindered collaboration and has made it difficult to develop a protocol, as the PD office has talked with a number of staff who were soon after transferred or replaced. In addition, there are counties where the two offices do not meet or speak regularly about these cases. Another factor complicating the process is that not every client is represented by the PD or the DA; some clients instead may be represented by a private attorney.

Overall, we found that these two offices for the most part do not inherently work together, and working to develop a collaborative relationship is one of the largest implementation challenges.

## Role of CBOs

As noted earlier, under the California County Resentencing Pilot Program, the county DA offices were provided \$250,000 each to contract with a CBO. The amount provided was the same regardless of the size of the county's incarcerated population. Specifically, the Section 1172 legislation stated that:

(c) A participating district attorney's office may contract with a qualifying community-based organization for the duration of the pilot. The community-based organization shall have experience working with currently or formerly incarcerated individuals and their support networks, and shall have expertise in at least two of the following areas: (1) Supporting and developing prerelease and reentry plans. (2) Family reunification services. (3) Referrals to postrelease wraparound programs, including, but not limited to, employment, education, housing, substance use disorder, and mental health service programs. (4) Restorative justice programs.<sup>3</sup>

Counties vary in how they envision the CBOs' role and where they are in the process of contracting with such organizations. Most counties view the CBOs as integral to developing reentry plans and providing reentry support for individuals who have been resentenced and released from prison. Identifying CBOs to contract with for reentry services has been challenging in some counties. Interviewees commented on the fact that the DA office usually has no history of working with these providers. Thus, it is challenging to identify CBOs and identify what services they can provide.

One county, for example, sought advice from a large reentry provider who does not work in the county about what type of program the county should create and what resources are important for a returning citizen and asked for suggestions about local organizations and individuals who could provide these services. The DA office then worked with the county procurement office to create a request for proposal and was waiting for proposals to be submitted. A committee comprising the DA and the PD offices is to review and select the CBO reentry provider. As the PD interviewee noted,

Some people have a set plan for when they get out. They already know where they're going to go, what they're going to do, who's going to support them. For others, to be successful, they need help creating that plan. So, we need social workers to help these individuals figure out their reentry plan, identify what resources exist, and facilitate connecting resentenced individuals with those resources.

<sup>3</sup> In June 2022, Section 1170.01 of the Penal Code was amended and renumbered to 1172. The only other change made was the removal of the list of one of the areas of expertise for CBOs being utilizing a participatory defense model. See California AB 200, 2022, § 8.

Other counties expressed challenges in identifying CBOs that could provide the range of services they felt were needed. For example, one interviewee commented that in small counties, community resources are few and far between. Even an interviewee from a larger county commented that reentry resources were not as robust in their county as in other counties.

As noted earlier, offices in two counties felt that reentry resources available through parole would be important for resentenced individuals to access upon release from prison. These offices have made it a requirement for resentencing consideration that individuals agree to waive any excess credits to increase the likelihood that they will be put on parole and so be able to access reentry resources via parole.

### FTP's Role

FTP, a nonprofit organization focused on the role of prosecutors in sentencing, has a long history of working with counties in general on their resentencing efforts. As discussed in Chapter One, FTP conceived of the idea of prosecutor-initiated resentencing in California and helped draft the 1172 legislation that established the California County Resentencing Pilot Program. In addition, FTP recruited the nine counties to participate in it.

For the pilot program specifically, FTP essentially has served as the technical assistance provider. Specifically, FTP was proactive in engaging the county DAs and PDs involved in the pilot to orient them to the concept of prosecutor-initiated resentencing, facilitated discussions among the pilot participants about prosecutor-initiated resentencing, and has provided DA staff with training. FTP also developed templates that the pilot counties could use to request CDCR data. FTP has assisted those counties that requested its help to obtain CDCR data and conducted analyses of the counties' incarcerated populations to help inform the selection of cases for resentencing consideration. In addition, FTP has worked with incarcerated individuals and their families and support networks to help them put together their packets of information for resentencing consideration by the county DAs.

The pilot county DA and PD interviewees all cited FTP as helping to orient them to the concept of prosecutor-initiated resentencing and the intent of the legislation. They found the convenings that FTP held to be helpful in discussing their respective roles, and they found the FTP data reports, which summarized the characteristics of their incarcerated populations, helpful for allowing counties to better understand who might meet their eligibility criteria. Although the role of FTP has evolved and will continue to evolve as the county pilot programs are staffed and policies fully developed, some of the counties plan on continuing to work with FTP as their pilots evolve and mature.

### Leadership Changes

During the first year of the pilot program, two of the pilot counties saw their DAs replaced by recall or by loss of an election. In both cases, the new DAs appear to have taken a more "tough on crime" approach. It is unclear the effect these changes in leadership may have on the pilot program. For example, moving forward, we may find that these DA offices adopt a more conservative approach about whom they refer to the courts for resentencing consideration.

### Process of Notifying Victims Can Take Time

Among the factors that contribute to delays in the review and resentencing process is the amount of time it can take to reach out to victims under Marsy's law (CDCR, undated-b) to notify them that an individual is being considered for resentencing and to get their input. As stated on the Los Angeles DA's FAQs webpage:

The District Attorney's Office will notify crime victims and provide an opportunity for them to be heard. In conformity with state law and as part of its evaluation process, the District Attorney's Office will endeavor to contact impacted crime victims and provide notice of any upcoming court proceeding. Crime victims in any case being considered for resentencing will have an opportunity to address the District Attorney's Office and the court as part of any resentencing proceeding. (Los Angeles County District Attorney's Office, undated)

Courts often ask the DA whether they have done due diligence in contacting the victim(s). Because many of these crimes were committed years ago, it can be difficult to locate the victims. As one DA interviewee commented, the judge may order that the DA office assign an investigator to go out and knock on doors in order to satisfy the court that the victim(s) cannot be found.

## Delays in Data Sharing Agreements and Obtaining C-Files

All of the nine pilot counties have put into place DSAs with CDCR to obtain data on their populations currently incarcerated in state prison and to obtain the C-files for those individuals whose cases they wish to review further. All but one of the counties had a DSA signed with CDCR by June 2022. Obtaining C-files can be a lengthy process in general. Some county DAs are working with CDCR to expedite the process, including getting abbreviated versions of the C-files for incarcerated individuals that the county is considering for resentencing. Some counties have been able to get electronic versions of the summaries or the C-files, whereas others have obtained paper copies.

To obtain the C-files, the pilot counties require a signed waiver from the defendant to release their prison records to the DA office. This can take some time to obtain and may require working with defense attorneys as well. To help streamline the process, some DAs have posted a waiver form on their websites as part of the application process.<sup>4</sup> They also have asked the PD offices to work with defendants to help obtain the waiver and C-file for review. As one DA interviewee summarized it, "We've entered into an agreement with CDCR where if we provided them with a waiver from a defendant that they would expedite getting us the information. Also, there has been some discussion about subpoenaing records; however, you can only do so if it is an active case." Subpoenaing the records of a case in court can expedite receipt of the C-files (e.g., receipt within a couple of weeks). Another factor that influences the time it takes to obtain an individual's C-file is the length of time they have been incarcerated. If an individual has been incarcerated for a long time, some prison facilities may only have paper records that will need to be scanned, whereas other prison facilities have electronic files. As one interviewee noted, "Some prisons can turn over the information pretty quickly; for other prisons it can take months."

Lastly, the pilot counties vary in their staff and capacity to analyze the CDCR data and C-files received. It has taken some counties time to figure out how to efficiently work their way through the CDCR data to quickly identify cases worth further consideration versus those that do not meet their eligibility criteria. Counties commented that the amount of information received from CDCR on their prison populations can be overwhelming. The counties are trying to figure out the best way to sift through the information and identify those people they are trying to prioritize. Some counties recently hired analysts who will be able to help with this. Other, smaller counties indicated that they are trying to manipulate the data and have found it to be a lot of work to actually view the CDCR data, especially with a small staff that is already overburdened. Interviewees noted that it has been helpful to have FTP obtain data from CDCR about their counties and then provide them with a report on their population. In addition to the CDCR data files, each individual C-file can be lengthy, often 100 pages or more, producing volumes of additional information for the DA's staff to review.

<sup>4</sup> For an example of a waiver form to release an individual's C-file, see San Diego County District Attorney's Office, 2019.

## Multiple Sources of Referrals

As noted above, early on, some counties received referrals from multiple sources, including private attorneys, family members, and letters from inmates themselves. In at least one county, PDs reported getting cases referred to them and not realizing the DA was also working on those cases or had already decided that the cases were not suitable for resentencing consideration. Several interviewees mentioned that they were trying to work as quickly as possible and explain as clearly as possible that the process can be lengthy, in order to avoid getting people's hopes up. It can be a confusing process, and a key responsibility is being clear with incarcerated individuals and families as to which resentencing options are available to them and whether they qualify for consideration under the pilot program or not. One suggestion was to have informational flyers that explain to incarcerated individuals and their families what the California County Resentencing Pilot Program is and its criteria, as well as other resentencing options available to them.

## CDCR Referrals for Resentencing

As discussed in Chapter One, CDCR has been sending referrals for resentencing consideration to the courts since 2018. 1170(d) provides the CDCR secretary broad authority to look at various factors, such as type of sentence, enhancements, meritorious conduct, and sentencing disparities in length of stay. Several counties reported that the number of CDCR referrals has increased substantially after the January 2021 amendment to Penal Code Section 1170.03. This increase may be related to the timing of CDCR Secretary Kathleen Allison's appointment in 2020; Allison has made resentencing referrals a priority. CDCR-initiated cases go directly to the courts that then set hearings for them—so the PDs and DAs must prioritize these cases over the prosecutor-initiated cases as a result. In addition, courts are giving some weight to referrals coming from the CDCR secretary. If CDCR submits a case and a pilot county DA also submits the same case, then that case may get even more weight. CDCR makes the referrals based on its own review of several factors and does not flag which cases the counties may be submitting for resentencing consideration. This means that there may be instances where CDCR refers a case to the courts for resentencing consideration while the DA may have decided not to refer that case or that the defendant does not meet the pilot county's criteria for resentencing consideration.

## Use of Grant Money and Other Resources

In this section we provide a qualitative assessment of resources required by the counties early on to stand up the pilot program and begin the resentencing process, based on the interviews and implementation logs. However, considering challenges such as delays in obtaining pilot site grant funding, the time it took to put DSAs into place, and the complexity of staffing issues encountered by sites, it is premature to conduct a quantitative analysis of the cost data from the first six months of the pilot program. At this early stage, the data offer an incomplete picture of the resources required to stand up the pilot program. In Year 2's report, we will be able to present an analysis of the cost data, along with a qualitative assessment of how resource use has evolved as the pilot program matures.

As summarized earlier in this chapter, county DA and PD offices need access to resources (grant funding, staff, data, etc.) to undertake the resentencing work efficiently and to develop the processes and systems to support their efforts. Several factors affected what resources were available to these offices and the timing of their work. In most of the pilot counties, there was several months' delay from the legislative start of the pilot program to receipt of the initial grant funding allocated to the DA and PD offices. In addition, for all of the counties, it took several months to develop the DSAs with CDCR to enable them to obtain CDCR data to aid them in selecting candidates for resentencing consideration. Furthermore, the counties had to decide

whether to create new resentencing units or use existing units to house the pilot program and its activities and whether to staff units with full- or part-time legal staff and attorneys to work on the pilot program.

Staffing issues were a key factor in many of the pilot counties. Counties had been experiencing staffing shortages independent of the pilot program. Some counties indicated they were holding off spending grant funds until they could identify a paralegal(s) or an attorney(s) to hire for the pilot program and expected to be able to do so near the end of the first year of the pilot or the beginning of the second year. Meanwhile, counties were using existing staff to implement the pilot program.

In some counties, civil service protections limited who they could hire and what job assignments individuals could do. For example, in hiring retirees, one county DA office noted that civil service rules require that the person hired be a retired attorney from that particular county and allow the retiree to work only 120 days per year. Although some counties received interest from individuals who wanted to do a lateral transfer or from volunteers, the county DA office was unable to hire them unless they went through the entire civil service process.

Several counties discussed the lengthy process involved in determining what services they would like to contract with CBOs for, including the time it takes to write a request for proposal, to review proposals and select a CBO, and to award the contract. This has meant delays in putting into place contracts with CBOs.

As discussed earlier, it also has taken time for the county DAs and PDs to determine how best to collaborate on the pilot program. For those counties with a history of DA and PD collaboration, the process has gone more smoothly. For other counties, the DA and PD offices are still in the process of figuring out their respective roles. In one county, the DA and PD reported duplication of efforts—where the PD office reported getting cases referred to them and not realizing the DA was also working on those cases or had already decided the cases were not suitable for resentencing consideration.

The county DAs and PDs also discussed that the resources required for a particular case can vary substantially, making it difficult and premature at this time to estimate an average cost per case. As one county PD interviewee explained, some cases require a lot of assistance and other cases are straightforward. “Understanding the history of an older person with a long prison record can take time to figure out what is going on for that individual. Some cases may be relatively straightforward, for example, ‘individual has done a lot of programming while incarcerated, has no rules violations,’ whereas another individual may be struggling to get the programming he or she needs or may have mental health issues.” It takes time to sort this out. Furthermore, some individuals have a set plan for when they get out, whereas others who may have been incarcerated a long time need help in putting together a solid reentry plan.



# Conclusions and Next Steps

## Summary of Key Findings

In 2018, California’s legislature passed AB 2942, which amended Penal Code Section 1170(d)(1) to allow the DA to revisit past sentences to determine whether further confinement is no longer in the interest of justice. In July 2021, the legislature passed AB 128, which established the California County Resentencing Pilot Program and appropriated funding to DA and PD offices in nine pilot counties to support and evaluate a collaborative approach to the exercise of prosecutorial resentencing discretion. In June 2022, Section 1170.01 of the Penal Code was amended and renumbered to 1172. The DAs and PDs and their staff we interviewed all expressed their commitment to and interests in the opportunities the pilot program afforded their counties to address discrepancies in sentencing for individual cases. This is despite challenges DAs and PDs faced, including the impact of COVID-19 on the courts and retention of staff, hiring issues that made it difficult for some counties to dedicate staff to the pilot program, and the fact that the pilot program required the DA and PD to work closely together on such an initiative for the first time.

The legislation specified key measures that the evaluation was to report on an annual basis as the pilot program develops and matures. The patterns we are seeing so far represent the early experiences of counties in the first six months of the pilot; the data reported cover the initial stages of identifying and considering cases for resentencing. That is, we are early in the pipeline of the flow of cases through consideration, resentencing, and release. Thus, we caution about drawing firm conclusions at this early stage of the pilot, as the patterns we identify may change over time as we analyze more cases and the counties have the chance to fully develop their pilot programs. Furthermore, some of the counties indicated that they expect their criteria for identifying cases for resentencing consideration to evolve over time. A key component of this evaluation is to track these changes.

Preliminary descriptive analyses of the data provided by the pilot DA offices and CDCR were available through the first six months of the pilot. These data indicate that 259 case reviews for possible referral for resentencing were initiated by the DAs between September 1, 2021, and February 28, 2022, with a large majority initiated closer to the end of the reporting period. Of those initiated, 163 cases (63 percent) were still pending at the end of the reporting period and eight had been referred for resentencing. We presented data summaries of DA sentencing review uptake, characteristics of reviewed individuals, the offenses and original sentences of reviewed individuals, and information on time remaining and risk of re-offense. As the pending cases advance, additional cases are identified for review, and case identification criteria evolve, it is possible that the interim values portrayed in the initial tabular descriptions may significantly change over the course of the pilot.

Implementation challenges were similar across counties with respect to developing eligibility criteria, hiring or assigning staff to work on the pilot, putting DSAs into place and acquiring and analyzing data from CDCR to identify individuals who met eligibility criteria, working with the individuals to facilitate prepara-

tion of their applications and supporting documents, identifying and hiring CBOs, and working with the courts to develop processes and procedures for making referrals to the courts. Except for a few counties, most of the DA and PD offices did not have a history of working closely together and are still sorting out how that collaboration will unfold. The PDs tended to want to play a more proactive role than the DAs envisioned in defining the eligibility criteria, identifying cases for consideration, and making recommendations to the courts.

FTP spearheaded prosecutor-initiated resentencing in California, helping to craft AB 2942, the nation's first prosecutor-initiated resentencing law, which allowed prosecutors to facilitate the release of people from prison, and the subsequent 1172 California County Resentencing Pilot Program legislation. In addition, FTP recruited the nine counties to participate in the pilot program, and, as discussed in Chapter Four, FTP essentially served as the technical assistance provider for the program. Specifically, FTP was proactive about engaging the counties and DAs and PDs involved in the pilot, providing training to them, assisting with obtaining CDCR data, and conducting analyses to help inform the selection of cases for resentencing consideration. The pilot counties all cited FTP as being particularly helpful early on in providing counties with data reports that summarized the characteristics of their incarcerated populations, assisting with identifying cases for possible consideration, providing templates for the counties to use to request CDCR data, convening the DAs and PDs to introduce them to the intent of the legislation, and facilitating discussions among them. In addition, some of the pilot counties planned on continuing to work with FTP as their pilots evolved and matured.

As with any pilot program, it takes time to stand up all the different components of a program and to put into place the processes and procedures for implementing it. We expect to see over time that many of these hurdles will have been addressed and that the pilot counties will have increased the number of individuals moving through the pipeline and which cases are resentenced.

Lastly, there is great interest in this pilot program and the concept of prosecutor-initiated resentencing. News about the pilot program has gotten out to individuals, families, CBOs, and private attorneys, which has led early on to multiple referrals or requests being submitted before the DAs had established procedures for doing so. In addition, there was some confusion among individuals as to whether or not they are eligible for resentencing under this pilot program. Because this is one of several resentencing options available to incarcerated individuals, there seems to be a need to provide fact sheets or FAQs to help individuals understand their options. Indeed, some counties have developed FAQs and letters to be sent to individuals who inquire about case eligibility that explain the program and what other options individuals may have if they do not meet eligibility criteria for a particular county.

## Next Steps

The legislation called for annual reports to the California legislature on October 1, 2022, and October 1, 2023, and for the final report to be available January 10, 2025. This is the initial report of the evaluation findings for this pilot program. Next year's report, due October 1, 2023, is expected to include the following:

- an update on the status of implementation of the pilot, how the pilot programs have evolved, and strategies adopted by pilot counties to address any challenges encountered
- analyses of the flow of cases as they move through identification, consideration, recommendations to the court, and court decisions
- preliminary analyses of available recidivism outcomes
- preliminary analyses of costs.

## 1172 Legislation

The original legislation was titled 1170.01. In June 2022, Section 1170.01 of the Penal Code was amended and renumbered to 1172. The only other change was the removal under section (c) of “utilizing a participatory defense model” as one of the areas of expertise for CBOs. This appendix contains 1172—the most recent version of the legislation.

## State of California

### PENAL CODE

#### Section 1172

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1172. (a) The County Resentencing Pilot Program (pilot) is hereby established to support and evaluate a collaborative approach to exercising prosecutorial resentencing discretion pursuant to Section 1172.1. Participants in the pilot shall include a county district attorney's office, a county public defender's office, and may include a community-based organization in each county pilot site.

(b) Each participating district attorney's office shall do all of the following:

(1) Develop and implement a written policy which, at minimum, outlines the factors, criteria, and processes that shall be used to identify, investigate, and recommend individuals for recall and resentencing. The district attorney's office may take into account any input provided by the participating public defender's office or a qualified contracted community-based organization in developing this policy.

(2) Identify, investigate, and recommend the recall and resentencing of incarcerated persons consistent with its written policy.

(3) Direct all funding provided for the pilot be used for the purposes of resentencing individuals pursuant to the pilot, including, but not limited to, ensuring adequate staffing of deputy district attorneys, paralegals, and data analysts who will coordinate obtaining records and case files, support data entry, assist in the preparation and filing of pleadings, coordinate with victim services, and any other tasks required to complete the processing and facilitation of resentencing recommendations and to comply with the requirements of the pilot.

(c) A participating district attorney's office may contract with a qualifying community-based organization for the duration of the pilot. The community-based organization shall have experience working with currently or formerly incarcerated individuals and their support networks, and shall have expertise in at least two of the following areas:

(1) Supporting and developing prerelease and reentry plans.

(2) Family reunification services.

(3) Referrals to postrelease wraparound programs, including, but not limited to, employment, education, housing, substance use disorder, and mental health service programs.

(4) Restorative justice programs.

(d) Nothing in this section shall be construed to limit the discretion or authority granted to prosecutors under Section 1172.1.

(e) All funding provided to a participating public defender's office shall be used for the purposes of supporting the resentencing of individuals pursuant to the pilot, including, but not limited to, ensuring adequate staffing of deputy public defenders

and other support staff to represent incarcerated persons under consideration for resentencing, identifying and recommending incarcerated persons to the district attorney's office for resentencing consideration, and developing reentry and release plans. A participating public defender's office may provide input to the county district attorney's office regarding the factors, criteria, and processes to be used by the district attorney in their exercise of discretion under Section 1172.1.

(f) Each participating district attorney's office shall utilize the same template developed by the evaluator to identify and track specific measures consistent with the goals of this section. The template shall be finalized no later than October 1, 2021. The measures shall include, but not be limited to, the following:

- (1) A summary of expenditures by each entity receiving funds.
- (2) A summary of any implementation delays or challenges, as well as steps being taken to address them.
- (3) The total number of people incarcerated in state prison on the first day of each reporting year for convictions obtained in the reporting county.
- (4) The factors and criteria used to identify cases to be considered for prosecutor-initiated resentencing.
- (5) The total number of cases considered by a pilot participant for prosecutor-initiated resentencing. For each case, information collected shall include the date the case was considered, along with the defendant's race, ethnicity, gender, age at commitment, categories of controlling offenses, date of prison admission, earliest possible release date or minimum eligible parole date, and date of birth.
- (6) The total number of prosecutor-initiated resentencing recommendations by the pilot participant to the court for recall of sentence, date of referral, and information on the defendant's race, ethnicity, gender, age at commitment, groups of controlling offenses, age at time of recall consideration, time served, and time remaining.
- (7) The total number of prosecutor-initiated resentencing recommendations by the pilot participant in which the court responded, the date the court considered each case referred, how many cases the court considered, and information on the defendant's race, ethnicity, gender, age at commitment, groups of controlling offenses, age at time of recall consideration, time served, and time remaining.
- (8) The total number of prosecutor-initiated resentencing recommendations denied by the court, and for each case the date of the denial and the reasons for the denial, and information on the defendant's race, ethnicity, gender, age at commitment, groups of controlling offenses, age at time of recall consideration, time served, and time remaining.
- (9) The total number of people who were resentenced, the date of resentencing, and information on the defendant's race, ethnicity, gender, age at commitment, groups of controlling offenses, age at time of recall consideration, time served, and time remaining.
- (10) The total number of people released from state prison due to prosecutor-initiated resentencing by the pilot participant, how many were released from state prison and the date of release, and information on the defendant's race,

ethnicity, gender, age at commitment, groups of controlling offenses, age at time of recall consideration, time served, and time remaining.

(g) The participating district attorneys' offices shall provide the data listed in subdivision (f) to the evaluator on a quarterly basis.

(h) To the extent possible, the evaluation of data reported by the participating district attorneys' offices shall be conducted in a manner that allows for comparison between the pilot participant sites. This includes, but is not limited to, collection and reporting of data at the individual case level using the same definitions. Each pilot participant shall provide any information necessary to the evaluator's completion of its analysis.

(i) Notwithstanding any other law, state entities, including, but not limited to, the Department of Corrections and Rehabilitation, the State Department of Social Services, and the Department of Child Support Services, shall provide any information needed for the completion of the evaluator's analysis.

(j) The evaluator shall do all of the following:

(1) For each case considered by a pilot participant, calculate the time served by an individual and the time remaining on their sentence.

(2) Analyze the data and prepare two preliminary reports and a final report to the Legislature. The first preliminary report shall be submitted to the Legislature on or before October 1, 2022. The second preliminary report shall be submitted to the Legislature on or before October 1, 2023. The final report shall be submitted to the Legislature on or before January 31, 2025.

(3) As part of the evaluation, the evaluator shall conduct, at minimum, four assessments, as follows:

(A) An implementation assessment shall be conducted to determine if pilot activities were implemented as intended. This assessment shall include semi-structured in-depth interviews with all relevant stakeholders, including, but not limited to, representatives from the district attorney agencies, public defender agencies and community-based organizations participating in the pilot jurisdictions. The assessment shall document the different strategies the pilot sites used, the development and implementation of the written resentencing policies and procedures, which cases were prioritized for resentencing and the referral process, and factors that facilitated or hindered implementation.

(B) A cost study that shall estimate the resources required to implement the pilot activities, to include both new expenditures on personnel and other goods and services, and the reallocation of resources from prior activities to the pilot activities. The assessment shall include total cost and cost per case.

(C) An assessment of the estimated amount of time by which an individual's earliest possible release date or minimum eligible parole date was advanced due to prosecutor-initiated resentencing, including a descriptive analysis of the process of cases from initial recommendation to final resentencing outcomes to document points of attrition in the process and allow for comparison between individuals based on age, gender, race, offense, and county. This assessment shall include a description of recidivism outcomes for individuals released from prison, based on definitions created

in collaboration with pilot participants. This assessment shall include a calculation of the total number of days of incarceration avoided, and amount of time by which the person's earliest possible release date or minimum eligible parole date was advanced due to prosecutor-initiated resentencing for those individuals released from prison using data maintained by the Department of Corrections and Rehabilitation data systems.

(D) An assessment which compares, to the extent feasible, records at the individual case level with county or state administrative data files that capture utilization of government benefit and social service programs, such as Temporary Assistance for Needy Families, Supplemental Nutrition Assistance Program, and other government cash or in-kind social services, and court-ordered child support and visitation. The evaluator shall document changes in these indicators at the individual case level during the evaluation period, in order to determine whether any observed changes can be attributed to the pilot. The evaluator shall combine the descriptive information on outcomes from the third and fourth evaluation components with the cost analysis findings from the second component to estimate the potential for cost savings to state and local governments from the pilot activities. The evaluator shall, using the data collected from the pilot, estimate the potential for cost savings to state and local governments from the pilot activities.

(k) The pilot term shall begin on September 1, 2021, and end on September 1, 2024. The evaluation term shall begin on September 1, 2021, and end on January 31, 2025.

(Added by renumbering Section 1170.01 by Stats. 2022, Ch. 58, Sec. 8. (AB 200) Effective June 30, 2022.)





## Evaluation Design

This appendix provides a high-level overview of the study components and their associated research questions. This appendix also describes the analytic approach to each study component, as well as the key data sources and their relationship to the different evaluation components (shown in Table B.1).

### Evaluation Components

The evaluation will comprise three components: analysis of data collected by the DA office, a qualitative implementation assessment, and a cost study to estimate the resources required to implement the pilot activities. Specifically, the evaluation is intended to determine how the pilot program is implemented in individual counties, whether the pilot is effective in reducing risk factors for criminal justice involvement (e.g., recidivism), and whether it is cost-effective. RAND is conducting an implementation assessment, a rigorous outcomes flow analysis, and a cost-benefit analysis to answer these four research questions:

1. What were the key implementation challenges experienced by the programs, and how did prosecutors and PDs overcome these barriers?
2. What are the characteristics and outcomes of cases identified for possible resentencing at each stage of the resentencing process?
3. What is the impact of the resentencing pilot on case outcomes and recidivism?
4. What is the tangible and intangible cost of the pilot program?

**TABLE B.1**  
**Evaluation Components and Sources of Data**

Data Source	Implementation Study	Outcomes Study	Cost Study
Case reporting template to be completed by DA offices		✓	
CDCR data		✓	
Pilot county key informant interviews with DA and PD offices	✓	✓	✓
Implementation Microsoft Word logs	✓		✓
Other key informant interviews (e.g., FTP)	✓	✓	✓
Fiscal/cost data template to be completed by DA and PD offices	✓		✓

## Outcomes and Other Measures Study

This component of the study will measure characteristics and outcomes at each phase of the resentencing process, including characteristics of the incarcerated individuals; offenses and sentences of the reviewed individuals; current information, such as time served and time remaining that is relevant to resentencing; and the resentencing outcomes. The full-term pilot study will inform the extent to which an individual's earliest possible release date or MEPD is advanced through resentencing. Because the pilot is early in the process, this interim report focuses primarily on characteristics and outcomes at the time of initial review of cases by the pilot DA offices.

### Sources of Data

We developed a reporting template for the county DA offices to supply case-level data regarding each incarcerated individual considered by the DA office for resentencing in a uniform format. Contents of the template were informed through data elements required for evaluation, as specified in the legislation establishing the resentencing pilot, and data elements motivated by the goals of this evaluation. Data reporting elements contained within the template include

- background information, race, ethnicity, gender, and CDC number<sup>1</sup>
- original sentencing information, including controlling offense, original sentence length, and facility type (state prison or county jail)
- information relevant to the DA's consideration of a resentencing referral for the individual, including the source that brought the case to the DA's attention, the individual's age at the time of the DA's review, and the DA's decision to refer the individual for resentencing
- information regarding the court's consideration of a motion to resentence the individual, including whether the court has responded and the court's resentencing decision
- for cases where resentencing was granted, information regarding the revised sentence and whether the individual has been released from state prison because of resentencing
- for cases where resentencing was denied, the reason for court denial of resentencing
- process dates, including, as applicable, the date the DA reviewed the individual for resentencing, the date the DA referred the case to the court for recall of sentence, the date the court considered the motion for resentencing, the date the court responded to the motion, the date the court resented the individual, the date the individual was released from state prison because of resentencing, and the date the court denied resentencing
- for cases where the individual considered for resentencing is in county jail, information regarding the individual's time served, time remaining, earliest possible release date, and MEPD, as applicable, at each resentencing process date.

Additional information required for the evaluation and specified in the legislation establishing the resentencing pilot was not available to the individual DA offices. To collect this information, we developed a supplemental data template for CDCR to provide this additional information. This template reports information, such as CDC number and process dates, from the DA data, thus serving as a framework through which CDCR may provide the additional information. The CDCR data template included the following:

- background information, including age at commitment, as well as race, ethnicity, and gender

<sup>1</sup> A CDC number is a unique identifier used by CDCR for individuals incarcerated in state prison.

- original sentencing information, including age at the time admitted to prison, types of major enhancements attached to the sentence, number of enhancements, total time added to the sentence for enhancements, and time served at the time of prison admission, as well as controlling offense and original sentence length
- resentencing information, including a prison release date (if applicable), as well as the revised sentence type and length
- for each process date provided by the DA, time served, time remaining, earliest possible release date (as applicable), MEPD (as applicable), and CSRA score (Turner, Hess, and Jannetta, 2009).

Certain background and sentencing information were included on both the DA and CDCR case-level data templates. This redundancy enhanced data validation across data sources.<sup>2</sup>

The first data delivery collected from the DA offices covered the first six months of the pilot, from September 1, 2021, through February 28, 2022, including all cases first reviewed by the DA offices on or after September 1, 2021. In addition to developing the data templates, RAND entered into a data use agreement with each county to establish data security and protection measures.<sup>3</sup> The last of the data use agreements was finalized in late April 2022; we further discuss challenges to this process in Chapter Four.

These case-level reports were provided by all nine counties by the end of April 2022. Necessary supplemental data based on the information in the initial delivery were requested from CDCR in early May, and CDCR provided the necessary supplemental information in June 2022. Given the timing of this report and the available complete data, results contained in this report cover this first data reporting period, through February 28, 2022. Future data delivery from the DA offices will occur quarterly throughout the remainder of the pilot.

In our discussions with the DAs, we learned that some counties just used local data systems to routinely gather information on recidivism. Others used California DOJ data, which have the advantage of containing recidivism information from counties outside the pilot jurisdiction. Our decision on the source of data was to use the California DOJ data to assure a consistent source across counties, to ensure efficient data abstraction, and to be in compliance with DOJ requirements.<sup>4</sup> Using DOJ, the evaluator would request recidivism information directly from the DOJ rather than from each individual county.

State criminal history records, however, have their weaknesses and may not be complete, especially with respect to court dispositions (McElhattan, 2022). The DOJ depends upon local jurisdictions sending the state information on arrests and subsequent court processing. We may need to conduct sensitivity analyses with a few pilot sites who use their own systems to gauge the extent to which we may have missing disposition data in our sample. Another possibility is to consider the use of arrests as an alternative recidivism measure. We will explore this option as we gain more experience with the recidivism outcomes in future years.

## Analysis Plan

The evaluation of the pilot at full term will employ the flow analyses, considering cases through the various stages of the resentencing process (DA review, motion to the court to resentence, court hearing, resentencing

<sup>2</sup> In a small number of cases, this data validation exercise allowed clarification of items, such as identifying the exact charge identified as the controlling offense and updating race and ethnicity. It also helped verify two cases where an incorrect CDC number was present in the data.

<sup>3</sup> Depending on how the county functions, some of the data use agreements were established with the DA office, and some were with the county.

<sup>4</sup> California DOJ data cannot be shared with third parties, so the research team is not able to obtain state DOJ data from the local pilot counties directly.

decision, and release, as applicable), to understand the important characteristics of progression and relevant interim outcomes at each stage. Each process segment will be characterized descriptively to illustrate key elements that will be of value to nonpilot counties as they consider implementation of their own resentencing plans. Analyses of final resentencing outcomes will calculate and illustrate the extent to which remaining time to serve has been diminished through the resentencing process, and will provide description of contemporaneous variables to help place the time reductions into context. Given the early stage of the pilot term at the time of this report, current analyses will focus on univariate descriptions of variables relevant to the first stage of the resentencing process, the DA's case review.

As discussed in the next section, "Recidivism Outcomes," this report contains cases that have just started the pipeline from DA consideration, so it is too early to have cases for a recidivism analysis. However, we anticipate that we will have enough cases for the second and final report.

## Recidivism Outcomes

The legislation requires that the evaluator collaborate with the sites to determine a measure of recidivism for the pilot sites. Project team members met (virtually) with representatives from all the DA pilot sites. We discussed four points related to recidivism: (1) what is the preferred measure of recidivism (e.g., arrest, filing, conviction), (2) what would be the time frame to measure recidivism outcomes (e.g., 6, 12, 24 months post release to the community), (3) what sources would be best to use to gather recidivism outcomes, and (4) which of the required reports would contain recidivism outcomes.

The overwhelming consensus by DAs was that convictions be the measure of recidivism. Representatives agreed that it would be most informative to report convictions broken down by type. Thus, we would break down convictions by felony and misdemeanor and seriousness (e.g., serious and violent). Groups agreed that they would like to have at least a 12-month follow-up period of recidivism for all individuals released from prison, particularly because some counties had individuals spend some time in residential facilities after release as part of the resentencing agreement. Recidivism outcomes will be primarily descriptive; results will be presented by county, with dichotomous (e.g., yes/no) measures for any conviction, felony or misdemeanor conviction, and serious or violent conviction. These will be measured at one year post release from prison for those individuals who are resentenced and released for at least one year.

### Sources of Data for Recidivism Outcomes

In our discussions with the DAs, some counties used local data systems to routinely gather information. Others used California DOJ data, which have the advantage of containing information from counties outside the pilot jurisdiction. Our decision on the source of data was to use the California DOJ data to assure a consistent source across counties and to ensure efficient data abstraction. Using DOJ, the evaluator would request information from one source rather than from each individual county.

### Analysis Plan for Recidivism Outcomes

Because this report contains cases that have just started the pipeline from DA consideration, we will not have cases for a recidivism analysis—it is too early. However, we anticipate that we will have enough cases for the second and final report. We will report on convictions during a one-year follow-up (longer if enough cases have been released to allow for longer follow-ups). Specifically, we will record whether there is a conviction within the follow-up time period; whether it was a misdemeanor or felony, and whether it was serious or violent. We may add additional conviction types depending upon the types of offenses we observe.

## Implementation Study

The implementation assessment documents the different strategies the pilot sites are using, the development and implementation of resentencing policies and procedures, which cases are prioritized for resentencing and the referral and resentencing process, and factors that are facilitating or hindering implementation. The pilot counties are required to provide quarterly updates to RAND on any implementation challenges, delays, and steps taken to address them, as well as updates on factors and criteria used to identify cases to be considered for prosecutor-initiated resentencing. In addition, the implementation assessment includes in-depth interviews with the pilot sites to understand the planning and implementation process, pilot sites' support needs, and lessons learned. In future years of the evaluation, site visits will be conducted.

## Sources of Data

We developed an implementation log Microsoft Word template for the county DA offices and PD offices to provide quarterly updates on the state of the implementation of their pilot programs, information on any implementation delays or challenges encountered that quarter, and a summary of steps taken to address them. In addition, the implementation log template contained a section where the DA and PD offices were asked to summarize the factors and criteria used to identify cases for resentencing consideration and note whether there had been any changes in those factors and criteria during the past quarter.

In the spring of 2022, we conducted telephone interviews with each county's DA and PD offices to learn more about their implementation experiences and progress in implementing their pilot programs. Interviews typically included one or two staff members, and all staff provided verbal consent for participation in the interviews. The purpose of these 45–60 minute virtual interviews was to understand the way each agency implemented the pilot, the process of resentencing, the nature of communication across the agencies, facilitators and barriers to implementation, and opportunities for improvement. For the full interview protocol, see Appendix C. Detailed notes were taken during the interviews, and they were also recorded to allow us to fill in gaps in the interview notes following the interview.

In future years of the evaluation, we plan on continuing the implementation assessment interviews with each site, both the DA and PD offices, and supplementing the findings with additional interviews with other county-level stakeholders, CBOs and any technical assistance help, such as FTP.

Recidivism information will be contained in future reports, since cases have just started to be referred for this first report. We will obtain automated criminal history records from the California DOJ and record convictions at one year post return to the community. We will break down convictions into any conviction, felony and misdemeanor, and serious and violent felonies.

## Analysis Plan

To analyze the interview notes, codes were largely developed deductively based on the interview guide. Three members of the evaluation team worked closely with the notes from each interview and pulled out key themes and domains. We also drew illustrative quotes from interview notes. Because we assured each site confidentiality, in most cases we provide paraphrased quotes rather than direct quotes.

## Cost Study

The legislation requires that the evaluation include a cost study to estimate the resources required to implement the pilot program, including both new expenditures on personnel and other goods and services, so that resources can be allocated from prior activities to the pilot activities.

## Sources of Data

The data for the cost study will come from the implementation interviews and from the quarterly updates on expenditures the pilot sites are required to provide as part of the data collection template as mandated by the legislation. We developed a cost data collection template early in the evaluation and sought feedback from the pilot counties on its elements.<sup>5</sup> Counties were then asked to complete the template for the first two quarters of the pilot.<sup>6</sup> In addition, the evaluation team is collecting qualitative data on costs and resources used as part of our implementation assessment activities—specifically the interview data and the quarterly implementation Word logs.

## Analysis Plan

Since the counties are still in the early stages of hiring staff and, in some cases, are planning to use the grant funds to hire staff once they have identified their pilot needs and individuals to hire, it is premature to present any analyses of the cost data collected to date. Instead, we reported in Chapter Four the findings from our interviews and implementation log summaries of what resources the counties are using, challenges encountered, and plans for hiring legal assistants and other staff. We also note that the counties are in the process of identifying, selecting, and hiring CBOs as part of the pilot program.

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<sup>5</sup> We are interested in capturing each county's overall expenditures for any program-related activities, not just those covered by the grant. Thus, we aim to capture all expenditures for the pilot program, regardless of the funding source.

<sup>6</sup> We use *project quarters* versus the state's fiscal quarters because the legislation requires that counties report their cost data on a quarterly basis for the pilot program, which began September 1, 2021. Thus, quarter 1 encompasses September 1, 2021, to November 30, 2021, and quarter 2 encompasses December 1, 2021, to February 28, 2022.

## Supplemental Tables of Results

The controlling offenses of individuals reviewed by the pilot DA offices for potential resentencing were discussed in Chapter Three. Results are presented in Table 3.9 across four broad offense categories typically reported by CDCR: crimes against persons, property crimes, drug crimes, and other crimes. CDCR also categorizes crimes in a set of more granular groupings, allowing a more detailed view of controlling offenses. Controlling offense results are presented in these more detailed grouping categories in Tables C.1 through C.4.

**TABLE C.1**  
**Crime Against Persons Cases Considered by Pilot DAs for Resentencing: September 1, 2021, Through February 28, 2022**

	Percentage Assault Deadly Weapon	Percentage Kidnapping	Percentage Lewd Act with Child	Percentage Manslaughter	Percentage Murder 1st	Percentage Murder 2nd	Percentage Oral Copulation	Percentage Other Assault/ Battery	Percentage Rape	Percentage Robbery	Total Crimes Against Persons Cases
Cases considered by DA	11.9	1.9	1.3	3.1	16.9	9.4	0.6	22.5	1.3	31.2	160
By DA review outcome											
Pending or referred for resentencing	13.3	1.8	0.9	1.8	15.9	8.8	0.9	17.7	1.8	37.2	113
Not referred for resentencing	8.5	2.1	2.1	6.4	19.1	10.6	0.0	34.0	0.0	17.0	47

SOURCE: Data provided by CDCR, June 2022.

NOTE: Percentages displayed are out of the total number of cases of crimes against persons. Percentages might not sum to 100 because of rounding.



TABLE C.2

**Property Crime Cases Considered by Pilot DAs for Resentencing: September 1, 2021, Through February 28, 2022**

	Percentage Burglary 1st	Percentage Burglary 2nd	Percentage Forgery/ Fraud	Percentage Grand Theft	Percentage Petty Theft with Specified Prior Convictions <sup>a</sup>	Total Property Crime Cases
Cases considered by DA	54.0	28.0	6.0	2.0	10.0	50
By DA review outcome						
Pending or referred for resentencing	71.4	21.4	0.0	0.0	7.1	28
Not referred for resentencing	31.8	36.4	13.6	4.5	13.6	22

SOURCE: Data provided by CDCR, June 2022.

NOTE: Percentages displayed are out of the total number of property crime cases. Percentages might not sum to 100 because of rounding.

<sup>a</sup> Pursuant to CA Penal Code Section 666, this category applies to petty theft crimes when the individual was previously convicted and imprisoned for certain theft offenses, a specified violent or serious felony, or an offense requiring sex offender registration (see CA Penal Code Section 666 for additional specific details).

TABLE C.3

**Drug Crime Cases Considered by Pilot DAs for Resentencing: September 1, 2021, Through February 28, 2022**

	Percentage CS+ Manufacturing	Percentage CS+ Other	Percentage CS+ Possession for Sale, etc.	Percentage CS+ Possession	Percentage CS+ Sales, etc.	Total Drug Cases
Cases considered by DA	5.3	10.5	31.6	26.3	26.3	19
By DA review outcome						
Pending or referred for resentencing	8.3	16.7	25.0	16.7	33.3	12
Not referred for resentencing	0.0	0.0	42.9	42.9	14.3	7

SOURCE: Data provided by CDCR, June 2022.

NOTE: Percentages displayed are out of the total number of drug crime cases. Percentages might not sum to 100 because of rounding. CS = controlled substance.

**TABLE C.4**  
**All Other Crime Cases Considered by Pilot DAs for Resentencing: September 1, 2021, Through February 28, 2022**

	Percentage Arson	Percentage Driving Under the Influence	Percentage Escape	Percentage Other Offenses	Percentage Possession of Weapon	Total Other Cases
Cases considered by DA	6.7	10.0	3.3	30.0	50.0	30
By DA review outcome						
Pending or referred for resentencing	11.1	5.6	0.0	38.9	44.4	18
Not referred for resentencing	0.0	16.7	8.3	16.7	58.3	12

SOURCE: Data provided by CDCR, June 2022.

NOTE: Percentages displayed are out of the total number of other crime cases. Percentages might not sum to 100 because of rounding.

# Interview Instrument

## **Evaluation of the California County Resentencing Pilot Program Implementation Interview Protocol**

### I. Informed Consent

I work for RAND, which is a private, non-profit, public policy research organization. We've been contracted by the California Board of State and Community Corrections (BSCC) to conduct an independent evaluation of the California County Resentencing Pilot Program.

Today I am hoping to hear about your views on this subject. The interview will take approximately 60 minutes.

Your confidential input about the development and implementation of the pilot program is valuable to us. We will not share your individual responses with anyone else outside of the research project. And we will not identify any individuals by name in our study reports. If we use any quotations from these interviews, we will not attribute them to any individual by name.

Your participation in this interview is voluntary. You may choose not to participate, decline to answer any question, or stop the interview at any time.

Do I have your permission to proceed with the interview?

[IF NO:] Thank you anyway.

[IF YES:] Thank you.

I plan to audio record it, solely for our note taking purposes. The audio recording will only be used by project staff, and we'll destroy it when the project is done.

Do I have your permission to record the interview?

[IF NO:] Thank you, we understand, we will only take hand written notes.

[IF YES:] Thank you, let's get started.

### II. Description of Jurisdiction

1. What are the most common local crime problems?
2. Describe the structure of the Prosecutor's Office.
3. How many felony and misdemeanor cases are prosecuted yearly?
4. Is an annual statistical report available?

### III. Pilot Program History

1. From your perspective, what was the impetus behind the development of the resentencing pilot? What factors drove the legislation? What factors influenced your county's decision to participate in the pilot?

2. How did your office get involved in the pilot?
3. Did you start resentencing prior to September 1, 2021?
  - i. [IF YES:] How was that going? What lessons learned may have influenced your county's approach to the current pilot program?
    - a. E.g., criteria to identify eligible individuals, priorities of the county for the pilot program
4. What type of support was there for your office or county participating in the pilot program?
5. Was there any opposition to your office or county participating in the pilot program?

Planning Process

6. Was there a formal or an informal planning team? What was the composition of the planning team?
  - i. What offices or agencies were represented?
  - ii. What sectors of the community were involved in the planning process? Was their role formal or informal?
  - iii. What other key stakeholders were included in the team? What was their role?
  - iv. Do they have an ongoing role or is it primarily focused on the initial planning of the program?
  - v. How often has the planning team met? What key decisions were made early on that helped shape the scope and focus of the pilot program? Are there memos or minutes available to document decisions and issues discussed?
7. What factors facilitated or hindered the planning process?
8. What were the lessons learned from the initial planning process?
9. Were written policies and/or procedures developed? {request a copy}
10. Did you receive any technical assistance while planning for or operating the pilot program?
  - i. If yes, in what areas? Who provided the TA [technical assistance] and what type of assistance was provided?
  - ii. Would you have liked to have seen more guidance? If so, in what areas?
  - iii. What future TA assistance needs [do] you anticipate?
11. At the state or local level, what other major policy changes occurred during this same time period (probe for past 5–10 years) that may have had implications for your county's resentencing pilot program's goals/design and/or implementation?
12. Reflecting on the last year, have there been any significant changes to policies, procedures, or training related to implementation? {For later site visits}

IV. Funding, Staffing, and Office Structure

1. What is your job title or position and what are your key responsibilities? How long have you served in this role?
  - i. Note: If the interviewee was interviewed during a prior site visit, ask if their job title and responsibilities have changed since you last spoke, and how long they have been in the new role.
2. How many prosecutors work on the resentencing pilot program? How many paralegals work on the pilot program? Other staff?

3. What changes in staffing, if any, were necessary to implement the pilot program? Did you hire new staff or reassign existing staff?
4. How are you using the grant funding for the pilot? (e.g., to fund positions, to contract with a CBO, etc.) How is funding from the pilot grant being used to support the staff and other support needed for your program?
5. Have you obtained funds from other sources to support the resentencing pilot program?
  - i. If so, what sources? (e.g., county, DA office, other grant funding) [This could include reallocating funds from the regular budget to support the pilot.]
  - ii. How are those funds being used?
6. Have you been able to scale up your activities related to the resentencing project to reach the level of effort desired by your agency? If not, what factors have constrained your ability to reach the desired scale? Limits on funding? Limits on the availability [of] qualified staff? Limits on the capacity of the courts? Other factors?

#### V. Program Goals

1. What are the main goals of the resentencing pilot program in your county (include a list and an open-ended question)
  - i. Is reducing racial inequities one of the program goals?
2. In your view, are some goals more realistic or achievable than others?
3. What outcomes would be important to assess in order to measure if your pilot program is achieving its goals?

#### VI. Target Population

1. Please describe the eligibility criteria for resentencing consideration.
  - i. How did your office decide on those criteria?
  - ii. Has that changed over time?
  - iii. Do you expect it to change over time?
2. Please describe how your office is identifying eligible individuals. Please describe the steps in the process by which your office is identifying eligible individuals. What factors have facilitated or hindered/delayed that process?
  - i. Are you working with CDCR? How is that going?
  - ii. Are you receiving information from the PD office?
  - iii. Other avenues?
3. Do you think this process is adequate for identifying all the possible eligible individuals?
  - i. If no, what else do they think needs to be done?
4. Is anyone else (other than your Prosecutor's Office staff) involved in eligibility decisions? (If they mention the PD office, probe on how that communication works)
5. What are the strengths and weaknesses of your current screening / eligibility approach?
6. What are the lessons learned to-date? What plans do they have, if any, to modify the screening/eligibility process?

#### VII. Resentencing

1. How many individuals have you resentenced?
  - i. Within the past two years
  - ii. Since the start of the pilot program in September 2021

2. Please explain the process of working with the court.

#### VIII. Partnerships

1. Are you partnering with any community-based organizations to implement the pilot program? What factors were important in identifying a community-based organization to partner with?
  - i. If yes, which organization(s) and in what capacity?
    - a. Ask what data or outcomes will they require the CBOs to report to them
  - ii. If no, do you plan to? In what capacity?
2. Please discuss the role played by each of the following stakeholders:
  - i. Defense bar
  - ii. Court players
  - iii. Probation
  - iv. Community-based partners including ForThePeople
  - v. Other stakeholders
3. If community-based providers are involved, how many do you use and under what circumstances for a specific case?
4. If community-based providers are involved, what sources of funding are used to cover their costs of supporting the pilot? Are they accessing the additional grant funds allocated to the county for this purpose? Are there other sources of new funds being used (e.g., from a philanthropy or other fundraising) or is the CBO supporting the pilot through their regular operating budget? (responses may [be] different across CBOs if there is more than one)
5. Aside from the CBOs, are there any other individuals or organizations involved in activities related to the resentencing pilot?
  - i. If so, what individuals/organizations/stakeholders and what types of activities are they involved with?
  - ii. For example, pro bono contributions from legal aid programs or efforts to limit the use of resentencing on the part of victims' rights organizations?
6. How are they working with For The People? What support is FTP providing?
  - i. Is that a formal or informal relationship? E.g., does your county have a contract with FTP
  - ii. Are there other organizations or TA providers they are also working with?

#### IX. Implementation Successes and Challenges

1. From your perspective, what has worked well with implementing the pilot program?
2. From your perspective, what have been the implementation challenges?
  - i. What strategies have been effective, if any, in overcoming these challenges?
  - ii. Is there anything you'd change about the pilot program? Why or why not?
3. From your perspective, how effective is coordination and communication between the DA's offices and between your office and the State?
4. How does your community view the program?
5. What would you like to change about the program?
6. What does your agency see as being the next steps with implementation?
7. How has implementation affected your organization?
  - i. In terms of staffing levels or structures?
  - ii. Relationships with PD office?

iii. Other impacts?

X. Program Data and Results

1. How satisfied are you with data collection and performance monitoring protocols that RAND provided?
2. Do you create your own regular performance reports of any kind?













