

# Evaluation of the California County Resentencing Pilot Program

## First-Year Findings

Lois M. Davis

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Testimony presented before the California Committee on Revision of the Penal Code on March 17, 2023



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*Evaluation of the California County Resentencing Pilot Program: First-Year Findings*

Testimony of Lois M. Davis<sup>1</sup>  
The RAND Corporation<sup>2</sup>

Before the California Committee on Revision of the Penal Code

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In 2018, the California State Legislature passed Assembly Bill (AB) 2942, which amended Penal Code section 1170(d)(1) to allow the district attorney (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 public defender (PD) offices in nine pilot counties to support and evaluate a collaborative approach to the exercise of prosecutorial resentencing discretion pursuant to paragraph (1) of subdivision (d) of Section 1170 with the goal of reducing the sentences of eligible prisoners.<sup>3</sup> Pilot counties were provided funding to implement the three-year pilot program. Participants include both a county DA office and a county PD office, and they may include a community-based organization (CBO) as well. The nine counties represented are Los Angeles, San Francisco, San Diego, Yolo, Humboldt, Contra Costa, Merced, Riverside, and Santa Clara.

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<sup>3</sup> In June 2022, Section 1170.01 of the Penal Code was amended and renumbered as Section 1172 (California Legislative Information, "Bill Analysis: AB-1540 Criminal Procedure; Resentencing," 2021).

The RAND Corporation, a nonprofit research organization, was selected as the independent evaluator of the pilot program. The pilot term is from September 1, 2021, through September 1, 2024; the evaluation term is from September 1, 2021, through January 31, 2025. The evaluation sought to determine how the pilot program is implemented in each county, whether the pilot is effective in reducing criminal justice involvement (e.g., recidivism), and whether it is cost-effective. The first of three RAND reports evaluating the pilot program was released on October 3, 2022.<sup>4</sup> This submission shares findings and observations from that report, including insights on support for the pilot program, eligibility criteria development, key challenges, and implementation.

## Initial Findings

### *Overall Support for the Pilot Program*

Through stakeholder interviews, DAs and PDs indicated their overall support of the pilot program, despite the challenges they faced in implementing it. Many DA office and PD office staff who we interviewed expressed their commitment and interest in the opportunities the pilot program afforded their county to address discrepancies in sentencing for individual cases.

### *Development of Eligibility Criteria*

The pilot counties each developed their own criteria for identifying cases eligible for resentencing consideration.

- Although the inclusion criteria varied somewhat across pilot counties, overall, the inclusion criteria focused on factors such as the age of the inmate, the crime committed, and the length and other details of the sentence. One county did not specify inclusion criteria because it planned to review all current cases of incarcerated in prison.
- Exclusion criteria primarily pertained to inmates convicted of crimes considered too egregious (e.g., sex offender registrant; serving a sentence for an offense listed in Penal Code Sections 667.5(c) or 1192.7(c), which lists specific violent felonies) for resentencing consideration.
- Counties expected their eligibility criteria to be refined and to evolve over time as they bring their pilots fully to scale.

### *Multiple Challenges Identified in the First Year*

Participants in the first year of the pilot program encountered the following implementation challenges:

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<sup>4</sup> Lois M. Davis, Louis T. Mariano, Melissa M. Labriola, Susan Turner, and Matt Strawn, *Evaluation of the California County Resentencing Pilot Program: Year 1 Findings*, RAND Corporation, RR-A2116-1, 2022, [https://www.rand.org/pubs/research\\_reports/RRA2116-1.html](https://www.rand.org/pubs/research_reports/RRA2116-1.html).

- County DAs and PDs faced key challenges, including the impact of coronavirus disease 2019 (COVID-19) on the courts and retention of staff and hiring issues that made it difficult for some counties to initially dedicate staff to the pilot program.
- News about the pilot project legislation has gotten out to individuals, families, CBOs, and private attorneys, which led, early on, to multiple referrals or requests being submitted before the DAs had established procedures in place for identifying cases eligible for resentencing consideration. In addition, there has been some confusion among individuals about whether they were eligible for resentencing under this pilot program.
- Additional implementation challenges include developing eligibility criteria, putting data-sharing agreements into place, acquiring and analyzing data from the California Department of Corrections and Rehabilitation to identify individuals who met eligibility criteria, working with eligible individuals to facilitate the preparation 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 in a few counties, most of the DA and PD offices did not have a history of working closely together and are still developing that collaboration. The PDs tended to want to play a more proactive role than the DAs envisioned in defining the eligibility criteria, in identifying cases for consideration, and making recommendations to the courts.

### *Early Results from Nine Counties' Case-Level Data*

In the first-year report, we examined case-level data covering the first six months of pilot implementation. Below are early results from the nine counties' case-level data. Because the pilot is in its early stages, these results should not be used to draw firm conclusions because these initially identified patterns may change over time as we analyze more cases and the counties have the chance to fully develop their pilot programs, including eligibility criteria.

- Among the 259 case reviews initiated during the first six months of the pilot program, the pilot county DA offices had yet to make a determination on 163 cases (63 percent); only eight cases (3 percent) 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).
- Aggregated across the nine pilot counties, the initial cases reviewed tended to involve individuals who were over the age of 50. 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 present.

### **Forthcoming Insights and Data on the Pilot's Implementation**

AB 128 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. We are currently in Year 2 of the evaluation of the pilot program. We expect additional insights in 2023 based on

- an update on the status of implementation of the pilot, how the pilot program has evolved in each pilot county, and strategies adopted by pilot counties to address any challenges encountered

- analyses of the flow of cases as they move through the pipeline from identification, consideration, recommendations to the court, and court decisions
- preliminary analyses of available recidivism outcomes
- preliminary analyses of costs.