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**CLOSING THE CALIFORNIA DIVISION OF JUVENILE JUSTICE:
Prospects and options to the Governor's proposed shutdown of DJJ**

Governor Jerry Brown has proposed to shut down the state's youth corrections operation—the Division of Juvenile Justice (DJJ)—as part of a massive financial rescue plan for California. Here is an explanation of how the DJJ closure fits into the larger budget picture, with an update on the status of the proposed elimination of DJJ.

How DJJ fits into the Governor's budget reform package

On January 10, 2011 Governor Jerry Brown released his FY 2011-12 Budget Proposal. It blends spending cuts with revenue increases designed to close a \$26 billion state deficit. His budget includes a Realignment Plan that would transfer \$6 billion worth of state-funded programs to county government, in areas ranging from corrections to foster care to mental health. On the corrections side, the Realignment Plan would transfer adult parole and all remaining state juvenile justice operations to county government. The Division of Juvenile Justice would close by 2014. Counties would get \$242 million per year (roughly DJJ's current state cost) to cover the cost of the shifted DJJ serious offender caseload. The source of funds for the Realignment Plan, including DJJ Realignment, would be a special tax fund. Voters would be asked this coming June to approve a ballot measure authorizing a five year extension of income, sales and vehicle tax bumps that were adopted in 2009 but are set to expire in 2011. DJJ realignment dollars would come out of these voter-approved tax funds—funds that would go directly to counties to pay for realigned programs.

The Democratic majority in the California Legislature has moved quickly to implement the Governor's budget proposal. Budget committees wrapped up their deliberations in February, approving the broad outlines of the Governor's plan. A Budget Conference Committee is meeting now—months ahead of schedule—to produce an FY 11-12 budget by early March, in time to get the budget plan and the tax extension measure on the June ballot. Thanks to voter approval of Proposition 25 last November, the budget can now be approved by a simple majority vote of the Legislature—in other words, without Republican support.

Republicans, however, have some trump cards, and they are playing them. It still takes a two-thirds legislative vote to increase taxes or to put a ballot measure before voters. Thirty Republican members have joined a pact to keep Brown's tax proposal off the June ballot. The Governor is pleading with a swing-block of Republicans to get the tax extension on the June ballot, but the outcome at this point is up in the air.

What does all this mean for DJJ? The Realignment Plan and the closure of DJJ depend on voter approval of tax funds to pay counties for realigned state programs. If the tax extension measure is kept off the June ballot, the Realignment Plan (including DJJ closure) dies. Then, it's back to the budget drawing board, and what an ugly drawing board it will be. The Legislative Analyst has already published a list of state-funded programs that would cease if the tax

extensions are not approved— for example, \$500 million worth of local public safety grants including the Juvenile Justice Crime Prevention Act.

The proposed shutdown of DJJ gets a frosty reception in legislative hearings

In budget subcommittee hearings, the proposed shutdown of DJJ drew little support and a good deal of hostility. Many lobbying groups—including the Chief Probation Officers (CPOC), the California District Attorneys Association, and the California Correctional Peace Officers Association— characterized the DJJ proposal as a threat to public safety. The gist of their testimony was that counties, as a whole, lack sufficient capacity to house, supervise and serve the high risk/high needs juvenile offenders that make up the remaining DJJ population. Some counties, speakers noted, have no confinement capacity for serious and violent juvenile offenders, while others have facilities that cannot meet their security and service needs. Testifying for CPOC, Executive Director Karen Pank noted that county probation departments already have their hands full trying to implement the 2007 DJJ realignment reform (SB 81) that moved approximately 1,500 non-violent youth to county control; the new realignment “carrot” in the Governor’s plan, she noted, would not suffice to build the local space and service capacity necessary to handle the serious offenders who remain in DJJ.

These opposition speakers outnumbered the voices supporting DJJ closure. Predictably, the Department of Finance backed the Governor’s proposal, as a way to avoid the ongoing \$240 million per year General Fund cost of DJJ. Full DJJ realignment was also endorsed with some reservations by the Legislative Analyst Office. The most vocal proponents of total shutdown were speakers representing the Ella Baker Center on Human Rights (Books Not Bars). They reiterated their long-held view that DJJ is an unsafe and inhumane operation that should be eliminated in favor of locally run juvenile justice facilities and programs.

Youth advocacy organizations are divided on the merits of DJJ closure

While outspoken organizations like Ella Baker Center and the Center for Juvenile and Criminal Justice champion the closure of DJJ, not all youth advocates are on board. Some worry about the adverse consequences of total shutdown. Chief among these concerns is the fear that, if DJJ closes, youth now going to DJJ will be tried as adults and sentenced to state prison. This was confirmed by CDAA ‘s Cory Salzillo in testimony before the Assembly Budget Committee: “If you take out DJJ, prosecutors will file more cases in adult court”, he pledged.

Prosecutor “direct files” on juveniles have doubled over the last five years in California, with more and more serious juvenile offenders getting state prison sentences. But the Division of Juvenile Justice, with jurisdiction to age 25, is still a sentencing choice that prosecutors are able to live with in many cases, siphoning off a caseload that would otherwise be tried as adults and sentenced to prison. Youth sentenced to prison must serve the full adult term (not the three year average stay in DJJ)—and in adult prison, they do not receive the education and other programs offered at DJJ. The worry about diverting more youth to prison is coupled with concern that counties may be no better equipped than DJJ to meet the security and service needs of DJJ youth. Given these considerations, staunch supporters of DJJ downsizing—like attorney Sue Burrell (Youth Law Center), reformer David Steinhart (Commonweal), litigator Don Specter (Prison Law Office) and juvenile justice expert Dr. Barry Krisberg (Berkeley Law School) have been exploring alternatives to full DJJ closure. They share the view that for the time being, some DJJ space should remain open for counties that lack their own secure facilities and as a safeguard against wholesale conversion of DJJ youth into adult prisoners.

DJJ closure options under review

No one can say at this point what will happen to DJJ, when the dust settles after the current budget debate. The timeline for decision is quite short. By the end of the first week in March, lawmakers must decide what's "in" and what's "out" of the realignment tax package that Brown wants voters to decide in June—and there's the hurdle of getting enough Republican support to get the measure on the ballot in the first place. DJJ is only a tiny piece of the huge budget deal the Governor is trying to quilt together at this point—though it is among the more controversial items. Some DJJ options under review in the Capitol are summarized below—with comments on current prospects.

Option 1: Total shutdown and complete realignment of DJJ to county government.

This is the Governor's proposal, and it has decent legislative support as a state cost reduction strategy. Under this proposal, DJJ would close by 2014, and counties would receive \$242 million per year in special tax funds to handle the security and program needs of approximately 1,000 juvenile serious/violent/sex offenders that could no longer go to DJJ. A side benefit of this plan, from the state perspective, is that the DJJ realignment dollars going to counties would be off General Fund and not subject to the Prop 98 (education) set-aside. However, as noted the proposed shutdown of DJJ is wildly unpopular with probation, law enforcement and public employee groups who cite major public safety risks. Moreover, many long-term advocates of DJJ downsizing are opposed to a plan that would predictably recycle DJJ youth into adult prisons. Prospects: At this point, the voices against DJJ shutdown may have persuaded the Administration to pull DJJ out of the Governor's Realignment Plan. DJJ represents only a small fraction of the cost-savings sought by the Department of Finance. The Administration is probably finding it hard to ignore tide of negative sentiment against closing DJJ. If DJJ comes out of the Realignment Plan, Option 2 offers state savings without the risks of total shutdown.

Option 2: Keep DJJ open—but cut administrative positions and take other steps to reduce cost.

Under this option, DJJ would remain open as a place of commitment for serious juvenile offenders. At the same time, the Administration would agree on a cost-reduction plan for DJJ. By wide agreement, DJJ is top heavy in central administrative staff—so one place to reduce cost is to cut administrative positions. Proceeding with the closure of Preston will also reduce state cost. Another cost-reduction strategy is to move youth more quickly out of DJJ institutions (now costing \$200,000 per youth per year) and into lower-cost re-entry programs. DJJ and counties are still wrestling with the implementation of AB 1628, last year's DJJ parole realignment law that shifted responsibility for supervision of DJJ parolees to county probation departments. Prospects: Moderately good. This would be a default position and, for lawmakers and the Governor, the "easy way out" of a DJJ full realignment proposal that has drawn fire from so many quarters. Given DJJ's slow and painful track record of implementing court-ordered reforms, this outcome is unappealing to those who see the Governor's proposal as an opportunity to end, once and for all, decades of frustration and failure in the state-operated system.

Option 3: The buyback plan— full fiscal realignment of DJJ with the county option to buy back space in a smaller state-run system.

Under this option, DJJ would stay in the Governor's Realignment Plan and counties would get the full payout of \$242 million per year in realignment tax dollars. But, counties could use their

DJJ realignment funds to purchase beds as-needed at a downsized DJJ. DJJ would remain open at a reduced capacity—the capacity to be determined by negotiation between counties and the state on the number of beds needed. This plan would be a fail-safe against the public safety risks of closing DJJ and forcing counties to locate new (and in some cases, nonexistent) dispositions for high-risk/high-needs youth. It would also maintain a layer of protection against pushing more serious juvenile offenders into adult prisons. This option looks like a win-win for the state (it gets the cost of DJJ off the General Fund) and for counties (they get big realignment dollars and can choose how to spend it). But, it is the most complex option to design in the short time available. It took several months, in 2007, to negotiate the process and payout terms of SB 81—the realignment law that moved non-violent youth from state to county control. Now, there is less time to decide multi-faceted issues like: How much will counties have to pay to use DJJ? What control mechanisms would govern how many DJJ slots each county would get? What if counties don't use or pay for all the beds that DJJ keeps open? What strings if any would attach to realignment funds retained by counties, to underwrite investment in evidence-based expansions of local juvenile justice capacity? Prospects: Possible but difficult. The buy-back plan is a winner for the Department of Finance (DJJ is no longer a state cost), for counties worried about secure capacity and for advocates who want a buffer against adult prison commitments of juveniles. However, it may be too wonky or complex for lawmakers and administrators to craft in the time available, given all the other fiscal skirmishes on the field.

Special option: penalties for prison commitments of juveniles. This proposal, backed by Ella Baker Center and LAO, would create a fiscal disincentive for counties making additional adult prison commitments of juveniles if DJJ closes or if counties have to pay to use DJJ. The idea is to make counties pay the state prison costs of increased juvenile commitments (roughly \$ 45,000 per inmate per year). This would, in theory, discourage run-ups in direct files in adult court. It would also, in theory, encourage counties to use realignment funds to develop local dispositions for serious juvenile offenders. The problem with this plan is that it may not work. Prosecutors make the front-end case decision on where to file—in adult or juvenile court. In a serious (WIC 707) case, if DJJ with age 25 jurisdiction is no longer available, prosecutors will predictably file in adult court. The fact that the county might later have to pay for a resulting prison sentence is not likely to deter the DA from electing to prosecute the minor as an adult. On conviction, determinate sentencing laws may compel prison commitment. Moreover, if counties are asked to pay state costs over the full term of each imprisoned youth, the compounded cost to counties could spiral out of control. This option, if invoked, must be very carefully designed.

What's happens next?

The time for decision is short and there are, at this point, few opportunities for public comment. The DJJ piece of the fiscal puzzle is admittedly a very small one. The Administration—through the Department of Finance—will probably make the final call on whether DJJ realignment stays in the Governor's tax package. Counties have made it clear they don't want DJJ to close—in a chorus that includes law enforcement, union and advocate opposition as well. By the second week of March, we should know whether DJJ is in or out of the Governor's Realignment Plan, and whether Republicans have been able to block that Plan from going before voters in June. If the Realignment Plan dies now, the whole fiscal scheme for moving the DJJ operation to counties dies with it. We just have to wait and see. ■

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