

# The Role of Collaborative Courts in California's Criminal Justice System

By DAN LYMAN\*

IN 2006, DECLARING A STATE OF EMERGENCY, California's Governor, Arnold Schwarzenegger, said "immediate action is necessary to prevent death and harm caused by California's severe prison overcrowding."<sup>1</sup> Despite California's efforts, prison overcrowding persisted. In 2011, the Supreme Court of the United States held that California's overcrowding created a prison system that "falls below the standard of decency that inheres in the Eighth Amendment."<sup>2</sup> For over a decade, the State's prisons operated at roughly double capacity—regularly housing as many as two-hundred prisoners in gymnasiums with just two or three correctional officers and roughly one toilet per fifty-four prisoners.<sup>3</sup> In 2006, Governor Schwarzenegger recognized that such overcrowding created a substantial risk for transmitting infectious illnesses and increased the suicide rate about one death per week—up eighty percent from the national average.<sup>4</sup>

California's over-burdened criminal justice system does not exclusively affect incarcerated people; it also significantly impacts California's taxpayers. In 2010, as the Supreme Court prepared to condemn California's prisons, California's taxpayers were spending \$7.9 billion on corrections.<sup>5</sup> That number has since risen to \$10.07 billion for the 2015–2016 budget.<sup>6</sup> Broken

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1. *Brown v. Plata*, 131 S. Ct. 1910, 1924 (2011).

2. *Id.* at 1947.

3. *Id.* at 1923–24.

4. *Id.* at 1924.

5. THE VERA INST. OF JUSTICE, THE PRICE OF PRISONS: CALIFORNIA (Jan. 2012), <http://www.vera.org/files/price-of-prisons-california-fact-sheet.pdf>. [<https://perma.cc/LW83-4GPU>].

6. Bob Egelko, *Crime down, costs up since prison realignment, study finds*, SF GATE (Sept. 29, 2015), <http://www.sfgate.com/crime/article/Crime-down-costs-up-since-prison-realignment->

down, each inmate in prison costs the state over \$50,000 per year.<sup>7</sup> However, the economic burden of incarceration in California is just *one* expense in an extremely costly system. Annual state and local law enforcement costs total more than \$14 billion statewide—equivalent to about \$380 per Californian.<sup>8</sup> Criminal cases in the trial courts cost California approximately \$1.5 billion, amounting to about two-fifths of the judicial branch's total funding.<sup>9</sup>

So, what is the objective of this immense spending on incarceration? Typically, punishment is justified by deterrence, incapacitation, retribution, or rehabilitation. However, to understand California's goal, it may be informative to look to the California Department of Corrections and Rehabilitation's ("CDCR") mission statement, which reads: "The mission of our department is to protect the public by safely and securely supervising adults and juvenile offenders, providing effective rehabilitation and treatment, and integrating offenders successfully into the community."<sup>10</sup> Despite the CDCR recognizing the importance of incapacitating dangerous offenders and rehabilitating and reintegrating others into society, a 2014 evaluation report shows that once released, there is a fifty-four percent chance of re-incarceration within three years.<sup>11</sup> These odds were an improvement from California's peak recidivism rate of sixty-seven percent in 2005.<sup>12</sup> Nevertheless, released offenders still have better odds at guessing a coin toss than staying out of the prison system for a substantial amount of time.

This Comment argues that collaborative courts are both more efficient and more effective in resolving emerging issues than traditional, adversarial proceedings and incarceration. Furthermore, the principles of collaborative courts have the potential to reshape the way society perceives the criminal justice system, making them an early consideration rather than a last resort.

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6536236.php. [https://perma.cc/UM3M-6P7N].

7. THE LEGISLATIVE ANALYST'S OFFICE, CALIFORNIA'S CRIMINAL JUSTICE SYSTEM: A PRIMER 40–41 (2013), <http://www.lao.ca.gov/reports/2013/crim/criminal-justice-primer/criminal-justice-primer-011713.aspx> (supporting that in 2011–2012, the cost per inmate per year was \$51,889, with about 47 percent of that cost distributed to correctional officers and 31 percent to inmate health care).

8. *Id.* (reflecting 2007 spending figures).

9. *Id.* (reflecting 2009–10 budget).

10. CAL. DEP'T OF CORRECTIONS AND REHAB., A SAFER CALIFORNIA THROUGH CORRECTIONAL EXCELLENCE, <http://www.cdcr.ca.gov> (last visited May 17, 2016) [https://perma.cc/95FN-443M].

11. CAL. DEP'T OF CORRECTIONS AND REHAB., 2014 OUTCOME EVALUATION REPORT vi (2015), [http://www.cdcr.ca.gov/Adult\\_Research\\_Branch/Research\\_Documents/2014\\_Outcome\\_Evaluation\\_Report\\_7-6-2015.pdf](http://www.cdcr.ca.gov/Adult_Research_Branch/Research_Documents/2014_Outcome_Evaluation_Report_7-6-2015.pdf). [https://perma.cc/8JEQ-ZN63].

12. Ed Joyce, *Recidivism Rate For California Offenders Drops Again*, Capital Public Radio (July 8, 2015), <http://www.capradio.org/articles/2015/07/08/recidivism-rate-for-california-offenders-drops-again/> [https://perma.cc/YK4V-J2EC].

Collaborative courts “combine judicial supervision with rehabilitation services that are rigorously monitored and focused on recovery to reduce recidivism and improve offender outcomes.”<sup>13</sup> These courts are beneficial to all Californians because they save time and are more economically efficient.<sup>14</sup> Secondly, they are beneficial to the CDCR and the Eighth Amendment because they lower recidivism rates, alleviate overcrowding, and serve the CDCR’s goals of rehabilitation and reintegration.<sup>15</sup> Lastly, offenders may benefit from collaborative courts because collaborative court rulings have the potential to restore offenders as productive and successful members of their community by addressing the causes of their criminal conduct.

This Comment is divided into four parts. Part one focuses on relevant historical policies that contributed to California’s recidivism problem. Part two discusses the current policies used to combat some of the systemic problems. Part three defines collaborative courts, introduces their principles, and describes how they are distinguishable from traditional courts. Finally, part four argues that the collaborative courts should be at the forefront of criminal justice reform in California.

## **I. Sentencing Policies and Recidivism Rates Have Contributed to California’s Problematic System**

One of the early policy changes that contributed to jail and prison overcrowding in California was the transition from indeterminate to determinate sentencing in 1977.<sup>16</sup> Indeterminate sentencing refers to a sentence with a minimum amount of time incarcerated, but no maximum, such as “five-to-life.”<sup>17</sup> This sentencing scheme was designed to give flexibility to parole boards when determining if an individual was ready to be released.<sup>18</sup> In the 1960s and 1970s, there was a bipartisan push to abandon this scheme.<sup>19</sup> Motivated by the civil-rights movement, liberal law makers sought to change the law due to the risk of racial and class bias in the members of the parole boards—vested with near-complete discretion.<sup>20</sup> Conversely, conservatives were

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13. Cal. Courts, *Collaborative Justice Courts*, <http://www.courts.ca.gov/programs-collabjustice.htm> (last visited May 17, 2016) [<https://perma.cc/2VFL-VV52>].

14. *See infra*, § III, 4.

15. *Id.*

16. The Legislative Analyst’s Office, *supra* note 7.

17. *Id.*

18. *Id.*

19. Vauhini Vara, *Will California Again Lead The Way On Prison Reform?*, THE NEW YORKER, Nov. 7, 2014, <http://www.newyorker.com/business/currency/will-california-lead-way-prison-reform>. [<https://perma.cc/26HK-DJHJ>].

20. *Id.*

motivated by a tough-on-crime attitude and concerns about parole board leniency.<sup>21</sup> The shift to determinate sentencing meant that most felonies came with a “triad” sentencing structure. This structure gave the court power to decide which of the three available punishments was appropriate in a particular case, thus eliminating parole board discretion.<sup>22</sup> However, despite the elimination of the parole board, determinate sentences have turned out to be longer on average than indeterminate sentences; this paved the way for California’s ballooning prison population.<sup>23</sup> Although determinate sentencing is more prevalent, indeterminate sentencing is still used for some serious crimes, or crimes committed by repeat offenders.<sup>24</sup> A study looking to the recidivism rates of those released from a determinate versus indeterminate sentence found the rates to be 54.4% and 9.5%, respectively.<sup>25</sup>

In 1994, California adopted an ultra-harsh determinate sentencing scheme when voters approved Proposition 184, also known as the “three strikes” law.<sup>26</sup> Under this scheme, people who commit a third felony (whether or not it is serious or violent) were generally sentenced to 25 years to life.<sup>27</sup> This law magnified the impact of determinate sentencing on California’s prison system.<sup>28</sup> In 2004, 43,000 inmates were serving a three strikes sentence, comprising twenty-six percent of the total prison population.<sup>29</sup> Of those, fifty-six percent were convicted of non-serious and nonviolent offenses.<sup>30</sup>

Additionally, California’s poor solution for providing social services for the mentally ill has contributed to overcrowding issues. In the 1950s, California was swept with a wave of deinstitutionalization which shifted the responsibility of providing mental health services from state operated hospitals to local community-based services.<sup>31</sup> This process, accompanied by a series of budget cuts, caused the number of patients in mental health hospitals to

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21. *Id.*

22. The Legislative Analyst’s Office, *supra* note 7.

23. Vara, *supra* note 19.

24. The Legislative Analyst’s Office, *supra* note 7.

25. Cal. Dep’t of Corrections and Rehab., *supra* note 11 at viii.

26. The Legislative Analyst’s Office, *supra* note 7.

27. *Id.*

28. BRIAN BROWN & GREG JOLIVETTE, A PRIMER: THREE STRIKES—THE IMPACT AFTER MORE THAN A DECADE, (2005), [http://www.lao.ca.gov/2005/3\\_strikes/3\\_strikes\\_102005.htm](http://www.lao.ca.gov/2005/3_strikes/3_strikes_102005.htm). [<https://perma.cc/X37C-WSYG>].

29. *Id.*

30. *Id.*

31. See DARRELL STEINBERG ET AL., WHEN DID PRISON BECOME ACCEPTABLE MENTAL HEALTHCARE FACILITIES, 5, [http://law.stanford.edu/wp-content/uploads/sites/default/files/child-page/632655/doc/slspublic/Report\\_v12.pdf](http://law.stanford.edu/wp-content/uploads/sites/default/files/child-page/632655/doc/slspublic/Report_v12.pdf) (last visited May 17, 2016) [<https://perma.cc/TRM4-LTJJ>].

plummet from roughly 36,000 to roughly 8,000 between 1956 and 1971.<sup>32</sup> As the number of mentally ill housed in mental hospitals essentially bottomed out, the number of mentally ill housed in prisons began to explode. In 1971 there were 20,000 people in California prisons, by 2010 there were more than 162,000 people in prisons, including an estimated 72,900 people with mental illness.<sup>33</sup>

One of the most significant national policies that contributed to prison overcrowding throughout the country was the “war on drugs.” First declared by President Nixon, and accompanied by strict sentencing and aggressive enforcement, it was President Regan who pushed the movement towards its infamous outcome.<sup>34</sup> From 1980 to 1997, the number of nonviolent drug offenders serving time in this country’s jails and prisons went from 50,000 to 400,000.<sup>35</sup> A massive public campaign was launched against drug use and the percentage of Americans who felt that drug use was the nation’s biggest problem went from the low single digits to sixty-four percent in just four years.<sup>36</sup> This public support led to harsh zero tolerance policies, mandatory minimum sentences, and increased enforcement across the country.<sup>37</sup> This national campaign was a well-known contributor to prison overcrowding in California.

California has made significant improvements to the state’s overcrowding problem, and the effects of bad sentencing policies are being tempered—mostly through voter initiatives. Key to this Comment collaborative courts are succeeding in lowering recidivism rates and state costs by using innovative approaches that target offenders’ specific needs.

## II. California’s Reform Efforts Have Focused on Sentencing and Realignment

### 1. Realignment

Governor Schwarzenegger’s response to overcrowding took a necessary, yet shortsighted approach to the problem. As part of his 2006 proclamation, Schwarzenegger began transferring inmates to out-of-state correctional facilities.<sup>38</sup> By 2011, thousands of inmates had been transferred from

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32. *Id.* at 5–6.

33. *Id.* at 2.

34. Drug Policy Alliance, *A Brief History of the Drug War*, <http://www.drugpolicy.org/newsolutions-drug-policy/brief-history-drug-war>, (last visited May 17, 2016) [<https://perma.cc/NHC8-S95S>].

35. *Id.*

36. *Id.*

37. *Id.*

38. Exec. Dep’t, State of Cal., *A Proclamation By The Governor of the State of California*

California's prisons.<sup>39</sup> That same year, Governor Brown succeeded Governor Schwarzenegger and signed into law Assembly Bills 109 and 117.<sup>40</sup> These bills implemented "Realignment" in California—a policy designed to reduce prison populations by keeping certain offenders in county jails rather than transferring them to state prisons.<sup>41</sup> This policy was effective. Two years after implementation, California's inmate population decreased by about 25,000.<sup>42</sup> On July 31, 2013, Governor Brown terminated Governor Schwarzenegger's 2006 Emergency Proclamation, proclaiming that "prison crowding no longer poses safety risks to prison staff or inmates."<sup>43</sup>

Does keeping an offender in county jail rather than transferring him or her to a state prison really make a difference? Eighth Amendment concerns are satiated—less people in a given facility avoids overcrowding. But, high costs, high recidivism rates, and high incarceration rates persist.

## 2. Sentencing

Another way California is addressing its problem with prison populations is through sentencing reform. Rather than focusing on where to incarcerate offenders, these efforts are aimed at shortening prison terms or avoiding incarceration all together.

In 2000, California voters passed Proposition 36, known as the Substance Abuse and Crime Prevention Act ("SACPA"). SACPA gave courts authority to sentence qualified defendants convicted of possession, use, or transportation of a controlled substance, to probation and drug treatment rather than incarceration.<sup>44</sup> This law was passed, in part, as a result of efforts from the Collaborative Justice Courts Advisory Committee.<sup>45</sup> The Act

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(Oct. 4, 2006) [https://www.gov.ca.gov/docs/Terminating\\_Prison\\_Overcrowding\\_Emergency\\_Proclamation\\_\(10-4-06\).pdf](https://www.gov.ca.gov/docs/Terminating_Prison_Overcrowding_Emergency_Proclamation_(10-4-06).pdf). [https://perma.cc/FB5U-8BZR].

39. Vara, *supra* note 19.

40. CAL. DEP'T OF CORRECTIONS AND REHAB., THE CORNERSTONE OF CALIFORNIA'S SOLUTION TO REDUCE OVERCROWDING, COSTS, AND RECIDIVISM, <http://www.cdcr.ca.gov/realignment/> (last visited May 17, 2016) [https://perma.cc/L8X6-XWA2].

41. CAL. DEP'T OF CORRECTIONS AND REHAB., REALIGNMENT FACT SHEET, <http://www.cdcr.ca.gov/realignment/docs/Realignment-Fact-Sheet.pdf> (last visited May 17, 2016) [https://perma.cc/G4BB-MMP9] ("Under Realignment, newly-convicted low-level offenders without current or prior serious or violent offenses stay in county jail to serve their sentence.").

42. *Id.*

43. Exec. Dep't, State of Cal., *supra* note 38.

44. Ballotpedia, *California Proposition 36 Probation and Treatment for Drug-Related Offenses* (2000), [https://ballotpedia.org/California\\_Proposition\\_36\\_Probation\\_and\\_Treatment\\_for\\_Drug-Related\\_Offenses\\_\(2000\)](https://ballotpedia.org/California_Proposition_36_Probation_and_Treatment_for_Drug-Related_Offenses_(2000)). [https://perma.cc/FRD6-62SV].

45. Robert V. Wolf, *California's Collaborative Justice Courts: Building a Problem-Solving Judiciary* (2005), 23, [http://www.courts.ca.gov/documents/California\\_Story.pdf](http://www.courts.ca.gov/documents/California_Story.pdf).

included \$120 million in annual drug treatment funding, which undoubtedly has had a great impact on the prevalence and success of drug courts and other collaborative courts.<sup>46</sup> In addition to keeping offenders out of overcrowded jails and prisons, Proposition 36 had an immediate and significant economic impact.<sup>47</sup> One study found that in the first year of the act's implementation, for every \$1.00 spent, \$2.50 was saved, and when looking only to offenders who completed their programs, \$4.00 was saved for every \$1.00 spent.<sup>48</sup>

In an effort to reform California's three-strikes law, voters passed a different Proposition 36 in 2012.<sup>49</sup> This Proposition 36 changed California's three-strikes law to require that the third strike be "serious or violent" before a life sentence can be imposed.<sup>50</sup> Dramatic stories in the press describing life sentences for stealing a slice of pizza, a bottle of vitamins, or videotapes fueled public concern over harsh sentencing.<sup>51</sup> When this change to the three-strikes law was passed in 2012, approximately 3,000 felons serving life sentences for nonviolent crimes were eligible to petition for a reduced sentence.<sup>52</sup> This was welcome relief to California's prisons just one year after the Supreme Court declared those prisons violated the Eighth Amendment.<sup>53</sup>

More recently, in 2014, California voters passed Proposition 47.<sup>54</sup> This proposition reduced most non-serious and nonviolent felonies to misdemeanors.<sup>55</sup> The law affects property crimes—for property valued at less than \$950—and drug use crimes.<sup>56</sup> The relieving impact of this law was

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[<https://perma.cc/JDV3-SXRX>].

46. *Id.*

47. UCLA Integrated Substance Abuse Programs, *Evaluation of the Substance Abuse and Crime Prevention Act* (March 13, 2006), 4, [http://www.uclaisap.org/prop36/documents/SACPA\\_COSTANALYSIS.pdf](http://www.uclaisap.org/prop36/documents/SACPA_COSTANALYSIS.pdf) [<https://perma.cc/4GEJ-FNYS>] (Comparing the cost of probation and treatment to traditional incarceration).

48. *Id.*

49. Ballotpedia, *California Proposition 36, Changes in the "Three Strikes" Law* (2012), [https://ballotpedia.org/California\\_Proposition\\_36,\\_Changes\\_in\\_the\\_%22Three\\_Strikes%22\\_Law\\_\(2012\)](https://ballotpedia.org/California_Proposition_36,_Changes_in_the_%22Three_Strikes%22_Law_(2012)) [<https://perma.cc/6K46-WXEX>].

50. *Id.* (Some exceptions apply, for example, if a prior strike was for rape, murder, or child molestation, then the third strike does not need to be serious or violent to impose a life sentence).

51. Jack Leonhard, *'Pizza Thief' Walks the Line* (Feb. 10, 2010), <http://articles.latimes.com/2010/feb/10/local/la-me-pizzathief10-2010feb10>, [<https://perma.cc/SYH9-6CPJ>].

52. Ballotpedia, *supra* note 44.

53. *Brown v. Plata*, 131 S. Ct. 1910, 1924 (2011).

54. Ballotpedia, *California Proposition 47, Reduced Penalties for Some Crimes Initiative* (2014), [https://ballotpedia.org/California\\_Proposition\\_47,\\_Reduced\\_Penalties\\_for\\_Some\\_Crimes\\_Initiative\\_\(2014\)](https://ballotpedia.org/California_Proposition_47,_Reduced_Penalties_for_Some_Crimes_Initiative_(2014)) [<https://perma.cc/V33H-L7E7>].

55. *Id.*

56. *Id.* Property crimes include crimes such as shoplifting, receiving stolen property, or forgery.

immediate and is expected to continue. A factor contributing to the effectiveness of this law is that it is retroactive, meaning that 10,000 people already sentenced under the original three-strikes law criteria, immediately became eligible for re-sentencing.<sup>57</sup> Just nine months after Proposition 47 was passed, 4,347 prisoners were released.<sup>58</sup> Presumably of more importance to voters, California is also gearing up to save a lot of money. Expecting lower costs, Governor Brown has reduced his annual budget by \$73 million as a result of the new three-strikes law.<sup>59</sup> However, this may actually underestimate the State's savings. The Legislative Analyst's Office estimates that California will save between \$100 and \$200 million by the beginning of the 2016–2017 fiscal year.<sup>60</sup>

While realignment and sentencing reforms have made tremendous strides in fixing California's overcrowding problem, they aren't really addressing the problem that needs addressing. Except for SACPA, all of these efforts focus on the aftermath of the crime. How serious should we consider the crime? Who should be in jail and who should be in prison? And, how long should we keep them there? SACPA, on the other hand, is about treatment, and ties its reduced costs not only to reduced incarceration costs, but to lower recidivism rates as well.<sup>61</sup> If the goal is to rehabilitate and reintegrate, then the question we need to ask is this: why did the offender offend? Once that question is answered, then we can pose the more important question: what can we do to prevent that offender from reoffending? This is the approach taken by California's collaborative courts.

### III. Collaborative Courts Approach Justice Differently Than Traditional Courts

Much of the discussion below regarding collaborative courts will be through the lens of drug courts—the most prevalent of the collaborative courts. Although not the earliest court to incorporate collaborative principles, drug courts have certainly spread the furthest in the least amount of time; they have also generated the most research. This section will first give a history of drug courts on the national level, and then describe the emergence of California's

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57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. Dan Page, *Proposition 36 Saves Taxpayers' Money: UCLA Study Finds Nearly \$2.50 in Savings for Each \$1 Spent on Drug Offenders Eligible for Treatment* (April 5, 2006), <http://newsroom.ucla.edu/releases/Proposition-36-Saves-Taxpayers-6950> [https://perma.cc/2SGM-5TPW] (Offenders who complete their treatment program save \$4 per dollar spent compared to \$2.50 per dollar spent when looking at all Proposition 36 offenders).



collaborative courts. It will then use the drug court structure to give an understanding of the principles guiding collaborative courts. Finally, this section will discuss the current adaptations of the principles embodied in drug court as they target other specialized needs.

### 1. Drug Courts are the Most Common Collaborative Courts Throughout the Nation

On the national level, necessity spurred the creation of drug courts.<sup>62</sup> In the 1980s, courts became overwhelmed with a revolving door of drug-related cases.<sup>63</sup> At that time, two out of three prison inmates arrested for a new offense were drug offenders; fifty to seventy percent of inmates re-incarcerated for a new offense or parole revocation were drug offenders; forty to fifty percent of revoked probations were for drug offenses; and ninety-five percent of drug offenders continued to abuse alcohol, drugs, or both.<sup>64</sup> This crises forced innovation and created drug courts. The “traditional plea-bargaining process [was transformed] into a negotiated disposition that would permit judges to talk to treatment professionals, that would require participants to speak to the judge, that would keep offenders closely supervised, and that would provide offenders with the tools needed to get well and stay well indefinitely.”<sup>65</sup> By 1996, The National Association of Drug Court Professionals published the essential elements of the drug court model in *Defining Drug Courts: The Key Components*.<sup>66</sup> These components became the core framework for drug courts across the country and have become the core framework for other collaborative courts.<sup>67</sup>

The Supreme Court provided the groundwork for recognizing addiction’s unique place in criminal justice in the landmark 1962 case, *Robinson v. California*.<sup>68</sup> In that case, the Court invalidated a California law that made it a criminal offense to “be addicted to the use of narcotics.”<sup>69</sup> The

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62. Drug court serves as a primary model of collaborative justice. The core principles that were created to guide drug courts were ultimately adapted to other collaborative justice courts. For that reason, this section focuses on drug courts.

63. National Drug Court Institute, *The Drug Court Bench Book* (Feb. 2011), 1, [http://www.ndci.org/sites/default/files/nadcp/14146\\_NDCI\\_Benchbook\\_v6.pdf](http://www.ndci.org/sites/default/files/nadcp/14146_NDCI_Benchbook_v6.pdf). [<https://perma.cc/8THV-5A8Z>].

64. *Id.*

65. *Id.*

66. See BUREAU OF JUSTICE ASSISTANCE, *DEFINING DRUG COURTS: The Key Components* (October 2004), <http://www.courts.ca.gov/documents/DefiningDC.pdf>. [<https://perma.cc/2VSM-NBMV>].

67. *Id.*

68. *Robinson v. California*, 370 U.S. 660 (1962).

69. *Id.*

Court held that imprisonment based on the “status” of being an addict amounted to cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments.<sup>70</sup> In oral argument, the State of California recognized that a narcotics addiction was an illness, which could be contracted innocently or involuntarily.<sup>71</sup> Seizing on this recognition, the Court hypothesized a similar statute criminalizing a person for being mentally ill, a leper, or being afflicted with a venereal disease.<sup>72</sup> The Court said a state may “require that the victims of these and other human afflictions be dealt with by compulsory treatment . . . [However], a law which made a criminal offense of such a disease would doubtless be universally thought to be an infliction of cruel and unusual punishment.”<sup>73</sup>

*Robinson* gave weight to the notion that treatment was a better solution for addicts than punishment.<sup>74</sup> And that in fact, traditional punishment does not serve the needs of an addict. This recognition gave precedential force to the push for alternative approaches to addiction, and ultimately many other underlying problems that intersect with criminal justice. Today there are approximately 3,000 drug courts across the country.<sup>75</sup> In California, drug court’s core principles have been adapted to many other specialized programs, such as homeless courts, domestic violence courts, DUI courts, mental health courts, and veterans’ courts.<sup>76</sup>

## 2. Collaborative Courts in California Developed Out of Necessity

Collaborative justice in California, like the Nation, arose out of necessity<sup>77</sup>. A coalescence of factors forced the system to adapt to handle an increasing burden. In the 1970’s and 1980’s there was a movement to deinstitutionalize the mentally ill which caused many of those deinstitutionalized individuals to get swept up in the criminal justice system.<sup>78</sup>

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70. *Id.* at 666–67.

71. *Id.* at 667.

72. *Id.* at 666.

73. *Id.*

74. National Drug Court Institute, *supra* note 63 at 12.

75. Center for Court Innovation, *Drug Court*, <http://www.courtinnovation.org/topic/drug-court> (Last Visited May 17, 2016) [<https://perma.cc/RC3E-WD6A>].

76. See *infra*, § III, 5.

77. In California we refer to the type of courts discussed below as Collaborative Courts; in other states the same principles of justice employed in problem Solving Courts. The theories behind these courts are also referred to broadly as Collaborative Justice or Problem Solving Justice. This Comment is focused on California so I will refer to Collaborative Courts and Collaborative Justice, but the terms are interchangeable for the purposes of this Comment.

78. JUDICIAL COUNCIL OF CAL., *MENTAL HEALTH ISSUES IMPLEMENTATION TASK FORCE: FINAL REPORT* (Dec. 2015), 4, <http://www.courts.ca.gov/documents/MHITF-Final->

Deinstitutionalization was an attempt to treat mental illness in the least restrictive means possible.<sup>79</sup> President Jimmy Carter championed this movement—opining that patients would be better treated by “maintaining the greatest degree of freedom, self-determination, [and] autonomy” possible.<sup>80</sup> However, this helped create a “mental illness crisis by discharging people from public psychiatric hospitals without ensuring that they received the medication and rehabilitation service necessary for them to live successfully in the community.”<sup>81</sup>

While a large number of mentally ill were being pushed into the homeless population, the crack-cocaine epidemic was hitting California streets.<sup>82</sup> With these combined forces, California saw a rise in homelessness and drug-related crimes.<sup>83</sup> These movements—along with changes in the justice system’s response to domestic violence, and newly implemented theories about crime and law enforcement, such as the “broken windows” theory—contributed to the forced innovation of collaborative justice in California.<sup>84</sup>

Emerging from Humboldt and Contra Costa counties in the mid-1980s, peer courts were among the states earliest collaborative courts.<sup>85</sup> These courts place juvenile offenders before a jury of their peers—other juveniles—to determine the consequences of their actions.<sup>86</sup> By 1991 Placer County Peer Court reported a drop in juvenile crime and a savings of \$500,000 a year.<sup>87</sup> Like all collaborative courts, peer courts are based on a collaboration of forces. The court, probation department, local schools, and attorneys all work together in the peer court to find what works best for a given community.<sup>88</sup>

Collaborative justice in California began to pick up speed. The state began experimenting with domestic violence courts and the first homeless court was established in San Diego in 1989.<sup>89</sup> In 1996, Butte County created the state’s first DUI court.<sup>90</sup> Judge Darrell Stevens teamed up with the local

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Report.pdf. [https://perma.cc/33QT-FLXT].

79. E. Fuller Torrey, *Deinstitutionalization: A Psychiatric “Titanic”* <http://www.pbs.org/wgbh/pages/frontline/shows/asylums/special/excerpt.html> (Last Visited May 17, 2016) [https://perma.cc/2AYJ-K4LL].

80. *Id.*

81. *Id.*

82. JUDICIAL COUNCIL OF CALIFORNIA, *supra* note 78.

83. *Id.*

84. *Id.*

85. *Id.* at 7.

86. *Id.*

87. *Id.*

88. *Id.* at 8.

89. *Id.* at 5.

90. *Id.* at 11.

hospitals and pharmacies to provide medication that blocks alcohol cravings, again taking advantage of a collaborative approach to offenders.<sup>91</sup> In 1998 San Diego launched the states most replicated juvenile delinquency drug court.<sup>92</sup> In 1999, the state's first mental health courts were established and in 2001 California established its first court focusing on dating violence.<sup>93</sup>

California's first drug court was created in Oakland in 1991.<sup>94</sup> As drug courts developed in the state, they relied heavily on developing close working relationships between courts and local treatment providers.<sup>95</sup> Because of the "revolving door"<sup>96</sup> problem facing California—which was creating a great burden on California courts—these courts received much attention. In 1994, Judge Patrick Morris of San Bernardino and Judge Jeffrey Tauber of Oakland, were among a small group who founded The National Association of Drug Court Professionals ("NADCP"), with the support of Chief Justice Ronald M. George and Administrative Director of the Courts William C. Vickery.<sup>97</sup> By the 1990s, California's drug courts began to serve as national models through the NADCP.<sup>98</sup> Judge Morris eventually chaired the California Drug Court Task Force, which was created by Chief Justice George, to facilitate funding and education in support of the drug court.<sup>99</sup> The Drug Court Task Force eventually became the Drug Court Oversight Committee, which carried out essentially the same tasks.<sup>100</sup> However, the attention of the California judiciary began to broaden beyond the drug court. In 2000, California's Judicial Council established the Collaborative Justice Courts Advisory Committee, which took over for the Drug Court Oversight Committee to address funding, evaluation, and establishment for all collaborative courts in California—not just drug courts.<sup>101</sup>

### 3. All Collaborative Courts Take the Same General Approach, but the Specifics Vary

Collaborative courts "combine judicial supervision with rehabilitation services that are rigorously monitored and focused on recovery to reduce

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91. *Id.*

92. *Id.* at 19.

93. *Id.* at 21–22.

94. *Id.* at 7.

95. *Id.* at 10.

96. *Id.* at 8 (term of art referring to the high recidivism rate associated with drug related crimes).

97. *Id.* at 10–11.

98. *Id.* at 12.

99. *Id.*

100. *Id.*

101. *Id.* at 23.

recidivism and improve offender outcomes.”<sup>102</sup> These courts take a problem-solving approach to justice, integrating both social and treatment services with judicial supervision.<sup>103</sup> In these courts, the judge and the defendant interact directly by playing active roles in the justice process.

Drug court is the first widely used and most prominent collaborative court,<sup>104</sup> so understanding drug court helps one understand collaborative courts. The National Drug Court Institute created a bench-book to guide the creation and maintenance of successful drug court programs.<sup>105</sup> According to this guide, drug courts have multidisciplinary teams of professionals who work together in non-adversarial proceedings with the judge serving, in essence, as a “leader among equals.”<sup>106</sup> These professionals consist of prosecutors, a public defenders, probation officers, treatment providers, case managers, law enforcement officers, and program coordinators.<sup>107</sup>

Several different models guide the interaction between drug courts and traditional proceedings. The most prominent model early on in the drug court days was the *pre-plea diversion* model, in which participation was part of pretrial intervention.<sup>108</sup> If the participant successfully completes the program then the charges were dropped, and if the participant did not then the proceedings resumed.<sup>109</sup> This model promotes judicial efficiency by avoiding preliminary hearings and extensive discovery, but risks the case going “cold” if it takes several months for the participant to become unsuccessful in the program.<sup>110</sup> However, this risk is avoided by another similar model known as *diversion with stipulation of fact*. This is the same as *pre-plea diversion* except upon entry to the program, the participant signs a stipulation essentially confessing to the events stated in the police report, which obviously satisfies the prosecutor’s concerns.<sup>111</sup>

There is also the *post-plea, pre-adjudication* model (also known as the *deferred entry of judgment* model). In this model, the participant enters a guilty plea, and upon completion of the program, they will receive a lesser sentence, such as probation instead of jail time.<sup>112</sup> This model has the converse

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102. Cal. Courts, *supra* note 13.

103. *Id.*

104. Wolf, *supra* note 45 at 13.

105. National Drug Court Institute, *supra* note 63.

106. *Id.* at xiii.

107. *Id.* at 23.

108. *Id.* at 33.

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.* at 34.

pros and cons of *pre-plea diversion*: no risk of a case going cold, but the costs of taking a case all the way to a guilty plea still remains. Similar to this model is the *post-adjudication, probation* model in which the participant actually receives a sentence of probation, and the terms of probation requires compliance with the drug court.<sup>113</sup>

There is no clear evidence establishing that one model is better than another.<sup>114</sup> What is important to recognize is that drug courts vary. They must be suited to address the needs of the community. In other words, drug courts reflect the values and needs of those who create them, and those whom they serve. Consequently, once you are beyond the broad-stroke principles of these programs, there are huge variations in the daily operations.

For example, another key component of drug courts, which can change from court to court, is the eligibility requirements. No specific eligibility requirements exist for all courts, however well-defined eligibility criteria are crucial.<sup>115</sup> The key factors considered when determining eligibility requirements are “the nature of the current offense, past offense history, type of drug, residency, history of violence, and whether treatment resources are reasonably available to serve the offender’s needs.”<sup>116</sup> Although there are no specific requirements, there is some consensus regarding eligibility criteria. Research shows drug court resources are utilized most effectively and efficiently when participants are high-risk and high-need offenders; these are offenders that “have serious substance abuse disorders and also have a history of poor response to standard treatment and/or antisocial personality traits.”<sup>117</sup> Because low-risk and low-need offenders are just as likely to have success in less rigorous treatment, drug courts get more bang for their buck when treating offenders who will not have success elsewhere. This basic distinction gives a general idea of the types of participants that are best suited for drug courts.

So what does it look like once an offender becomes a participant in a drug court program? Every participant’s goal is graduation, which can look much like any other graduation: replete with family, flowers, speeches, and awards. The length of a program and its graduation requirements can vary, but research has indicated higher success rates in programs that last twelve to

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113. *Id.*

114. *Id.* at 35.

115. *Id.* at 31 (“If eligibility criteria are left to vague, this can lead to unintentionally disparate treatment for certain groups of citizens, such as racial or ethnic minorities, or can create a perception that the program is unfair in its selection of candidates. This could also lead to due process or equal protection challenges.”).

116. *Id.*

117. *Id.* at 32.

sixteen months.<sup>118</sup> And, with an ideal time frame, it's important to create achievable requirements. The most obvious requirement for a drug court graduate is sobriety. But, drug courts are realistic and don't require a perfect record. Sanctions, such as spending a night or two in jail, can be imposed for any infractions of the drug court policies, even producing a failed drug test.<sup>119</sup> Most courts require a consistent "clean time" for at least ninety days or as long as six months before a participant can graduate.<sup>120</sup> In addition to sobriety, "graduation requirements often include payment of victim restitution and court fines or fees (if applicable), successful completion of all treatment requirements, obtaining a job or pursuing an education, and securing a stable residence."<sup>121</sup> With such individualized requirements, it is the drug court's responsibility to provide adequate resources to make success possible.<sup>122</sup> As with everything else in drug court, the specific resources available in a specific court are going to reflect the needs of the participants for whom that court serves.

To provide an example of how a drug courts should address the needs of its participants, suppose that a lack of education is a recurring issue for a specific drug court's participants. That lack of education repeatedly affects the participants' abilities to obtain a driver's licenses, reliable employment, or housing. The drug court team might decide to require a GED equivalency for graduation. This requirement would increase the participants' likelihood of success during and after the program because lacking an education is hindering their progress. But, drug courts must do more than set the bar; they must also provide the tools to succeed. So, a court may decide to provide study guides, tutors, and test sites available at no or reduced costs to the participants.<sup>123</sup> This level of flexibility and adaptability allows courts to set participants up for success once they leave the program.

A twelve to sixteen-month drug court program is always structured into different phases reflecting the completion of some objective criteria.<sup>124</sup> Each court's phase advancing criteria varies. Some court's criteria may require attendance of a number of treatment sessions, obtain stable living arrangements or employment, or completion of community service and restitution.<sup>125</sup> A criterion for the final phase often focuses on developing a

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118. *Id.* at 36.

119. *Id.* at 141.

120. *Id.* at 35.

121. *Id.*

122. *Id.* at 35-36.

123. *Id.* at 36 (this example is taken from the drug court bench book).

124. *Id.* at 37.

125. *Id.* at 38.

relapse prevention system for after drug court graduation.<sup>126</sup> Participants' adherence to these criteria may be monitored during status hearings on weekly, bi-weekly, or monthly bases.<sup>127</sup> Typically during the first phase of the program, participants attend status hearings on a bi-weekly basis.<sup>128</sup> However, as participants demonstrate their commitment to the program, the court may decide that weekly status hearings are necessary, or monthly status hearings are sufficient.<sup>129</sup> As participants advance through the program by obtaining jobs, going to school, and maintaining a rigorous drug counseling and testing schedule, heading to the courthouse twice a week may become unnecessarily burdensome. This shift of responsibility from the court to outside commitments, such as school or work, is really the point of drug court. Drug courts focus on success after graduation, which requires giving flexibility and encouragement to participants who engage outside commitments.

#### **4. Drug Courts Have had Significant Success Reducing Recidivism While Saving Money**

Drug courts have become commonplace across the country, and for good reason. Currently, over 3,000 drug courts exist nationwide<sup>130</sup> and about ninety are in California.<sup>131</sup> This explosion of drug courts is a result of their success. The drug court model's success is realized from two perspectives: it's good for the state financially, and it's good for the participants who otherwise would continue spinning around the revolving door of the justice system.

In 2000, the Judicial Council of California initiated a study to help inform policy decisions regarding these programs.<sup>132</sup> The study was released in 2006<sup>133</sup> and presented promising data. The study focused on just nine courts in the state.<sup>134</sup> The researchers chose these courts based on maturity and an attempt to "represent a range of demographic, programmatic, and geographic areas."<sup>135</sup> All participants who entered these programs from January 1998, through December 1999, regardless of completion status, were compared to offenders

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126. *Id.*

127. *Id.* at 40.

128. *Id.*

129. *Id.*

130. Center for Court Innovation, *supra* note 75.

131. ADMIN. OFF. OF THE CTS., *California Drug Court Cost Analysis Study 5* (2006), [http://www.courts.ca.gov/documents/cost\\_study\\_research\\_summary.pdf](http://www.courts.ca.gov/documents/cost_study_research_summary.pdf). [<https://perma.cc/M7CZ-CWQY>].

132. *Id.* at 1.

133. *Id.*

134. *Id.* at 2.

135. *Id.*



who were eligible but did not participate in the program.<sup>136</sup> The study tracked the outcomes of members of both groups for four years from the time that they entered the program.<sup>137</sup>

The study concluded that “[f]or each year that a cohort of participants entered just these nine drug courts, the state realized a combined net benefit of more than \$9 million.”<sup>138</sup> The study compared the average cost per drug court participant to the average cost per nonparticipant and found that on average it was \$1,593 more expensive to put someone through the drug court program than to let them go through traditional proceedings.<sup>139</sup> However, the benefits far outweighed the costs. To measure savings the study tracked “recidivism, including rearrests, new court cases, jail/prison/probation time served, new treatment episodes and victimization costs arising from property crimes or crimes against the person.”<sup>140</sup> The average savings per participant when compared to a nonparticipant was \$11,000.<sup>141</sup>

The key to drug court’s success is its effect on recidivism rates. This is where all that money is saved, and this is where we see the goal of rehabilitation<sup>142</sup> being finally realized. The overall recidivism rate for prisoners in California was about fifty-four percent,<sup>143</sup> in contrast, the comparison group in this study—those who were eligible for the program but did not participate—saw a lower rate of forty-one percent.<sup>144</sup> The recidivism rate of all drug court participants was twenty-nine percent and the rate for drug court graduates was seventeen percent.<sup>145</sup> That means that for graduates of the program, their odds of reoffending dropped by roughly fifty-eight percent compared to similarly situated offenders who did not participate in the program.

This success is consistent across the country. Several meta-analyses found \$2.21 in direct benefits for every \$1 spent on drug court, and when considering reduced victimization and reduced impact on the child welfare system, that number jumps to between \$4 and \$12 saved for every \$1 spent.<sup>146</sup> The Department of Justice found that eighty-four percent of drug court graduates nationally had not been re-arrested in the first year after graduation, and 72.5%

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136. *Id.*

137. *Id.*

138. *Id.* at 4.

139. *Id.* at 3.

140. *Id.*

141. *Id.*

142. CAL. DEP’T OF CORRECTIONS AND REHAB., *supra* note 10.

143. CAL. DEP’T OF CORRECTIONS AND REHAB., *supra* note 11.

144. ADMIN. OFF. OF THE CTS., *supra* note 131 at 3.

145. *Id.* at 3.

146. National Drug Court Institute, *supra* note 63 at 13.

had not been re-arrested after two years.<sup>147</sup> One meta-analysis compiled the results of 154 independent evaluations, and found an average drop in recidivism from fifty percent to thirty-eight percent after three years.<sup>148</sup>

### 5. Collaborative Principles are Continually Adapted to Target the Specific Needs of Uniquely Challenged Populations

Many courts across the state apply the collaborative justice model to other, uniquely challenged populations whom, like drug offenders, are better served by treatment and support than traditional punishment. Parolees are one such group; and reentry courts aim to smooth the transition back to life on the outside. In 2009, the California Legislature allocated \$10 million for a pilot program to enhance or establish six parole reentry courts, serving high-risk and high-need parolees.<sup>149</sup> Following the collaborative court framework, “reentry court programs provide an alternative to prison for parole violators with a history of substance abuse and/or mental illness.”<sup>150</sup> Thirty-one percent of participants in reentry courts found themselves back in prison within one year, compared to forty-six percent of all released prisoners.<sup>151</sup> Only twelve percent of graduates went back to prison within a year.<sup>152</sup> Ninety-seven percent of homeless participants found housing through the program, thirty percent of whom found permanent housing.<sup>153</sup> Of the unemployed, thirty-eight percent found employment and twenty percent obtained a higher level of education.<sup>154</sup>

Elder abuse courts are another area in which collaborative principles are being applied. Elder abuse cases are becoming more prevalent and they present unique challenges to the courts.<sup>155</sup> Collaborative principles are beginning to be employed in a small number of California courts to address

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147. OFFICE OF NAT’L DRUG CONTROL POLICY, A SMART APPROACH TO CRIMINAL JUSTICE (May 2011), [https://www.whitehouse.gov/sites/default/files/ondcp/Fact\\_Sheets/drug\\_courts\\_fact\\_sheet\\_5-31-11.pdf](https://www.whitehouse.gov/sites/default/files/ondcp/Fact_Sheets/drug_courts_fact_sheet_5-31-11.pdf). [<https://perma.cc/H2HA-MPA8>].

148. Ojmarrh Mitchell et al., *Assessing the Effectiveness of Drug Courts on Recidivism: A Meta-Analytic Review of Traditional and Non-Traditional Drug Courts* (2011), [http://www.courtinnovation.org/sites/default/files/documents/Assessing\\_Effectiveness.pdf](http://www.courtinnovation.org/sites/default/files/documents/Assessing_Effectiveness.pdf) [<https://perma.cc/TB7W-L554>].

149. ADMIN. OFFICE OF THE COURTS, CALIFORNIA PAROLEE REENTRY COURTS, 1, <http://www.courts.ca.gov/documents/CA-Reentry-Cts-PrelimFind.pdf>. [<https://perma.cc/3ZT2-R3D6>].

150. *Id.* at 1; BUREAU OF JUSTICE ASSISTANCE *supra* note 66.

151. ADMIN. OFFICE OF THE COURTS, *supra* note 131 at 6.

152. *Id.*

153. *Id.*

154. *Id.*

155. Cal. Courts, *Elder Abuse Courts*, <http://www.courts.ca.gov/5981.htm> [<https://perma.cc/4G55-3B4J>] (last visited May 17, 2016).

the distinct needs of this growing population.<sup>156</sup> In 2010 and 2011, the Judicial Council funded several trainings throughout California designed to provide “a comprehensive examination of issues related to creating such courts including the importance of understanding the needs of the elderly.”<sup>157</sup>

Another adaption of collaborative justice principles targets veterans. Veterans are an extremely vulnerable population, and a significant number of veterans are involved with the criminal justice system. The U.S. Department of Veterans Affairs estimates that there are approximately 130,000 homeless veterans or about one third of the adult homeless population in the country.<sup>158</sup> Of the homeless veterans, forty-five percent suffer from mental illness and seventy-five percent report substance abuse problems.<sup>159</sup> Of the veterans who become involved with the justice system, eighty-one percent have substance abuse problems, twenty-five percent suffer from mental illness, and twenty-three percent are homeless at some point in the year prior to being arrested.<sup>160</sup> Currently just twelve veterans courts throughout the state are designed to specifically address the unique challenges this population faces.<sup>161</sup>

Collaborative principles are also being employed to target the challenges of juveniles in the criminal justice system. Across the state, approximately eighty peer courts, provide juvenile offenders with a sentencing forum comprised of their peers—along with judicial supervision.<sup>162</sup> Additionally, forty-eight juvenile drug courts,<sup>163</sup> three juvenile domestic violence courts,<sup>164</sup> and eleven juvenile mental health courts are in use.<sup>165</sup> In 2015, San Francisco created the Young Adult Court—the first of its kind in the nation. This collaborative court targets young adults, ages eighteen to twenty-five, and relies on a well-researched understanding of brain development in these young

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156. *Id.*

157. Cal. Courts, *Elder Abuse Courts: Effective Court Practices*, <http://www.courts.ca.gov/5981.htm#tab13006> [<https://perma.cc/QSZ2-X5F8>] (last visited May 17, 2016),

158. Cal. Courts, *Veterans Courts*, <http://www.courts.ca.gov/11181.htm> [<https://perma.cc/AM3J-GTZL>] (last visited May 17, 2016).

159. *Id.*

160. *Id.*

161. *Id.*

162. Cal. Courts, *Peer/Youth Courts*, <http://www.courts.ca.gov/5991.htm> [<https://perma.cc/5YYB-BMBB>] (last visited May 17, 2016).

163. Cal. Courts, *Drug Courts*, <http://www.courts.ca.gov/5988.htm> [<https://perma.cc/ES8W-B4HM>] (last visited May 17, 2016).

164. Cal. Courts, *Domestic Violence/Dating/Youth Courts*, <http://www.courts.ca.gov/5987.htm> [<https://perma.cc/8K9L-8Q3E>] (last visited May 17, 2016).

165. Cal. Courts, *Mental Health Courts*, <http://www.courts.ca.gov/5990.htm> [<https://perma.cc/G7GJ-QGP7>] (last visited May 17, 2016).

adults to direct them through and beyond the system.<sup>166</sup> Young adults' brains are not fully developed and consequently their cognitive processing and impulse control may not be that of a fully developed adult brain.<sup>167</sup> This court seeks to achieve justice with this understanding. Like other collaborative courts, many players are involved from the bench, to the district attorney, the public defender, the San Francisco Police Department, and community organizations.<sup>168</sup> In their first year, this new collaborative court served sixty to eighty clients,<sup>169</sup> and although it takes time to see the results, if other collaborative courts are any indication, this approach will likely see success.

Mental health courts are becoming as common as drug courts, and for good reason. It has been reported that four times as many mentally ill are housed in prisons or jails than in psychiatric hospitals.<sup>170</sup> In 2008, the Chief Justice of the California Supreme Court, Tani Cantil-Sakauye, took notice of the problem and created the Task Force for Criminal Justice Collaboration on Mental Health Issues that developed 137 recommendations to improve outcomes of these courts.<sup>171</sup> In 2012, Chief Justice Cantil-Sakauye also created the Mental Health Issues Implementation Task Force, designed to, as one could guess, implement those recommendations.<sup>172</sup>

Collaborative courts vary greatly throughout California. They are designed to target different needs and counties often employ a wide range of tactics designed to address the specific needs of their community. The common thread in collaborative courts seems to be acting with a responsive understanding to challenges faced by discrete populations—challenges that often become detrimental to success in traditional proceedings. The better our understanding and the more effectively we utilize this understanding, the more success we can expect to see.

#### **IV. Collaborative Courts Should be Prominent in Efforts to Reform California's Criminal Justice System**

California's criminal justice system should embrace and replicate the successes of collaborative courts. The first step to improving and expanding these courts is to increase funding to encourage innovation and

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166. The Super. Ct. of Cal., Cty. of S.F., *Young Adult Court*, <http://www.sfsuperiorcourt.org/divisions/collaborative/yac> [<https://perma.cc/3STW-Q8A9>] (last visited May 17, 2016).

167. *Id.*

168. *Id.*

169. *Id.*

170. JUDICIAL COUNCIL OF CALIFORNIA, *supra* note 78.

171. *Id.* at 1.

172. *Id.* at 2.

experimentation. As discussed above, collaborative principles are being adapted to address many different challenges faced by criminal defendants. Many of the people involved commit crimes because of some problem they have in their life—not because they are inherently bad people, or because they want to commit a crime for the sake of committing a crime. The crime often serves some end, or is simply a product of some condition. Further, California needs to invest in both identifying the various common roots of criminal conduct, and in developing specialized programs to address these common roots.

Increasing research is equally essential. Because the development of these programs happens at the local levels, research on these small, experimental courts is needed to spread successes and failures to other counties. Research is how we can identify effective programs and how we can continually push for more funding and more development of these programs. The development of specialized programs possible is critical. Understanding the success of these programs is equally important and that cannot be done without thoroughly studying them.

Once we understand the successful programs, we need to educate judges, prosecutors, and public defenders. Because collaborative courts are, by definition, non-adversarial, they may be misunderstood, or met with confusion or resistance. Collaborative courts change everyone's roles. Judges and district attorneys have an interest in the success of the participants. The defense attorney has an interest in the long-term success of the participant, not just minimizing the damage in the short-term. For example, there may be situations where a year-long program is more "punitive" to a public defender's client than pleading to some low-level offense. Since a public defender is supposed to minimize damage to the client, it would not make sense to send a client to one of these programs. But this is exactly the institutional framework that must be challenged. We should try to identify and address the roots of criminal activity, rather than just dealing with the outcome. What's really in the best interest of the client may be the program. Bending our roles as zealous advocates for or against (or as neutral judges) to an emerging success in "solving" criminal behavior may be necessary—although a somewhat alarming notion to the seasoned attorney.

In order to bring collaborative principles to the front of criminal justice reform, we need to start pushing these programs into the state's smaller counties. Just as drug courts have spread to nearly every county, so too should courts that experience consistent success such as mental health courts, veterans courts, and reentry courts. We should also allow and encourage low-risk offenders to enter collaborative courts. Although they may not be quite as cost-effective with such rigorous programs as high-risk offenders, low-risk offenders will still realize the same benefits from these programs. Perhaps

there could be parallel low-risk collaborative courts, or the system could just enjoy less economic benefits from these offenders. Either way, with success, the system doesn't have to wait for low-risk offenders to become high-risk before intervening on a more effective level.

## Conclusion

Reforming California's criminal justice system is necessary and inevitable. In the last few decades, California has combatted unconstitutional overcrowding, growing costs, and high recidivism rates. Although realignment and sentencing reform has technically "solved" our constitutional violation,<sup>173</sup> collaborative courts aim to prevent offending in the first place, rather than just changing how we react to it. Further, this approach has been proven to significantly reduce recidivism rates,<sup>174</sup> while also saving money!<sup>175</sup>

Reformers have taken great strides to fix the policies that have led to the recent dysfunction. But simply fixing bad policies is not enough. We can do more. Collaborative courts offer a new and exciting approach to justice. These courts represent a re-thinking of the roles that judges, prosecutors, defense attorneys, defendants, and the community should play in dispensing justice. The defendants, the system, and the community all benefit from these courts, and the more thoroughly we integrate these courts throughout our justice system, the more benefits we will see.

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173. *Brown v. Plata*, 131 S. Ct. 1910, 1924 (2011).

174. ADMIN. OFF. OF THE CTS., *supra* note 131.

175. *Id.*