

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)	
)	WC Docket No. 12-375
)	
Rates For Interstate Inmate)	
Calling Services)	

REPLY COMMENTS OF

**MARTHA WRIGHT, ET. AL.,
THE D.C. PRISONERS' LEGAL SERVICES PROJECT, INC.,
CITIZENS UNITED FOR REHABILITATION OF ERRANTS,
PRISON POLICY INITIATIVE, AND
THE CAMPAIGN FOR PRISON PHONE JUSTICE**

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SUMMARY

“It's like déjà vu all over again.”

Once again, the ICS providers and correctional institutions have politely declined to provide any reasoned analysis or detailed cost data that would support their arguments that the FCC has no jurisdiction over ICS calls. As with their earlier attempts to block reform of Interstate ICS rates and practices, the parties most interested in maintaining the current revenue-sharing regime largely relied on the same arguments presented (and rejected) in the earlier rounds of this proceeding to attempt to block Intrastate ICS reforms.

However, the Petitioners (and a few ICS providers) agree with the FCC that it has the requisite legal authority to extend the interim Interstate ICS rates and practices to include Intrastate ICS calling as well. The language of Section 276 is clear – the FCC may adopt rules requiring “fair” rates, and may preempt state regulations that conflict with the FCC’s rules. It is black-letter law that when a statute clearly grants authority to an agency, the agency is required to follow Congress’ intent. The Petitioners have demonstrated repeatedly that Intrastate ICS rates and practices are unjust, unreasonable and unfair, and the ICS providers and correctional institutions failed to prove otherwise.

Further, the Petitioners urge the FCC to not adopt tiered pricing structures for jails at this time. In light of the growing trend of using county and local jails to house inmates for periods longer than one month, the argument that these small jails have higher costs does not appear to be accurate. Since the FCC has adopted a three-tiered structure for Interstate ICS rates, and permits parties to submit waiver requests, the adoption of a one-size-fits-all exemption for all jails will undermine the FCC’s goals in this proceeding.

Finally, the FCC must adopt rules to ensure that ICS customers are not charged excessive rates for poor quality or dropped calls. The record demonstrates a pervasive practice of dropping calls and poor connections, and ICS customers must not be charged if they need to reconnect due to such problems.

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Martha Wright, Dorothy Wade, Annette Wade, Ethel Peoples, Mattie Lucas, Laurie Nelson, Winston Bliss, Sheila Taylor, Gaffney & Schember, M. Elizabeth Kent, Katharine Goray, Ulandis Forte, Charles Wade, Earl Peoples, Darrell Nelson, Melvin Taylor, Jackie Lucas, Peter Bliss, David Hernandez, Lisa Hernandez, Vendella F. Oura, along with The D.C. Prisoners' Legal Services Project, Inc., Citizens United for Rehabilitation of Errants, the Prison Policy Initiative, and The Campaign for Prison Phone Justice (jointly, the "Petitioners") hereby submit these Reply Comments in connection with the Further Notice of Proposed Rulemaking with the above-captioned proceeding.¹

The *FNPRM* sought comment on the extension of the Interstate Inmate Calling Services (ICS) safe harbor rates and price caps to Intrastate ICS calls as well, along with the associated questions relating to the adoption of permanent ICS rates, addressing excessive Ancillary Fees, encouraging competition in the ICS market, and the adoption of ICS rates for those with disabilities.

¹ *Rates for Interstate Inmate Calling Services*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 14,107 (2013)(individually, the "Order" and "FNPRM"). The *FNPRM* was published in the Federal Register on November 13, 2013. On December 12, 2013, the FCC issued an Order extending the deadline submitting Reply Comments to January 13, 2014 (DA 13-2379).

In their Comments, the Petitioners urged the Commission to (i) extend the interim ICS rates to Intrastate ICS calls, (ii) adopt procedures to reexamine the ICS rates in the future, (iii) establish rules to limit the impact of excessive Ancillary Fees, and (iv) establish quality of service standards and procedures to deal with dropped calls in an equitable manner.

Not surprisingly, ICS providers and representatives from correctional institutions submitted comments arguing that the FCC does not have the legal authority to address Intrastate ICS rates. Repeating arguments that have already been reviewed and rejected by the FCC in the *Order*, these parties argue that the establishment of Intrastate ICS safe harbor rates and price caps will lead to large-scale security concerns, and that the FCC should cede to them all authority to establish ICS rates, practices and procedures.

Somewhat surprisingly, the National Association of Regulatory Utility Commissioners (NARUC) joined with the ICS providers and correctional institutions, and claimed that “individuals States are in the best position to oversee and investigate matters relating to ICS INTRASTATE rates and service quality.”² This position, of course, is directly opposite to NARUC’s prior comments regarding the FCC’s treatment of Interstate ICS, wherein it urged the FCC to “prohibit unreasonable interstate rates and charges for inmate telephone services” and establish “a benchmark rate for domestic interstate interexchange inmate collect calling services.”³ According to NARUC, the FCC lacks authority to address Intrastate ICS rates, and NARUC attempted to block the proposed application of the interim Interstate ICS safe harbor rates and price caps to Intrastate rates and practices.

As discussed in the Petitioners’ Comments, and wholeheartedly supported by several ICS providers, not only does the FCC have the legal authority to address Intrastate ICS rates and practices, in light of the patchwork of state regulations dealing with Intrastate ICS rates and practices, the FCC must adopt Intrastate ICS rates to ensure that the adoption of the Interstate

² *Comments of NARUC*, filed Dec. 20, 2013, pg. 3.

³ *Id.*, pg. 2 (citing NARUC Reply Comments, filed April 22, 2013).

ICS rates and practices (which NARUC concedes is within the parameters of the FCC's authority) is not frustrated or completely undermined.

The Petitioners urge the FCC to adopt a comprehensive solution to the ICS industry, and apply the interim Interstate safe harbor and price caps to Intrastate ICS. To the extent that the adopted Intrastate ICS rates differ with state regulations, the FCC must preempt those state regulations so that ICS providers, correctional institutions, and ICS customers face a level playing field throughout the country.

Those that oppose the adoption of a comprehensive solution have utterly failed to demonstrate any significant difference between the security or quality of service concerns with respect to Intrastate and Interstate calls. Instead, the only apparent differences are that volume of Intrastate ICS calling is greater, and that states have had a traditional role in establishing Intrastate rates. Neither consideration, however, justifies the real potential of frustrating the FCC's obligation set forth in the Communications Act to protect ICS customers from unjust, unreasonable and unfair rates and practices, whether an ICS call terminates across the street from the correctional institution, or across the country.

DISCUSSION

I. THE FCC HAS CLEAR STATUTORY AUTHORITY TO ADOPT INTRASTATE ICS RATES.

In their Comments, the Petitioners demonstrated that current Intrastate ICS rates are comparable to the Interstate ICS rates that the FCC found to be unjust, unreasonable and unfair. As provided therein, the Petitioners showed that there is a wide disparity among the Intrastate ICS rates charged by the same company in different jurisdictions that simply could not be justified by any state-based regulation. Further, the Petitioners showed that the Intrastate rates charged with the same state are widely-divergent, even when the state had established lower-cost ICS rates as an option for correctional institutions and ICS providers.

Rather than addressing the FCC's request for specific reasons why Intrastate ICS rates should be treated differently, certain ICS providers, correctional institutions and NARUC claimed that (i) the FCC does not have statutory authority to address Intrastate ICS rates; (ii) the rates charged for Intrastate ICS rates implicate special (but unspecified) security concerns of which the FCC should not interfere; and (iii) the FCC should not interfere with ongoing state-based attempts to reform Intrastate ICS rates.

1. The Communications Act of 1934 Provides the FCC With the Necessary Legal Authority to Address Intrastate ICS Rates.

In the *Order*, the FCC found that widely-divergent Interstate ICS rates was *prima facie* evidence of unjust, unreasonable and unfair rates and practices.⁴ In the Petitioners' Comments, substantial evidence of widely-divergent Intrastate ICS rates was provided. As explained by the Petitioners, a typical ICS call provided by each of the ICS providers active in this proceeding is routed to a centralized calling center located in a different state. The ICS provider then applies the security measures requested by the correctional institution, and then the ICS call is routed to the recipient. Thus, whether or not the recipient is across the street from the correctional institution, or across the country, each and every call is routed using VOIP technology to a centralized calling center, and then forwarded on to the recipient.

A similar finding was made by the Alabama Public Service Commission when it acknowledged that "there is little difference in provider cost for calls that terminate in the local calling area of the inmate facility and those that terminate outside the inmate facility's local calling area."⁵ In fact, the FCC has noted that "that the cost of calling today is distance insensitive."⁶ In addition, the use of postalized rates by some ICS providers, and the adoption of

⁴ *R&O*, 28 FCC Rcd at 14,132.

⁵ *Order Proposing Revised Inmate Phone Service Rules and Establishing a Comment Period*, pg. 7, Dkt. 15957 (rel. Oct. 1, 2013), *erratum* rel. Oct. 7, 2013 (attached as Exhibit A).

⁶ *FNPRM*, 14,182, nt. 492 (citing *USF/ICC Transformation Order*, 26 FCC Rcd 17,663, 17910-11, para. 751, citing generally *Access Charge Reform, Price Cap Performance Review for*

postalized rates in the states that have had the opportunity to review ICS cost data, further demonstrates that the use of the same rate for Interstate and Intrastate ICS is not only possible, but actually preferred.

Section 276(b) of the Communications Act supports this conclusion, and provides the FCC the authority to address Intrastate ICS rates and practices. Specifically, Section 276(b)(1) directs the FCC to “take all actions necessary” to “establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call.”⁷ The FCC has previously determined that “fair” in the context of Section 276 means that parties on “both sides” of the economic relationship must be treated fairly.⁸ In addition, Section 276(c) of the Communications Act grants authority to the FCC to preempt “any State requirements [that] are inconsistent with the Commission’s regulations.”

Further, while certain parties in this proceeding argue that Section 2(b) of the Communications Act prohibit the FCC from establishing Intrastate ICS rates, that conclusion is simply incorrect.⁹ Specifically, as discussed by Pay Tel Communications in its Comments, by enacting Section 276 *after* Section 2(b) of the Communications Act, Congress intended to have the FCC follow the requirements set forth in Section 276 regardless of the limitations set forth in Section 2(b).¹⁰ Since the plain language of Section 276 calls for rules addressing both Interstate

Local Exchange Carriers, Low-Volume Long Distance Users, Federal- State Joint Board on Universal Service, 15 FCC Rcd 12962 (2000), *rev'd and remanded sub nom, Texas Office of Public Utility Counsel v. FCC*, 265 F. 3d 313 (5th Cir. 2001).

⁷ 47 U.S.C. § 276(b) (2012).

⁸ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Fifth Order on Reconsideration and Order on Remand, 17 FCC Rcd 21,274, 21,302-3 (2002).

⁹ 47 U.S.C. § 152(b) (2012). *See Comments of Global Tel Link*, filed December 20 2013, pg. 8. *See Comments of NARUC*, pg. 8. *See Comments of Securus Technologies*, filed December 20, 2013, pg. 2.

¹⁰ *Comments of Pay Tel Communications*, filed December 20, 2013, pg. 6.

and Intrastate calls, the limitations of Section 2(b) do not apply.¹¹ Instead, the FCC has “concluded[d] that Section 276(c) eliminates any question about [its] authority to adopt a particular compensation plan, even if it contradicts existing state regulations.”¹²

Finally, NARUC’s attempt to distinguish the holding in *IPTA v. FCC* should be disregarded.¹³ NARUC argues that *IPTA* did not deal with Intrastate toll rates, but rather focused “on rates for local calls made from a payphone and paid with coins.”¹⁴ While NARUC argues that *IPTA v. FCC* can be distinguished because inmates do not pay for calls with coins,¹⁵ it ignores the court’s determination that Section 276 “unambiguously grants the Commission authority to regulate the rates for” Intrastate ICS calls as well.¹⁶ Just in case that was not a sufficiently clear statement of the FCC’s authority, the court continued with the finding “the Commission has been given an express mandate to preempt State regulation of local coin calls.”¹⁷

Therefore, the Petitioners agree with the FCC, Pay Tel Communications, CenturyLink and Telmate that Congress granted to the FCC unequivocal authority to apply the interim Interstate ICS safe harbor rates and price caps to Intrastate ICS rates.¹⁸ Furthermore, to the extent that there are state laws which establish Intrastate ICS rates that are inconsistent with the

¹¹ *Id.* (citing *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order on Reconsideration, 11 FCC Rcd 21,233, ¶ 57).

¹² *Id.*

¹³ *Illinois Public Telecommunications Association v. FCC*, 117 F.3d 555 (D.C. Cir 1997).

¹⁴ *NARUC Comments*, pg. 11.

¹⁵ *Id.*, pg. 12.

¹⁶ *IPTA v. FCC*, 117 F.3d at 561.

¹⁷ *Id.*, pg. 562.

¹⁸ *See FNPRM*, 28 FCC Rcd at 14,174 (citing comments filed by Pay Tel and CenturyLink calling for a comprehensive solution to all ICS rates). *See also Telmate Comments*, filed March 22, 2013, pg. 3 (calling for postalized rates).

FCC's actions, the FCC use its authority to preempt those rates and establish a comprehensive ICS solution.¹⁹

2. Unverified Security Concerns, If Any, Can Not Justify Unjust, Unreasonable and Unfair Intrastate ICS Rates.

The comments submitted by the Correctional Institutions argued that “the actions taken by the Commission in the *Order and FNPRM* interfere and trample upon the exclusive domain of state and local officials to establish policies for their respective correctional facilities.”²⁰ They further assert that the FCC is “seeking to substitute the Commission’s judgment for that of State-appointed professionals charged with overseeing our nation’s expanding inmate population...[and]...the Commission may not intrude upon areas that are traditionally reserved to the States absent clear congressional authorization.”²¹ Finally, the Correctional Institutions claim that the “Commission’s proposals undermining the “special security requirements applicable to inmate calls.”

However, a close read of those comments reveals that the sole interest of the Correctional Institutions is to ensure that they continue to receive their “bargained for” share of the ICS providers’ excessive profits earned from the unjust, unreasonable and unfair ICS rates charged to inmates and their families. That’s it.

For example, the Correctional Institutions claim that “[t]he *Order and FNPRM* has the effect of abolishing site commissions.”²² Later, the Correctional Institutions argue that “the extension of the FCC’s new rate regime intrastate ICS rates would be detrimental to the Correctional Institutions” because they would be unable to “recoup continued site

¹⁹ See also *New England Public Communications Council v. FCC*, 334 F.3d 69 (D.C. Cir. 2003) (finding that “both intrastate and interstate facilities and services are at issue” and that “it [would] make little sense for Congress to command the Commission” to address interstate issues “while leaving it powerless” to address the identical intrastate issues).

²⁰ *Comments of Correctional Institutions*, filed Dec. 20, 2013, pg. 2-3.

²¹ *Id.*, pg. 3.

²² *Id.*, pg. 7.

commissions.”²³ They argue that they will need to consider “terminating inmate programs and services or attempting to find other ways to cover the costs for these programs.”²⁴ In sum, the Correctional Institutions sole goal in this proceeding is to keep in place the unjust, unreasonable and unfair rates.

As one can imagine, the Petitioners do not agree. First, nowhere did the Correctional Institutions articulate the actual security concerns that are implicated solely by Intrastate ICS calls. Moreover, the FCC did not eliminate practice of ICS providers sharing their excessive ICS revenue with correctional institutions. The FCC did adopt safe harbor rates and price caps, but that is not the same as eliminating the profit-sharing practices of ICS providers and correctional institutions.

Instead, the Petitioners have shown that the reduction of rates actually will lead to increased call volumes and thus, increased site commissions. That is what the Florida Department of Corrections found when they reviewed competing ICS proposals last year.²⁵ Further, Telmate noted that the call volume in its institutions had increase more than 200% when it instituted a postalized rate in one Great Plains state.²⁶

Furthermore, the Petitioners have shown that there no consistency with respect to the use of site commissions, with many states, counties and local governments merely depositing the funds into general funds. For example, while California Statute Section 4025 requires the placement of all site commissions into an “Inmate Welfare Fund”, the use of the funds is left to the discretion of the County Sheriff, so that the funds may be used for other purposes, including

²³ *Id.*

²⁴ *Id.*

²⁵ *See Petitioners Comments*, Exhibit F (advocating for the adoption of a “pricing structure that increases the department’s commission rate by approximately 27% while lowering the cost of a 15 minute collect phone call to inmate family and friends by approximately 25%. The lower cost per call should lead to increased communication between inmates and their family and friends which will ultimately help support the Department’s Re-Entry Initiatives.”).

²⁶ *See Telmate Comments*, filed March 22, 2013, pg. 13.

those that are not tied to inmate welfare at all.²⁷ The Petitioners previously demonstrated that in many California counties, the funds are not used for education and welfare of the inmates, but rather to cover operational costs.²⁸ The Petitioners also provided evidence that many other states have similar practices.²⁹

On the other hand, one significant and easily verifiable result of lower ICS rates, i.e., increased contact between inmates and their loved ones, is that the recidivism rate will be reduced. The Petitioners and other organizations have provided extensive and incontrovertible evidence that increased contact leads to lower recidivism rates. In turn, lower recidivism rates lead to lower costs for correctional institutions. In fact, the Petitioners showed that if the recidivism rate is reduced just one percent (1%), the cost savings would be more than \$250 million year after year.³⁰

Thus, the Petitioners respectfully submit that the “effect on public interest”³¹ the Correctional Institutions should be most concerned about is reducing the prison population, rather than maintaining a profit-sharing regime that imposes unjust, unreasonable and unfair ICS rates and practices on those least able to pay for them.

²⁷ See *Cal. Pen. Code*, Section 4025(e) (“the money and property deposited in the inmate welfare fund shall be expended by the sheriff primarily for the benefit, education, and welfare of the inmates confined within the jail. Any funds that are not needed for the welfare of the inmates may be expended for the maintenance of county jail facilities. Maintenance of county jail facilities may include, but is not limited to, the salary and benefits of personnel used in the programs to benefit the inmates, including, but not limited to, education, drug and alcohol treatment, welfare, library, accounting, and other programs deemed appropriate by the sheriff. Inmate welfare funds shall not be used to pay required county expenses of confining inmates in a local detention system, such as meals, clothing, housing, or medical services or expenses, except that inmate welfare funds may be used to augment those required county expenses as determined by the sheriff to be in the best interests of inmates. An itemized report of these expenditures shall be submitted annually to the board of supervisors.”)(emphasis added).

²⁸ See *Petitioners Reply Comments*, filed April 25, 2013, Exhibits F-G.

²⁹ *Id.*, See Exhibit H.

³⁰ *Petitioners Comments*, Exhibit C, pg. 24.

³¹ *Correctional Institutions Comments*, pg. 8 (“The Correctional Institutions’ inability to recoup continued site commissions...will have a material negative effect on the public interest.”).

3. State-Based Attempts to Reform Intrastate ICS Rates Are Rare, and Suffer Same Challenges By ICS Providers and Correctional Institutions.

Finally, the Correctional Institutions, NARUC and certain ICS providers argue that the states should have sole authority to establish Intrastate ICS rates, and point to several recent state-level efforts as evidence that the FCC's efforts are not necessary. However, a closer review of what is occurring in the states actually reinforces the need for immediate FCC action.

For example, in New Mexico, ICS providers launched an unrelenting effort to undermine the November 2012 decision to adopt a postalized \$0.15 rate, and were nearly successful. Despite the fact that the order had been adopted in November 2012, the ICS providers sought reconsideration of the order in May 2013. Further, despite the fact that the new rates are now effective, they do not apply to existing agreements, and the interlude provided by the pending appeals permitted the ICS providers to renew and/or extend their existing agreements. It should be further noted that it took six years for the new rates to be adopted.

Furthermore, in Massachusetts, a Petition for Relief was filed in 2009 seeking review of the ICS rates and quality of service by the Department of Telecommunications and Cable. The Petition was not even accepted and put out for comment for two years, and, on October 18, 2013, a Motion to Hold Proceeding in Abeyance was filed seeking to delay the state proceeding until the FCC proceeding is completed. In heated debates spanning three years, the Louisiana PSC adopted lower rates in December 2012, which also prohibited ancillary fees. However, before the ink had dried, petitions seeking to suppress the order and then requests to stay the ban on ancillary fees were filed.

Finally, as discussed in the Petitioners Comments, the Alabama Public Service Commission launched an investigation in November 2012 into ICS rates, and sent two separate requests to ICS providers seeking cost data. Upon review of the ICS providers' cost data, the Alabama PSC adopted an order on October 1, 2013, proposing lower rates and the requirement

that ancillary fees be cost-based. Again, before the ink was dry on the order, several motions to hold that proceeding in abeyance was filed based on the pendency of the instant proceeding.

Thus, this brief review of the several state efforts to reform the ICS industry demonstrates the overwhelming need for the FCC to adopt a comprehensive plan that covers both Interstate and Intrastate ICS rates and practices.³² Individual state public utility commissions efforts to adopt rules establishing lower ICS rates and adoption of quality of service requirements are routinely challenged by the same parties that are relying on these state-run proceedings in this FCC proceeding. In the event that additional states take the FCC's lead and attempt to reform Intrastate ICS rates and practices, one can imagine that similar opposition will be present, taxing limited state resources.

Instead, the state-based efforts merely replace the current patchwork of ICS rates and practices with a new patchwork of ICS rates and practices that will likely lead to even more abuse and consumer confusion. For example, because New Mexico permitted the grandfathering of existing contracts, it is possible that an existing ICS contract will preserve the right of an ICS provider to charge ICS rates that are widely-divergent than the rates adopted by Alabama or Louisiana, thus leading to inequitable ICS rates and practices even among those states that have attempted to reform ICS rates and practices.

In light of the FCC's determination that telephone calls are "distance insensitive", the lack of any Intrastate-specific security concerns, the use of calling centers by the ICS providers that are rarely in the same state as the originating or terminating call location, and the likely continuation of widely-divergent rates, even among those states that have adopted reduced ICS rates, there is a clear and indisputable need for the FCC to exercise its authority under Section 276 and adopt a comprehensive Interstate and Intrastate ICS rate structure.

Therefore, the Petitioners renew their proposal that the FCC extend the interim Interstate ICS safe harbor rates and price caps to Intrastate ICS, and adopt rules to examine all

³² *Comments of Securus*, pg. 9.

ICS rates in two years to determine if any further adjustments are necessary. Only the FCC has the authority to adopt a comprehensive structure that will provide a level playing field for ICS providers and consumers alike. The application of Interstate ICS rates will not eliminate the current profit-sharing regime, will not undermine any “special state concerns”, and, in fact, will lead to increased revenues for both ICS providers and the correctional institutions.

II. THE FCC MUST ENSURE THAT ANCILLARY FEES DO NOT BECOME REPLACEMENT REVENUE SOURCE FOR ICS PROVIDERS.

The Petitioners have provided substantial evidence demonstrating that ancillary fees, i.e., fees charged by the ICS provider (or a service provider in privity with the ICS provider) that are directly related to the provisioning of ICS calls, were unjust, unreasonable and unfair. Other commenters also submitted information into the record highlighting these excessive charges.³³

In their Comments, the Petitioners expressed skepticism that the ICS providers would respond to the FCC’s request for additional information regarding ancillary fees, including the ICS providers’ actual costs to the ICS providers for providing the ancillary services. Sadly, the Petitioners’ skepticism was well-placed. None of the ICS providers submitted actual cost data with regard to Ancillary Fees. Instead, most held the line, and expressed their opinion that the FCC should not regulate ancillary fees.³⁴

In fact, Global Tel*Link took the position that “ICS providers are exercising ‘the freedom’ granted by the Commission to make their own pricing decisions.”³⁵ Of course, this “freedom” does not extend to ICS customers, as they are forced to deal both with a monopolistic ICS

³³ See *Prison Policy Initiative Ex Parte Submission*, dated May 9, 2013 (providing a copy of its seminal report - *Please Deposit All of Your Money: Kickbacks, Rates, and Hidden Fees in the Prison Phone Industry*).

³⁴ See *Comments of Global Tel*Link*, pg. 9 (“There is no need for the Commission to take any action with respect to ancillary charges imposed by ICS providers.”). See also *Comments of Securus*, pg. 20 (“Securus maintains that the Commission does not have authority to regulate these items.”).

³⁵ *Comments of Global Tel*Link*, pg. 12.

provider, and the correctional institution granting the monopoly that literally holds the keys as to whether the inmate will speak with its family member or loved one.

Two ICS providers did buck this trend, and acknowledged that the FCC should take steps to reform the ICS ancillary fee regime. For example, CenturyLink noted that “without controls on ancillary charges, the practical effect of rate caps is likely to be limited, if not wholly neutralized.”³⁶ Moreover, Pay Tel also supports ICS ancillary reform and suggested that “the Commission to adopt a scheme in which ancillary charges are generally prohibited, subject to a narrow list of clearly-defined exemptions.”³⁷

As noted in the Petitioners’ Comments, several states have had the luxury of reviewing the actual cost data that most ICS providers have thus far not given the FCC. After reviewing the data submitted to the Alabama PSC, it was decided that the authorized ancillary fees permitted by Alabama would be limited to “only to recover actual costs incurred by the ICS provider...[finding that]...[t]hey are not a profit center for the service provider nor are they to be a source of commissionable revenue for the inmate facility.”³⁸

The Petitioners’ Comments also discussed the fact that the data submitted to the Alabama PSC raised questions as to whether the fund transfer fees associated with certain ICS providers were excessive. In its review, the Alabama PSC found that “agents hosting financial services such as Western Union and MoneyGram are paid a portion of the fee charged ICS customers,” and that ICS providers are free to negotiate the fee charged their customers. As a result, the Alabama PSC

Staff emphasize[d] that ICS providers are prohibited from receiving any portion of fees paid by their customers to third-party financial services for submission of payments for ICS and/or for transferring funds into inmate accounts. Any evidence that ICS providers are benefitting financially from fees charged their

³⁶ *Comments of CenturyLink*, pg. 18.

³⁷ *Comments of Pay Tel*, pg. 31.

³⁸ *Alabama Order*, pg. 15 (banning the imposition of (i) Bill Processing fees, (ii) Account set-up fees; (iii) Refund fees; (iv) Provider assessed fines and penalties for prohibited behavior; (v) any other usage charges and or fees otherwise not specifically permitted.).

prospective or existing customers by third-party money transfer services and/or that ICS providers are paying confinement facilities commissions therefrom, constitutes tacit admission that the fees are excessive and shall subject the provider to Commission regulatory action including, but not limited to, customer refunds with interest. All ICS providers shall submit, for informational purposes to the Commission, the transaction fee charged their customers by Western Union and MoneyGram for ICS payments and will update this information as the fees change. Staff will compare fees submitted by all ICS providers and require justification from ICS providers for any observed anomalies.³⁹

The finding that ICS providers may be receiving a portion of the fee charged by the money transfer services directly conflicts with Global Tel*Link's statement in its Comments that "ICS providers cannot control the fees established by third-parties for payment processing functions, such as Western Union or MoneyGram fees or the payment processing fees charged by credit card companies."⁴⁰

Since the Alabama PSC received the "identification of fees charged ICS customers submitting payment via Western Union and MoneyGram" directly from the ICS providers,⁴¹ its finding that "ICS providers can influence the amount of the fee charged"⁴² raises a real question whether Global Tel*Link lacked candor in its Comments when it stated that it "cannot control" these fees.

In the absence of the specific cost data requested by the FCC in the *FNPRM*, and in light of the findings made in other states that certain fees may be higher than the actual cost of providing the service, the Petitioners urge the FCC to address Ancillary Fees in this rulemaking proceeding. As previously provided, the Petitioners do not support rules authorizing ancillary fees, as most fees merely reflect standard overhead costs.⁴³ However, should the FCC permit cost-based ancillary fees, the FCC must establish caps on ancillary service fees.

³⁹ *Alabama Order*, pgs. 16-17 (emphasis added).

⁴⁰ *Comments of Global Tel*Link*, pg. 11.

⁴¹ *Alabama Order*, pg. 3 (this information was also requested by the FCC, but the ICS providers have thus far refused to provide it.).

⁴² *Id.*, pg. 7.

⁴³ *Alabama Order*, pg. 19.

III. THE QUESTION OF COSTS WHEN SERVING PRISONS AND JAILS.

In their Comments, the Petitioners noted that a significant share of the population in county and local jails include long-term inmates.⁴⁴ The Petitioners provided examples such as California and Louisiana where long-term state DOC prisoners were being held at county or local jails. The Petitioners argued that such arrangements tend to undermine the argument that there should be a separate pricing regime for jails.

The Petitioners also provided a separate discussion of this issue in its *ex parte* submission filed on December 20, 2013.⁴⁵ Several points raised in the *ex parte* submission bear mentioning to ensure that the FCC fully appreciates the use of county and local jails for long-term incarceration.

Specifically, seven states place 20% or more of their long-term prisoners in local jails:

- Louisiana 53.7%
- Kentucky 38.4%
- Tennessee 30.3%
- Mississippi 29.2%
- West Virginia 24.5%
- Utah 22.6%
- Virginia 19.9%⁴⁶

The Petitioners remain concerned that the FCC's adoption of a tiered pricing regime based solely on whether the correctional institution is classified as a prison or jail would fail to take into account the large number of long-term state prisoners who are also housed at those jails.

This problem is especially evident in states, such as California, where long-term non-serious, non-violent, non-sex offenders are no longer housed in the state prisons run by the California Department of Corrections and Rehabilitations, but rather are housed in county jails. The practice reflects a shifting of responsibility of long-term incarceration from prisons to jails,

⁴⁴ *Petitioners Comments*, pgs. 11-12.

⁴⁵ *Petitioners' Ex Parte Submission*, dated Dec. 20, 2013 (attached hereto as Exhibit B).

⁴⁶ *Id.*, pg. 2.

which has also led to an increase in pre-trial releases, further reducing the number of “costly” short-term inmates in jails.⁴⁷

Finally, the Petitioners supplied additional information detailing the duration of stay for those in custody at jails. The Petitioners focused on those inmates that were in jail less than 24 hours, and those that remained in jail for more than one week. These two low-cost categories were selected since those that are detained for less than 24 hours typically do not establish an account with an ICS provider, and those that remain incarcerated for more than one week are no longer considered to be a high-cost ICS customer.⁴⁸ As shown, more than 90% of those released from jails in Indiana had either remained in custody for less than 24 hours, or for more than one week. In five other states, more than 70% were held in custody for similar periods; nationwide, the percentage of released detainees falling within these categories was nearly 59%.⁴⁹

In light of this information, the adoption of a wholesale, one-size-fits-all exemption for correctional facilities classified as “jails” is unwarranted. A significant number of inmates held at “jails” do not generate the high costs complained of by ICS providers.⁵⁰ The FCC created a three-tier structure in the *Order* that permits parties with verifiable high costs to submit a waiver request. Such an approach should be preferred, as it is narrowly-tailored to fit the actual needs of ICS providers, and will help the FCC avoid a “tag wagging the dog” situation.

IV. THE FCC MUST ADOPT RULES ENSURING THAT ICS CUSTOMERS RECEIVE SAME QUALITY OF SERVICE AS ALL OTHER FORMS OF INTERSTATE AND INTRASTATE CALLING.

In their Comments, the Petitioners urged the FCC to adopt rules requiring ICS providers to permit ICS customers to reinitiate dropped calls without being charged additional fees. In event that there is a dropped call, the Petitioners called for rules to eliminate any per-call charge

⁴⁷ *Id.*, (citing Exhibit B, pg. 21).

⁴⁸ *Id.*, pg. 2.

⁴⁹ *Id.*, pg. 2-3.

⁵⁰ *See Ex Parte Submissions of Pay Tel Communications, Inc.*, filed Dec. 9, 2013.

levied by the ICS provider if the reinitiated call is placed within one (1) minute from the time that the call was terminated. The Petitioners explained that because the *Order* permits ICS providers the option to apportion the overall 15-minute rate as it sees fit, it still remains possible for an ICS provider to front-load its charges for an ICS call so that each call is charged the maximum amount permitted under the FCC's rules.⁵¹ In such a case, therefore, the charges for reconnecting after a dropped Interstate ICS call would be between \$1.80 and \$3.75.

In their comments, most of the ICS providers and correctional institutions stated that quality of service regulations are not required.⁵² However, these statements ignore the extensive record established in this record that dropped calls and substandard call quality are pervasive in the ICS industry.⁵³ Verifiable complaints and testimony submitted by attorneys, paralegals, inmates and their families clearly established that ICS calls are routinely dropped, and attempts to obtain refunds are rarely successful.

Therefore, the Petitioners renew their call for the FCC to require ICS providers to permit ICS customers to reinitiate dropped calls without being charged additional fees. In event that there is a dropped call, the ICS customer should be credited any per-call charge levied by the ICS provider if the reinitiated call is placed within one (1) minute from the time that the call was terminated. The record established in this docket persuasively demonstrates that there are wide-spread problems with ICS dropped calls, and, by adopting these consumer protection rules, the FCC will eliminate any monetary incentive for ICS providers to prematurely terminate calls.

⁵¹ *R&O*, 28 FCC Rcd 14,107, nt. 271.

⁵² *See Comments of CenturyLink*, pg. 23 (“There is simply no need for additional service quality requirements.”). *See Comments of the Ohio Department of Rehabilitation and Corrections* and *Comments of Correctional Institutions*, (both) at pgs. 15-16 (“the ODRC urges the Commission to refrain from adopting one-size-fits-all federal mandates, and instead defer to state and local officials.”).

⁵³ *Petitioners' Reply Comments*, pgs. 18-20.

CONCLUSION

There should be no question that only the FCC can protect ICS customers from unjust, unreasonable and unfair ICS rates and practices. The Communications Act grants the FCC authority to address both Interstate and Intrastate ICS rates and practices, and, in light of technological developments rendering the distance of an ICS call irrelevant, the FCC is best positioned to craft a universal resolution of the deeply imbedded issues associated with the ICS industry.

As presented herein, there is simply no cost-based reason for the wide divergence among Intrastate ICS rates and ancillary fees charged to ICS customers. Recent examinations by states have resulted in the adoption of uniform rates, and the only apparent reason for maintain high-cost Intrastate ICS rates is that both the ICS provider offering the service, and the correctional institutions granting exclusive access to ICS customers, have a vested interest in extracting and reallocating the excessive revenues. Absent FCC action, it is unquestionable that this practice will continue to occur with Intrastate ICS rates.

The FCC has already taken the important first step to address the rates and practices for Interstate ICS calls, and the Petitioners urge the FCC to act with dispatch to adopt final rules that offer a comprehensive solution. By applying the interim safe harbor rates and price caps to Intrastate ICS calls, and by adopting rules to address ancillary fees, quality of service and dropped calls, the FCC will be fulfilling its mandate under Title One of the Communications Act to “make available...to all the people of the United States without discrimination ...[a]...communication service with adequate facilities at reasonable charges.”

Respectfully submitted,

By: 

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January 13, 2014

EXHIBIT A



STATE OF ALABAMA
PUBLIC SERVICE COMMISSION
P.O. BOX 304260
MONTGOMERY, ALABAMA 36130

TWINKLE ANDRESS CAVANAUGH, PRESIDENT

JOHN A. GARNER, EXECUTIVE DIRECTOR

JEREMY H. ODEN, ASSOCIATE COMMISSIONER

TERRY DUNN, ASSOCIATE COMMISSIONER

Re: GENERIC PROCEEDING CONSIDERING THE)
PROMULGATION OF TELEPHONE RULES) DOCKET 15957
GOVERNING INMATE PHONE SERVICE)

ERRATA AND SUBSTITUTE ORDER PROPOSING REVISED INMATE PHONE
SERVICE RULES AND ESTABLISHING A COMMENT PERIOD

BY THE COMMISSION:

On October 1, 2013, the Commission issued an Order in the above styled proceeding, proposing revised Inmate Phone Service rules and establishing a period, through November 8, 2013, during which interested parties may submit to the Commission comments regarding the proposed changes to the Inmate Phone Service rules.

The Commission's Order of October 1, 2013 is hereby amended by the errata as noted below:

ERRATA

<u>PAGE</u>	<u>LOCATION</u>	<u>AMENDMENT</u>
Page 1	Order heading	Substitute "GOVERNING" for "GOVERING"
Page 4	Paragraph 1, line 5	Substitute "confinement facility." for "inmate facility."
Page 5	Paragraph 1, line 3	Strike: "Opportunities are available for ICS customers to call parties whose residence in relation to the inmate facility would normally be rated as a toll call using the local call rate."

Substitute: “Opportunities are available for ICS customers to utilize the local calling rate for calls to recipients located outside the confinement facility’s local calling area.”

- | | | |
|---------|------------------------|---|
| Page 8 | Paragraph 1, line 6 | Strike: “maximizing commissions to”

Substitute: “the percentage commission offered” |
| Page 8 | Paragraph 1, line 7 | Strike: “no voice whatsoever in the selection of their provider and no choice with regard to the rates they must pay and the provider’s customer service.”

Substitute: “no choice whatsoever in the selection of their provider, the rates charged, and the provider’s service quality.” |
| Page 11 | Paragraph 3, line 2 | Replace “\$0.25 per-minute” with “\$0.25” |
| Page 11 | Paragraph 4, line 6 | Replace “and the existing” with “at the existing” |
| Page 13 | Paragraph 1, line 2 | Replace “expensive, some” with “expensive. Some” |
| Page 17 | Paragraph G(6), line 2 | Replace “as provide in paragraph H” with “as provided in paragraph I” |
| Page 19 | Paragraph 1, line 4 | Replace “F(5)” with “G(6)” |
| Page 20 | Paragraph 3, line 4 | Replace “inquiries, shall” with “inquiries, and shall” |
| Page 22 | Paragraph 3, line 2 | Strike the duplicate period at the end of the sentence |
| Page 23 | Paragraph 3, line 4 | Strike: “unused account balances may be made via check or credits to the customer’s credit/debit card. for prepaid ICSand VVS .”

Substitute: “unused account balances for prepaid ICS and VVS may be made via check or credits to the customer’s credit/debit card.” |
| Page 23 | Paragraph 3, line 6 | Strike the duplicate period at the end of the sentence |
| Page 23 | Paragraph 4, line 9 | Amended to: “used to determine whether abandoned property” |

Page 24	Paragraph 2, line 5	Strike “submitted” and replace with “remitted”
Page 24	Paragraph N, listed items (1), (2) and (3)	Strike: “ICS minutes and associated revenue” Substitute: “ICS minutes, number of calls, and associated revenue”

This Order, amended for the errata listed above, is substituted for and takes the place of the Order entered in the above-referenced Docket on October 1, 2013.

I. BACKGROUND

In the Commission’s November 6, 2012 Order for the above styled proceeding, the Commission staff proposed changes to Commission Telephone Rule T-15.1 for Inmate Phone Service (IPS). Specifically, the staff sought comments from IPS providers on whether the existing local and toll IPS rates, consisting of an operator surcharge and a usage component, should be replaced with a usage rate only. Additionally, staff addressed the charges applied to customer bills when collect calls are terminated to local service providers that do not have collect call billing arrangements with IPS providers and whether such charges should be allowed in excess of the tariff rates for the calls. Comments were solicited from interested parties.

On January 25, 2013, staff submitted a data request to IPS providers for the following information with responses due by March 15, 2013:

1. Revenue and expenses for the most recent three-year period.
2. IPS revenues and minutes of use separated into local, intraLATA toll and interLATA toll categories.
3. Identification of fees charged IPS customers for submitting payment via Western Union and Moneygram, and the fees charged IPS customers by third-parties for billing and collection of IPS charges.
4. Description of each type fee charged plus the total fees assessed IPS customers by fee type.
5. Number of text-to-collect charges assessed IPS customers and the total charges assessed.
6. Credit card fees assessed IPS customers.
7. Refunds and unclaimed property reports filed with the State Treasurer.
8. Alabama Gross Receipts Tax collections and remittances.

9. Whether online and paper account statements are available to customers.

On May 14, 2013, staff submitted another data request to IPS providers requesting the following additional information with responses due by June 17, 2013:

1. How USF fees are assessed by the provider for their IPS and USF remittances.
2. Whether sales taxes are charged by the provider for IPS.

Additionally, staff viewed the FCC workshop on reforming inmate calling services, streamed over the internet on July 10, 2013. Following the workshop, the FCC, on August 9, 2013, issued a news release that it is taking immediate action to reduce interstate inmate calling service rates.

The FCC's reforms are summarized as follows:

- Requires that all interstate inmate calling rates, including ancillary charges, be based on the cost of providing the inmate calling service
- Provides immediate relief to exorbitant rates:
- Adopts an interim rate cap of \$0.21 per minute for debit and pre-paid calls and \$0.25 per minute for collect calls, dramatically decreasing rates of over \$17 for a 15-minute call to no more than \$3.75 or \$3.15 a call
- Presumes that rates of \$0.12 per minute for debit and prepaid calls (\$1.80 for a 15-minute call) and \$0.14 cents per minute for collect calls (\$2.10 for a 15-minute call) are just, reasonable and cost-based (safe-harbor rates)
- These rates include the costs of modern security features such as advanced mechanisms that block calls to victims, witnesses, prosecutors and other prohibited parties; biometric caller verification; real-time recording systems; and monitoring to prevent evasion of restrictions on call-forwarding or three-way calling
- Concludes that "site commissions" payments from providers to correctional facilities may not be included in any interstate rate or charge
- Clarifies that inmates or their loved ones who use Telecommunications Relay Services because of hearing and speech disabilities may not be charged higher rates
- Requires a mandatory data collection, annual certification requirement, and enforcement provisions to ensure compliance with this Order
- Seeks comment on reforming rates and practices affecting calls within a state
- Seeks comment on fostering competition to reduce rates

Based on the additional information obtained by staff and the FCC's action, staff determined that changes to Commission Rule T-15.1 as proposed in the Commission Order of November 6, 2012 are insufficient to address needed reforms in Alabama IPS. Consequently, staff substitutes the proposed revisions to Commission Rule T-15.1 referenced herein for those provided in the rulemaking proceeding established by the November 6, 2012 Commission Order.

II. GENERAL

A. "Inmate Calling Service" Adopted as Service Description

Previous Commission Orders under this Docket and Commission Rule T-15.1 use the terminology "Inmate Phone Service" to describe the telecommunications service provided to those incarcerated in prisons and jails in Alabama. The FCC identifies these services as "Inmate Calling Service". For consistency, staff will hereafter refer to the telecommunications service provided to those incarcerated in prisons and jails in Alabama as "Inmate Calling Service" (ICS).

B. ICS Service in Alabama

Service at confinement facilities is offered under contract with a single ICS provider. Competition for the contracts is intense. In Alabama and many other states, confinement facilities are allowed to receive commissions on ICS revenues at their facilities. The commissions can be as much as 80 percent or higher.

ICS is provided via collect calling, debit accounts, prepaid accounts, and direct billing arrangements. Both debit and prepaid calling accounts are prepaid service. The distinction between the two is that the purchaser of prepaid service pays only for inmate calls to their local telephone number. For debit service, the inmate chooses to use their funds to pay for a call to any phone number that is not otherwise blocked by the confinement facility. Direct billed accounts are established by ICS providers for credit-worthy individuals, bail-bond services, attorneys, public agencies, etc., typically with a credit limit. Debit and Prepaid service are currently the dominant ICS options.

Some confinement facilities require inmates to submit a list of the numbers they intend to call using debit calling service. The maximum duration of inmate calls is in accordance with individual confinement facility policy. Twenty minutes is generally the maximum time allotted. Confinement facilities require that calls be monitored electronically with the capability for a member of the facility staff to listen to conversations as desired. Key words and phrases are scanned, via software, and flagged for additional attention. Three-way calls are prohibited and software is usually provided to detect the presence of such calls.

Video Visitation is a burgeoning inmate calling service. Video Visitation is provided for both the inmates and their visitors at the inmate facility or the “visitor” may connect remotely using a PC with a web camera and high-speed internet connection at home, work, or elsewhere. Additionally some ICS providers offer recorded video messages that can be downloaded by the inmate, as well as inmate email, and text messaging services. Such services are relatively new and are therefore not addressed in previous Commission ICS proceedings.

C. Inmate Calling Rates and Fees

Existing Alabama ICS usage rates are established in two tiers, one for local and one for toll calls. The rate structure was established when collect calling was the dominant service platform. It includes a flat-rate operator surcharge of \$2.25 per local or toll call. The usage charges are capped at \$0.50 per local call and \$0.30 per minute for toll calls. Local calls are thus capped at \$2.75 (\$2.25 operator surcharge plus \$0.50 for usage). The charge for toll calls depends on call duration. For a twenty-minute toll call, as an example, the ICS customer is charged \$8.25 (\$2.25 plus \$0.30 per minute).

Predictably, the economics of such a rate structure incents ICS customers toward local calling when possible, particularly for inmates incarcerated for more than a temporary period. Opportunities are available for ICS customers to utilize the local calling rate for calls to recipients located outside the confinement facility’s local calling area. One of the most common ways to accomplish this is for the inmate’s called party to acquire a cellular phone whose number is within the confinement facility’s wireline local calling area. Another is using a service such as “Cons Call Home”, where for a monthly fee of \$7.50, the called party is provided with a number that is local to the inmate facility or a toll free number. Calls to the local or toll free number is

routed by the service to the called party. Consequently, most ICS traffic in Alabama is rated as local calls. The percentage of ICS minutes at Alabama confinement facilities that are rated as local calls ranges from 56.4% to 93.6% with a statewide average of 81%.

In addition to the tariffed charges for calls, ICS providers typically assess fees for various aspects of the service including an account maintenance fee, biometric or voice verification fee, billing cost recovery fee, bill processing fee, bill statement fee, carrier cost recovery, etc. ICS customers who pre-pay by money transfer at Western Union or MoneyGram are charged a fee by those financial services. ICS providers can influence the amount of the fee charged by Western Union or MoneyGram based on negotiated arrangements with those financial services. Additionally, ICS customers pay the State Utility Gross Tax assessed to the price of their local and intrastate services as well as the Federal Universal Service Fund fee and the Federal TRS Fund fee applicable to interstate calls.

Purchasers of prepaid ICS usually have several payment options. Payment can be made by check or money order. Credit/debit cards can be used on the internet or over the phone using either interactive voice response (IVR) or a live agent. Purchasers may pay using a money transfer service such as Western Union or Money Gram. Kiosks are also available at some confinement facilities providing the capability of depositing funds for prepaid accounts or debit accounts via cash or credit card. Inmates may also transfer funds from their trust/commissary accounts to their inmate phone debit account.

D. ICS Has Evolved

ICS has evolved from exclusive reliance on the public switched network to service routed over an internet protocol (IP) based platform to the provider's switch, frequently located out-of-state. The calls are subsequently routed to their destination over the provider's trunks or those of an underlying carrier. Therefore, there is little difference in provider cost for calls that terminate in the local calling area of the inmate facility and those that terminate outside the inmate facility's local calling area. The use of IP technology avoids originating access expense. Terminating access expenses are incurred.

Collect calls represent a relatively small and declining percentage of ICS traffic. One reason for the shift to prepaid ICS is lower costs for the provider. Prepaid ICS eliminates the

substantial expense of billing agreements and the uncollectable receivables associated with local service provider billing. Additionally, many wireless providers refuse to accept ICS collect calls and the number of ILECs and CLECs that accept ICS collect calls is declining. To ensure the completion of collect calls by local wireline and wireless providers that refuse to accept and bill for collect ICS calls, ICS providers rely on prepaid calling options and/or third-party billing and collection services. Called parties may be charged a bill statement fee when third-party billing and collection services are used by their ICS providers.

Most wireless providers do not offer billing of collect calls creating an opportunity for third-party services to enter into agreements with ICS providers and wireless companies for completing the calls. One such service is “text-to-collect”. The wireless recipient of an attempted collect ICS call is sent a premium text message from the third-party service identifying the calling party and offering to complete the call for a charge of \$9.99. The maximum duration of the call is subject to confinement facility policy; usually no more than 20 minutes and frequently less. Regardless of whether the call lasts 1 minute or 20 minutes, the charge is \$9.99. Based on research, staff estimates the ICS provider receives 45 to 50% of the \$9.99 charge, the wireless provider receives 35 to 40%, and the third-party “middleman” receives the remainder. The premium text message is then billed directly to the wireless customer by the wireless provider. No additional usage charges apply. From the charges assessed the wireless caller, confinement facilities typically receive 30 cents or less commission per call (3% of the total charge).

The lure of such lucrative margins creates a further incentive to eliminate the “middle man” third-party and the wireless provider altogether. At least one ICS provider is doing so under a program called “pay now”. Attempted collect calls to wireless or un-billable wireline parties are temporarily connected to the called party for a short “free call”. However, the provider uses an automated operator to identify the calling party and offers to continue the call for a charge of \$14.99 billed to the recipient’s debit or credit card. Staff has listened to the messages that accompany such calls. The called party is advised that \$1.80 of the charge is for the call and the remaining \$13.19 is a call processing charge. Like “text-to-collect” calls, the maximum duration of the call is subject to confinement facility policy. Regardless of whether the call lasts 1 minute or 20 minutes, the charge is \$14.99. No additional usage charges apply.

From the charges assessed the called party, staff understands that confinement facilities typically receive \$1.60 or less commission (approximately 11% of the total charge).

More ICS providers are likely to pursue “pay now” type call processing, leading staff to conclude that the percentage of inmate calls billed in this manner will increase. According to ICS provider, IC Solutions¹, more than 25 percent of calls at some inmate facilities across the nation are being completed as “pay now” and text-to-collect calls. As more calls are completed using “text-to-collect” and “pay now”, the average price for inmate calling will trend upward regardless of regulatory caps established for ICS usage rates and authorized fees. Additionally confinement facilities, regardless of the contractual percentage commission pledged by ICS providers, will experience decreasing commissions compared to what they would receive from other prepaid, debit, and collect calls.

III. ICS REFORM

A. Commissions Paid to Confinement Facilities

Whether confinement facilities should be allowed to receive commissions from ICS, and the extent thereof, is a decision reserved for state and local policy makers with fiscal oversight for prisons and jails, not the state agency responsible for regulating service provision, pricing, billing, customer relations, and other terms and conditions of ICS at those confinement facilities. Consequently, the Commission takes no position on policy that authorizes or does not otherwise restrict the payment of commissions to confinement facilities from ICS. Nevertheless, staff believes the decision for selection of the exclusive provider of ICS service at a confinement facility, from a group of providers competing for the contract, could be disproportionately influenced by the percentage commission offered the confinement facility. The actual users of ICS services have no choice whatsoever in the selection of their provider, the rates charged, and the provider’s service quality. Therefore, Commission regulation of provider rates and service is undertaken as a proxy for fair market competition to ensure that inmates and their families are provided the highest quality service and customer support at prices that are just and reasonable.

¹ IC Solutions, Bid No. WG13-01, Presented to Baldwin County, Alabama, November 14, 2012, “Rates & Commission (Completed Schedule B)”, Tab 6, Page 4.

In recognition of existing public policy, staff recommendations addressed herein considers the financial interests of ICS customers, ICS providers, and inmate confinement facilities. In the event that public policy regarding commission payments to confinement facilities changes, the staff recommendations in this order shall be revisited and adjusted accordingly.

In the August 9, 2013 announcement capping interstate ICS rates, the FCC presumed the cost of ICS is currently \$0.12 per minute for debit and prepaid ICS calls and \$0.14 per minute for collect ICS calls². ICS providers are promising commissions of 80% or higher to some confinement facilities. Staff calculates the average ICS revenue per call in Alabama at \$0.27 per minute, 80% of which equates to \$0.216 per minute commission. Staff is perplexed at how ICS providers can commit to paying confinement facilities a commission of 21.6 cents on a call that costs the provider 12 cents (total cost to the provider of 33.6 cents) yet generates only 27 cents in revenue. Either ICS providers are operating at a loss, are generating revenue by means other than inmate calls, or are shielding some portion of ICS revenue from commissions. As previously discussed, one way to reduce commissionable ICS revenue is through “text collect” and “pay now” calls. Another way to reduce the revenue against which commissions apply is by shifting a higher proportion of ICS revenues to fees assessed by the provider.

Staff considers the ICS “baseline offering” as debit or prepaid service paid by check or money order with no associated payment processing fee and an online customer account activity statement. With payment by money order or check, customer funds are devoted entirely to ICS service but there is a delay in establishing service availability. Many inmates processed into city/county jails are released after hours or days. Consequently, payment by check or money order is not always viable. Therefore, many customers choose collect calling or the expeditious establishment of prepaid service via money transfers, kiosks, or by credit/debit card. These “above baseline” ancillary services result in additional provider costs. Staff considers these legitimate business costs that the ICS provider should be provided an opportunity to recover. The Commission emphasizes, however, that ICS fees authorized by the Commission are intended

² Staff believes the presumed costs referenced by the FCC are more applicable to high occupancy state and federal correctional facilities but significantly underestimate the average costs applicable to smaller city/county confinement facilities.

only to recover actual provider costs, not generate net income for the ICS provider and/or revenue for the confinement facility. Consequently, confinement facilities shall not seek/accept nor shall ICS providers offer/pay commissions to confinement facilities from ICS customer fees.

The funds most ICS customers can afford to devote to inmate calls are finite. Therefore, any proportion absorbed by unnecessary or excessive ICS provider fees decreases the amount devoted for inmate calls and reduces commissionable revenue. The interests of ICS customers and confinement facilities are best served by eliminating unnecessary or excessive provider fees and thereby maximizing customer funds available for inmate calls. Furthermore, restricting commissionable revenue to ICS usage makes it far easier for confinement facilities to verify they are being paid the full extent of commissions due from the ICS provider.

B. Calls to Recipients Whose Providers Do Not Accept Collect Calls

Staff considers the charges associated with “text-to-collect” and “pay now” ICS call processing to be exorbitant and an obstacle to ensuring that ICS rates are affordable for consumers. “Pay now” call processing demonstrates that “text-to-collect” is not a necessary method for completing calls to customers whose providers refuse to bill collect calls. Staff finds no reason why the ICS provider can’t offer the called party the option to “pay now” and/or the opportunity to establish a prepaid account using the call processing fees and usage rates approved by the Commission.

Staff recommends that “text-to-collect” be prohibited from intrastate ICS in Alabama. Staff further recommends that any “pay now” option for collect calls be restricted to the applicable usage rates and payment processing fees recommended in paragraphs E and F below.

C. Applicable State Taxes

Staff sought guidance from the Alabama Department of Revenue (“ADOR”) on whether the State Utility Gross Receipts Tax or sales taxes apply to ICS. On August 13, 2013, the Commission received a response from the Assistant Director, Sales and Use Tax Division of ADOR (Attachment A). ADOR’s guidance is that the six-percent (6%) State Utility Gross Receipts Tax applies to all ICS local service, intrastate toll and interstate toll charges. Local and State sales taxes do not apply to ICS charges. Section 40-21-80 (11), Code of Alabama, provides

that the tax shall not be applied to provider fees and/or "...services which are ancillary to the provision of telephone service but are not directly related to the transmission of voice, data, or information...". Additionally, the tax is not applicable to government mandated fees.

D. No Up-Front Assessment of Taxes and Government Fees

The provider is unable determine the nature of the calls and their duration until the calls are rated. Consequently, ADOR guidance (Attachment A) is that the State Utility Gross Receipts Tax be applied only as the service is used. Taxes³ and government mandated fees⁴ applicable to ICS in Alabama shall be assessed to each call at the time of the call and not beforehand.

E. ICS Usage Charges

Based on information reported by ICS providers in the staff's January 25, 2013 data request, the composite ICS local and toll revenue, including operator surcharges and usage charges, averaged \$0.27 per minute in Alabama (total reported local and toll ICS calling revenue divided by total reported local and toll minutes).

On August 9, 2013, the FCC capped the price for interstate ICS calls at \$0.21 per minute for prepaid calls and \$0.25 per minute for collect calls with no call set-up allowance. The FCC rates presume that ICS provider costs average \$0.12 per minute for prepaid calls and \$0.14 per minute for collect calls. The staff considered mirroring the FCC rate caps. However, those rates do not take into consideration commissions to confinement facilities. On the other hand, the FCC failed to acknowledge the anticipated effects of call volume stimulation, which can be substantial, increasing both ICS provider revenue and corresponding commissions. Additionally, Intercarrier Compensation Reform is decreasing access costs. Terminating access rates are at interstate levels throughout the state and are being phased down to zero.

The existing ICS rate structure in Alabama is designed for a collect calling service platform with live operator interaction. However, collect calls comprise only a small percentage of total ICS traffic. ICS consists primarily of debit and prepaid calls with direct dialing to the

³ The three percent (3%) Federal Excise Tax on local telephone service is not applicable to ICS.

⁴ The USF fee and Federal Telephone Relay Service ("TRS") Fund fee are applicable only to interstate calls.

authorized telephone number pre-approved by the inmate facility. Operator services are not applicable. Additionally, collect calls are fully automated requiring no live operator interaction.

Staff recommends elimination of existing operator surcharges and establishment of a single per-minute, postalized rate of \$0.25 applicable to both local and toll calls, and to both prepaid and collect calls. Like the FCC ICS rates, the staff's recommended ICS rate is intended to recover all associated ICS biometrics and security monitoring costs. Call durations shall be rated in increments of no greater than one (1) minute.

ICS providers at the FCC workshop testified that postalized ICS call rates (single per-minute rate for calls) and/or lower per-minute rates result in increased call volume. In some cases, the usage stimulation is extensive (above 100%). One ICS provider in Alabama confided to staff that they converted their ICS local rates in Alabama to a postalized rate of \$0.15 per-minute, equating to a 46% decrease in price based on the average duration of a local ICS call in Alabama at the existing rate cap for local calls. Nevertheless, the provider reports that total revenue remained unchanged due to the effects of call stimulation. Staff anticipates that a postalized rate structure and elimination of unnecessary or excessive ICS fees will significantly increase the volume of inmate calls. Along with staff measures addressing "text-to-collect" and "pay now" call delivery, the total commissionable revenue at confinement facilities is expected to increase accordingly.

F. Video Visitation Authority, Rates, and Other Inmate Services

Video Visitation Service ("VVS") is relatively new to Alabama confinement facilities. The service is offered by some certificated ICS providers and by others who do not currently possess a Certificate of Public Convenience and Necessity ("CPVN"). VVS is telephone calling accompanied by video images captured by webcams on either the instrument or via a webcam attachment to a personal computer. VVS is not internet service and those offering the service are not internet service providers. Confinement facilities do not authorize inmate subscription to traditional internet service. In fact, much of VVS is provided exclusively to both parties within the confinement facility. The audio and video, like traditional ICS, is transmitted over broadband facilities. It is essentially enhanced ICS.

VVS offers significant advantages to inmate family and friends. Children are frequently barred from visitation areas in confinement facilities. Without VVS, many inmates and their children have little to no opportunity for face-to-face contact. Studies show that such contact between inmate parents and their children not only lowers the recidivism rate among inmates but decreases the delinquency rate of their children. VVS can also amount to a substantial travel-related cost savings for inmate families, particularly if they live a significant distance from the confinement facility and have access to a computer with web cam. The convenience of remote VVS may also lead to more frequent “visitation”. In some areas, Richmond, VA for one, local churches with prison ministries have established sites with web cam equipped computers for inmate families to utilize the service.

Confinement facilities find VVS advantageous. Traditional visitation areas pose a security risk in terms of transporting inmates to and from visitation. Additionally, contraband is sometimes smuggled to inmates during visitation. The confinement facility must dedicate personnel to transport and monitor inmates during visitation. With in-house VVS, inmate families including their children, may access a VVS terminal located in a secure area of the facility for a “visit” with the inmate at another VVS terminal located inside the cell block. VVS from home or another remote site must be scheduled and approved beforehand.

VVS is not without its potential issues. Many inmates prefer the live face-to-face visitation. Additionally, confinement facilities may be inclined to eliminate free live visitation, especially with the revenue incentive associated with VVS. The service can be relatively expensive. Some ICS providers are charging up to \$1.00 per minute for VVS.

There are non-ICS providers offering VVS to confinement facilities. Among them are Turnkey Corrections, a manufacturer of kiosks and a provider of inmate canteen services; and Homewav. Turnkey Corrections offers VVS for \$0.35 per minute while Homewav provides the service for \$0.50 per minute. Both companies offer commissions to confinement facilities. However, ICS providers offer VVS at rates that are as much as \$1.00 per minute (double the rate of Homewav and nearly triple the Turnkey rate).

VVS is an ICS and, therefore, falls under the Commission’s regulatory jurisdiction. Consequently, providers of VVS in Alabama must possess a CPCN from the Commission. Staff recommends that ICS providers in Alabama that possess a CPCN for ICS from the Commission,

on or before the date of the final order in this rulemaking proceeding, be granted additional VVS authority. Those offering VVS without a CPCN from the Commission must request such authority within 90 days from the date of the final order in this proceeding or cease providing the service.

Staff recommends that the per minute rate for VVS be capped at \$0.50 per minute, with billing increments of no greater than one (1) minute, until such time as ICS providers individually submit to the Commission detailed cost studies for ICS and petition the Commission for alternative rates. Staff's recommended rate cap is based on the VVS rate currently charged by ICS competitor, Homewav, and allows for commissions paid to the confinement facilities.

The provider will not fix the charges for VVS based on minimum call duration. For instance, providers will not offer VVS for \$10.00 with a twenty-minute call allowance regardless of actual call duration. VVS will be priced at the capped rate applied to the actual call duration. Downloadable VVS recorded messages will be capped at \$1.00 for the first minute and \$0.50 for each additional recorded minute. The maximum fees and ancillary charges referenced in Part G (below) are applicable to VVS as are the State Utility Gross Receipts Tax and government mandated fees referenced herein. Affordable VVS rates are in the best interests of Alabama inmates, their families, and the confinement facilities.

Staff requests comments from interested parties on whether the rates for email and text messaging services offered by ICS providers should be capped by the Commission and, if so, at what rates.

G. ICS Fees and Ancillary Charges

Staff emphasizes that authorized fees for ICS service are intended only to recover actual costs incurred by the ICS provider. They are not a profit center for the service provider nor are they to be a source of commissionable revenue for the inmate facility. Any evidence to the contrary constitutes tacit admission that the approved fees are above provider cost. All fees and charges assessed by the ICS provider must be approved by the Commission and will be included in the provider's tariff on file with the Commission.

(1) Payment Processing Fees

Based on the method of payment selected by the purchaser of ICS, costs are incurred by the provider. The ICS customer will be provided the opportunity of paying for debit/prepaid ICS service, via check or money order, without incurring a payment processing fee. Other payment methods that provide establishment of service more expeditiously result in additional costs to the provider from credit or debit card processing services, costs for establishing web-based payment interfaces, costs for IVR and live customer payment processing service, and the costs of providing and servicing kiosks at confinement facilities. Staff recommends recognition of the following maximum fees:

- (a) Payment by check or money order - No charge
- (b) Website payment⁵ via credit or debit card – \$3.00
- (c) IVR phone payment (footnote 5) via credit or debit card - \$3.00
- (d) Live agent phone payment (footnote 5) via credit or debit card - \$5.95
- (e) Kiosk payment (footnote 5) via cash, credit, or debit card - \$3.00
- (f) Money Transfer services (Western Union and MoneyGram) – Staff recognizes that these fees are set by these financial services but is also aware that agents hosting such services are paid a portion of the fee. Additionally merchants may negotiate the fee charged their customers. Staff emphasizes that ICS providers are prohibited from receiving any portion of fees paid by their customers to third-party financial services for submission of payments for ICS and/or for transferring funds into inmate accounts. Any evidence that ICS providers are benefitting financially from fees charged their prospective or existing customers by third-party money transfer services and/or that ICS providers are paying confinement facilities commissions therefrom, constitutes tacit admission that the fees are excessive and shall subject the

⁵ The provider will not establish a ceiling on the payment that may be submitted by a customer, regardless of payment method utilized. Such artificial barriers deprive the customer of available “economies of scale” with little increase in the provider’s actual costs. The staff believes such ceilings can be used to force customers into paying the provider’s processing fees more frequently. Consequently, the maximum payment processing fees referenced herein are flat-rated regardless of the payment amount and method of payment.

provider to Commission regulatory action including, but not limited to, customer refunds with interest. All ICS providers shall submit, for informational purposes to the Commission, the transaction fee charged their customers by Western Union and MoneyGram for ICS payments and will update this information as the fees change. Staff will compare fees submitted by all ICS providers and require justification from ICS providers for any observed anomalies.

ICS providers shall fully inform customers on their websites of all the payment methods available, the payment processing charges associated therewith, including the money order and check payment option available at no charge, and the estimated time required to establish ICS service applicable to each payment option.

(2) Bill Processing Fees

- (a) Collect Calls – ICS providers must pay third-party processing and LEC charges for adding charges to local exchange carrier (“LEC”) bills. Staff recommends a maximum fee of \$3.00 regardless of the number of calls included on the customer’s bill.
- (b) Bill processing fees are not authorized for debit, prepaid, and direct-billed ICS. The Commission considers such costs normal business overhead recovered via the authorized ICS usage charge.

- (3) Convenience Fee – ICS providers are typically required to invest in software interfaces with inmate trust/canteen accounts for purposes of transferring inmate funds into ICS debit accounts. Additionally, inmate trust/canteen service providers typically assess ICS providers a percentage of the inmate funds transferred as a fee for the service. Usually, the transfers are very small amounts (\$3 to \$5). The staff recommends a maximum convenience fee of five-percent (5%) of the funds transferred into the inmate’s ICS account for purposes of recovering the ICS provider’s costs.

- (4) Regulatory Cost Recovery Fee – The Commission considers the costs of complying with regulatory requirements and payment of Inspection and Supervision Fees (“I&S fees”) as normal utility overhead. The Commission has not heretofore authorized a regulatory cost recovery fee for intrastate service telephone service. Any such fees applied to Alabama LEC bills are those specifically authorized by the FCC for interstate carriers subject to FCC regulatory fee assessments and who are required to file interstate tariffs with the FCC. ICS providers were heretofore not regulated by the FCC and have not been assessed FCC regulatory fees. It appears the FCC has asserted regulatory jurisdiction over ICS providers based on its August 9, 2013 action to cap interstate ICS charges. Should the FCC specifically authorize a regulatory cost recovery fee for ICS providers, the Commission will consider its applicability. In the interim, the Commission does not authorize such a fee for intrastate service.

- (5) Returned Check Charge – Section 8-8-15(b) in the Code of Alabama establishes the maximum returned check charge as \$30. This is the maximum allowable returned check charge authorized for ICS in Alabama.

- (6) Paper Bill Fee – All ICS customers (including VVS) will be provided an electronic statement of payments and charges, free-of-charge, as provide in paragraph I, below. Customers may optionally request that a detailed paper bill be mailed or faxed to them for any or all of the account activity corresponding to the most recent three-months statements available online in electronic format. The maximum allowable paper bill fee (including postage and handling) is \$2.00.

H. Other Ancillary Charges Prohibited

- (1) Account set-up fee – The Commission authorizes service installation charges for telephone utilities involving connection/activation and/or transfer of facilities. The provision of ICS to an inmate does not require any connection/activation or transfer of underlying facilities. There is no need to establish customer accounts for ICS collect calls. The called party is billed and a bill processing fee is charged. Account and billing information must be collected

by the ICS provider for debit, prepaid, and direct-billed accounts. However, the migration to these type services resulted in substantial cost savings to providers allowing them to avoid that portion of uncollectable charges typically associated with collect ICS calls. The inherent cost savings associated with debit and prepaid service was cited by ICS providers as justification for seeking Commission approval to introduce debit and prepaid service. It is, therefore, incomprehensible that providers should now insist on charging these customers for the “privilege” of using a service established for the provider’s benefit. The Commission considers account establishment as a normal administrative cost that should be borne exclusively by the provider. Consequently, the Commission does not authorize any fee for ICS account set-up.

- (2) Refund fee - With debit and prepaid service, providers not only avoid uncollectable expenses, they benefit from the interest-free utilization of customer owned funds. No telephone utility certified in Alabama is authorized to assess a service charge for refunding customer funds. The Commission considers administrative costs associated with customer refunds to be normal business overhead to be borne exclusively by the provider and, therefore, does not authorize a refund fee.
- (3) Provider assessed “fines” and penalties for prohibited inmate behavior – The ICS account is established with an expectation that the funds submitted to the provider are exclusively for ICS including applicable taxes and government mandated fees. The funds associated therewith are the property of the ICS customer until utilized in part or in whole for ICS. Providers and/or confinement facilities are not authorized to assess monetary penalties/fines/fees to ICS customer accounts for violation of confinement facility security policies or otherwise access the customer’s ICS prepayments without Commission authorization and the explicit consent of the ICS customer.
- (4) Other fees and charges - Providers are not authorized to assess any usage charges and/or fees other than those specifically referenced herein under Section III, Parts C through G(6), without specific Commission approval. Any proposed tariffs submitted to the Commission

by an ICS provider seeking approval for rates and fees not specifically listed in Section III, Parts C through G(6) of this Order, and/or seeking approval for rates and/or fees that exceed the maximum charges associated therewith, shall not be effective without the provider's formal request that the Commission grant an exemption/waiver from the limitations imposed by Section III, Parts C through G(6). Additionally, the fees/rates shall not be effective absent a Commission Order granting the requested exemption/waiver specified in the provider's request. Any unauthorized fees charged by providers and/or any commissions paid therefrom are subject to Commission regulatory action including, but not limited to, customer refunds with interest.

I. Minimum Customer Account and Service Information Requirements

Commission Telephone Rule T-5(C) requires that detailed monthly electronic or paper account statements be provided to customers at no charge. Monthly, individualized ICS customer account statements must be provided to ICS customers of debit, prepaid, and direct-billed service (including VVS). The default customer account statement shall be in electronic format, available over the internet and printable. The most recent three-months of statements shall be maintained online. In lieu of an electronic statement, a paper bill, mailed or faxed to the customer (customer's option), shall be provided at the request of prepaid and direct-billed customers (debit service excluded), subject to the paper bill fee referenced in G(6), above.

The monthly billing statement shall include the following:

- (1) For each call (including VVS): the date/time for the call, the call destination city and state or called number including area code (necessary only for debit accounts), call duration, and the charge for the call. If charged to the customer's debit, prepaid, or direct billed account, charges for inmate texting service, inmate email service, and video visitation shall be listed in the same detail applicable to inmate calls.
- (2) Applicable Alabama Utility Gross Receipts Taxes shall be listed in a separate category and labeled appropriately. The tax rate, and the total taxes assessed shall be provided.
- (3) Any applicable ICS provider fees will be listed individually in a separate category and labeled appropriately. The name of the applicable fee, amount charged by fee type, and total provider fees shall be clearly identified.

- (4) Government fees shall be listed in a separate category and labeled “Government Fees”. The description and amount for each government fee shall be listed individually.
- (5) The statement shall provide the customer name, beginning and end date of the applicable billing period, beginning account balance, date and amount of payments received, and the ending account balance.

For payments at kiosks, the customer receipt shall provide the customer name, transaction date, identity of the account to which the payment applies, amount paid, payment processing fee, and balance applied to the customer’s ICS account.

Electronic and paper account statements shall include the provider’s toll free number for customers to call in order to inquire about the information listed on their statement of payments/charges and/or to discuss suspected billing errors and/or service issues. Additionally, the Universal Resource Locator (URL) to the provider’s ICS website shall be listed. The provider’s toll-free number and URL shall be prominently displayed in font size that is easily located by the consumer.

The Provider’s ICS website shall have a webpage specifically devoted to Alabama ICS. The Alabama specific ICS webpage shall include the following information:

- (1) available services;
- (2) payment options (including information about kiosks);
- (3) ICS rates;
- (4) ICS fees;
- (5) description and rate/amount of the State Utility Gross Receipts Tax and government fees;
- (6) monthly customer statement options (electronic or paper);
- (7) refund procedures;
- (8) customer service contact information;
- (9) a link to the Alabama PSC ICS webpage (to be provided by the Commission).

The ICS provider’s electronic and paper account statement and their Alabama specific ICS webpage format and content is subject to review and approval by the Commission Telecommunications Division staff.

For purposes of resolving billing disputes, ICS providers shall fax or include as email attachments, copies of the customer’s monthly statements, as requested by the Commission, at no charge to the customer and/or the Commission. These documents will be considered proprietary

by the Commission and will not be released to outside parties, including the ICS customer, without explicit provider approval.

Providers shall submit to the Commission the name(s), telephone number, and email address of a point of contact(s) within the company for purposes of addressing consumer inquiries and resolving customer disputes. The contact information shall be revised and updated as necessary. Providers shall promptly acknowledge receipt of Commission inquiries, and shall fully cooperate with Commission staff to promptly investigate and resolve all inquiries and disputes to the Commission's satisfaction.

J. Records Retention and Auditing Requirements

ICS providers shall maintain electronic and/or paper copies of the following documents, records, or forms applicable to ICS in Alabama for the months in the current calendar year plus the most recent three (3) complete calendar years (Jan – Dec):

- (1) customer monthly account statements, referenced in Part III I;
- (2) forms showing the State Utility Gross Receipts Tax collected and the State Utility Gross Receipts Tax remitted to the Alabama Department of Revenue;
- (3) forms showing USF fee collections and payments submitted to USAC;
- (4) forms showing collections of the federal TRS fee and payments remitted to the TRS Fund Administrator;
- (5) records showing unused customer balances, by customer identification, and records of refunds by customer identification including the date, amount, and method of refund;
- (6) Unclaimed Property Report forms showing submission of unclaimed customer funds to the Alabama State Treasurer.

The records and forms to be retained by the ICS provider, as referenced herein, are subject to audit by the Commission, by the Commission on behalf of the Alabama Department of Corrections and local governments as requested, and other state agencies, including but not limited to the Alabama Department of Revenue, Alabama State Treasurer and State Examiners. Additionally, the ICS provider may be required to make available for inspection to the aforementioned entities other information not specifically identified herein.

For purposes of verifying compliance with tariffs and Commission rules for ICS, providers shall submit to the Commission, upon request, electronic or paper copies of ICS customer monthly account statements associated with ICS service at any confinement facility

designated by Commission staff, for any or all of the most recent three-month period requested by staff. Upon Commission staff request, providers shall submit to the Commission electronic or paper copies of ICS customer monthly account statements associated with ICS service for any service category designated by staff (debit phone, prepaid phone, VVS, etc.) at any of the Alabama confinement facilities served by the provider. All customer account statements submitted to the Commission by the ICS provider will be considered proprietary and will not be released to any party outside the Commission without explicit approval from the ICS provider.

Section 37-1-82 in the Code of Alabama requires all providers under the Commission's jurisdiction to make its books and records available for inspection at a location within the state of Alabama. If all or part of the provider's books, documents, and/or records referenced herein are located outside of Alabama and not made available for inspection at a location within Alabama, the ICS provider is required to reimburse the State of Alabama for all Commission employee travel, meal, lodging, and incidental expenses associated with the inspection of the provider's books, documents, and/or records.

K. Initial Inmate Call and Other Non-rated Calls

To ensure that newly confined inmates are provided ample opportunity to inform family members of their confinement status, identification of the confinement facility ICS provider, and procedures for establishing a prepaid ICS account, staff recommends that new inmates (those transferred from another confinement facility and/or newly processed into the confinement facility regardless of previous booking instances) be provided an initial two (2) minute call, at no charge provided the confinement facility does not block the inmate from calling the number.. A call attempt resulting in a busy signal or when there is no answer does not constitute compliance with this requirement.

The ICS provider shall inform the called party that the inmate is being provided two-minutes of conversation time and that at the end of the two minutes, information will be provided on procedures for establishing an ICS account. However, no part of the inmate's two-minute initial call allowance shall be utilized by the ICS provider to announce the call or for subsequent information regarding procedures for establishing a prepaid ICS account. Staff believes that this arrangement is beneficial to the inmate, the called party, the ICS provider and the confinement

facility. Providers who choose to utilize a collect call arrangement must nevertheless comply with this requirement and offer an initial two-minute call to the inmate, free of charge to the called party. The initial two-minute call allowance does not apply to established direct billing arrangements (attorneys, bail bondsmen, etc.).

ICS providers will not charge inmates for calls to the designated customer service number for the ICS provider.

L. ICS Resale

ICS providers sometimes offer to the facilities they serve, ICS phone cards in increments of \$10, \$20, etc., for resale to inmates. The total price paid by the ICS customer, including any markups by the ICS provider and/or the confinement facility must not exceed the purchasing power of ICS services using the card. Therefore, if the face value of the calling card is, for example, \$10, the inmate may not be charged more than \$10 for the card (including any markups or fees not specifically approved by the Commission) and the card must be redeemable for \$10 of ICS based on the ICS provider's tariffed rates on file with the Commission. Additionally, taxes and government fees will not be assessed up front but are applicable only when calls are placed by the customer.

M. Refunds and Unclaimed Property

Commission Rule T-5(C)(6) requires that providers refund customers any overcharges for the previous thirty-six (36) month period.

ICS providers will be proactive in informing customers of procedures for refunding unused debit and prepaid balances. ICS customers will be refunded their unused balances in full. The provider will not assess any fee to the customer's balance or request any payment from the customer for refunds. Refunds of unused account balances for prepaid ICS and VVS may be made via check or credits to the customer's credit/debit card. Refunds of unused account balances for debit service shall be made by credits to the inmate's trust fund account. The Commission will consider other refund methods, e.g., calling cards that can be used outside the facility, on a case by case basis. However, these methods and the rates/charges applicable to the

calling cards must be approved by the Commission and included within the ICS provider's tariff on file with the Commission.

Title 35, Chapter 12, Article 2A, in the Code of Alabama codifies the Uniform Disposition of Unclaimed Property Act of 2004 ("the Act"). Section 35-12-72(a)(15) is applicable to utility service and defines unclaimed as a "Deposit or refund owed to a subscriber by a utility, one year after the deposit or refund becomes payable". The Commission hereby defines the terminology "one year after the deposit or refund becomes payable" to be one year from the date of the last customer generated debit or credit to the customer account, i.e. one year following the last customer payment for ICS in the account or one year after the customer's last usage of funds in the account for ICS, whichever comes later. Section 35-12-74 of the Act identifies the criteria used to determine whether abandoned property should be submitted to the State Treasurer.

Section 35-12-76 of the Act, addresses dormancy charges and whether they are applicable to abandoned property. Paragraph (b) reads:

"A holder may deduct from property presumed abandoned a charge imposed by reason of the apparent owner's failure to claim the property within a specified time only if there is a valid and enforceable written contract between the holder and the apparent owner under which the holder may impose the charge and the holder regularly imposes the charge. The amount of the deduction is limited to an amount that is not unconscionable."

The Commission does not consider ICS provided under exclusive contract with the confinement facility to represent any explicit or implied contractual agreement with users of their ICS service for purposes of determining whether dormancy charges apply to the customer's abandoned property. Furthermore, the Commission prohibits any attempt by ICS providers to include in ICS offerings to their customers, or otherwise in their tariff on file with the Commission, any requirement that the customer's property is subsequently subject to dormancy charges in the event of abandonment. Dormancy charges are not applicable to ICS in Alabama.

Section 35-12-76 of the Act establishes the procedures for submitting a report of abandoned property to the Alabama State Treasurer. Paragraph (c) requires the report to be filed before November 1 each year, for the most recent 12-month period ending June

30. Section 35-12-77 of the Act requires the total amount of unclaimed property for the period covered by the report be remitted with the report to the State Treasurer, Unclaimed Property Division. Attachment B, provided by the State Treasurer, shows prescribed dormancy periods and National Association of Unclaimed Property Administrators (NAUPA) codes.

N. Reporting Requirements

ICS providers will submit the following information to the Commission for each Alabama confinement facility served:

- (1) local ICS minutes, number of calls, and associated revenue;
- (2) intrastate ICS minutes, number of calls, and associated revenue;
- (3) interstate ICS minutes, number of calls, and associated revenue.

The initial report is due January 31, 2014 for the previous six-month period ending December 31, 2013. Thereafter, reports are due quarterly, every year, on the last business day of April, July, October, and January for the most recent three-month period ending in March, June, September, and December respectively.

O. Tariffs

ICS providers will submit revised tariffs that comply with the requirements in the final Order for this proceeding and rules adopted therein. Within the provider's tariff, a separate section will be established identifying all services provided to confinement facilities in Alabama, a description of each service provided, and the associated rates for each service. Additionally, a separate tariff section will be provided that identifies, defines, and provides the associated price for all ICS fees and ancillary charges. The provider will not assess any rate or charge to ICS customers without Commission approval nor will any rates of charges be included in the tariff that are not specifically listed in the separate tariff sections referenced above. No existing or new ICS will be offered by the provider until the service and associated rates are approved by Commission and included in the provider's tariff on file with the Commission.

P. Tariff Filing Requirements

Section 37-1-81 in the Code of Alabama is applicable to ICS. Requests for additions to or revisions in the provider's tariff will be submitted with a requested effective date of no less than thirty (30) days from the date the filing is received at the Commission (file date). The Commission may suspend the tariff for investigation for a period of up to six (6) months from the file date. Commission Rule T-12 provides the specific format for telecommunications tariffs.

Tariffs and additions/revisions thereto filed with the Commission are considered public record and subject to intervention, in accordance with Commission rules and practices, from other providers and affected parties. In the event the Commission suspends the tariff for investigation due to intervention, the Commission may seek comments from other interested parties with regard to any issues identified by intervenors. Additionally, the Commission staff welcomes informal questions and comments from providers and affected parties on any aspect of ICS tariff filings.

Q. Implementation

In responses to the staff data request of January 25, 2013, ICS providers indicated that their contracts with Alabama confinement facilities include a provision that allows for the terms of the contract to be revised in the event of regulatory changes. Therefore, staff recommends that the changes to ICS approved by the Commission be implemented no later than ninety (90) days from the date of Commission's final order for this proceeding.

R. Comment Period

Staff recommends that the Commission consider comments from interested parties on the staff's changes to Commission Rule T-15.1 proposed herein, provided said comments are filed with the Commission on or before November 8, 2013.

IT IS, THEREFORE, ORDERED BY THE COMMISSION, That the Commission will consider comments from interested parties concerning matters discussed above provided said comments are properly filed with the Secretary of the Commission before the close of business on or before November 8, 2013.

IT IS FURTHER ORDERED, That this Order shall be effective as of the date hereof.

DATED at Montgomery, Alabama, this 7th day of October, 2013.

ALABAMA PUBLIC SERVICE COMMISSION



Twinkle Andress Cavanaugh, President

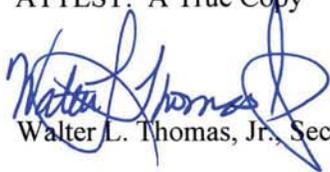


Jeremy H. Oden, Commissioner



Terry L. Dunn, Commissioner

ATTEST: A True Copy



Walter L. Thomas, Jr., Secretary

EXHIBIT B

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December 20, 2013

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By ECFS

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Federal Communications Commission
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WISCONSIN

RE: *Rates for Interstate Inmate Calling Services*
WC Docket No. 12-375

Dear Ms. Dortch:

Pursuant to Section 1.1206(b) of the FCC's rules, undersigned counsel for Martha Wright, et al. (the "Petitioners") hereby submits the following response to comments by other parties to the proceeding regarding the difference in Inmate Calling Service (ICS) costs associated with jails and prisons.

In particular, recent submissions by Pay Tel Communications, Inc.,¹ have argued that the effective date for rules adopted in the ICS Order should be postponed for "jails" due to the higher costs associated with providing service to this type of correctional institution.² On November 26, 2013, Pay Tel filed a Petition for Partial Stay of the ICS Order.³ On December 3, 2013, the Petitioners filed an Opposition to the Partial Petition, noting that the FCC's three-tiered structure adopted in the ICS Order provided sufficient flexibility for ICS providers of all sizes to continue to provide ICS service.⁴

The Petitioners continue to be concerned that the FCC is not fully informed about the use of jails for long-term incarceration. In recent years, many state-run prisons have begun to use local and county jails to house convicted inmates for extended periods, including periods for more than a year. Such long-term incarceration of inmates in local jails would seem to undermine the creation of an exception from the ICS Order to be applied just to "jails".

¹ *See Ex Parte Submissions of Pay Tel Communications, Inc.*, filed Dec. 9, 2013.

² Rates for Interstate Inmate Calling Services, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 14,107 (2013)(the "ICS Order").

³ *Petition of Pay Tel Communications, Inc. for Partial Stay of Rates for Interstate Inmate Calling Services Order*, filed Nov.. 26, 2013.

⁴ *Opposition to Petition for Partial Stay*, filed by Martha Wright, et. al., on December 3, 2013.

For example, attached as Exhibit A are the most recent figures from the Bureau of Justice Statistics regarding the use of local jails by state run prison systems.⁵ According to these results, there are seven states that house approximately 20% or more of their state prisons in local jails:

- Louisiana 53.7%
- Kentucky 38.4%
- Tennessee 30.3%
- Mississippi 29.2%
- West Virginia 24.5%
- Utah 22.6%
- Virginia 19.9%

Thus, should the FCC granting an exemption from the ICS Order for “jails”, the exemption would necessarily extend to state prisoners who are also housed at those jails.

Furthermore, as part of the 2011 California Realignment (AB 109), non-serious, non-violent, non-sex offenders are no longer be housed in the state prisons run by the California Department of Corrections and Rehabilitations, but rather are housed in jails.⁶ As a result of this shift, long-term incarceration in jails is more prevalent, and pre-trial releases have increased, and both of these factors limit the jail churn argument even further, especially in already at-capacity local jails.

Moreover, even if one does not take into account whether the inmates are under the jurisdiction of a county or state, the Petitioners have compiled a chart of the durations of stay for those in custody in jails, which is attached hereto as Exhibit C. This chart is based on a survey of sampled jails over a one-week period in June 2012. The chart shows the percentage of detainees released during that week who were confined for less than 24 hours, and those that remained in jail for more than a week. These two categories were chosen in order to highlight the population of low-cost ICS users. As detailed in the past, those that are detained for less than 24 hours typically do not establish an account with an ICS provider. Furthermore, those that remain incarcerated for more than one week are no longer high-cost ICS customers.

The results of this study offer additional support for the FCC to decline granting an exemption for all jails. For example, according to the survey, more than 90% of those released from jails in Indiana had either remained in custody for less than 24 hours, or for more than one week. In five other states, more than 70% were held in custody for similar periods; nationwide, the percentage of released detainees falling within these

⁵ *Prisoners in 2012*, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice.

⁶ *See Impact of Realignment on County Jail Populations*, rel. June 2013 (attached hereto as Exhibit B).

categories was nearly 59%. Four of the states in which Pay Tel provides ICS service were above 60% and six more were above 50%.⁷ If one only focused on jail detainees that are held in custody for more than one week, there would still be six states above 50%. *Id.*

Therefore, the Petitioners do not support Pay Tel's request that all jails be exempt from the rules adopted in the ICS Order. Not only are state prisoners routinely housed in local and county jails, but a majority of those that are held in custody in jails are either released within 24 hours, or are held for more than one week. In either circumstance, these individuals do not represent the "churn" used to support the request for the Partial Stay.

Should there be any questions regarding this submission, please contact undersigned counsel.

Respectfully submitted,



Lee G. Petro

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Counsel for Martha Wright, et al.

Attachments

cc: Daniel Alvarez
Amy Bender
Kalpak Gude
David Zesiger
Deena Shetler
Rhonda Lien
Lynne Engeldow
Jamie Susskind
(by email)

⁷ *Id.*, *Pay Tel Ex Parte Submission*, *supra* nt. 1, at "Intrastate Rate Caps for Local Calls", pg. 1.

EXHIBIT A



Prisoners in 2012

Trends in Admissions and Releases, 1991–2012

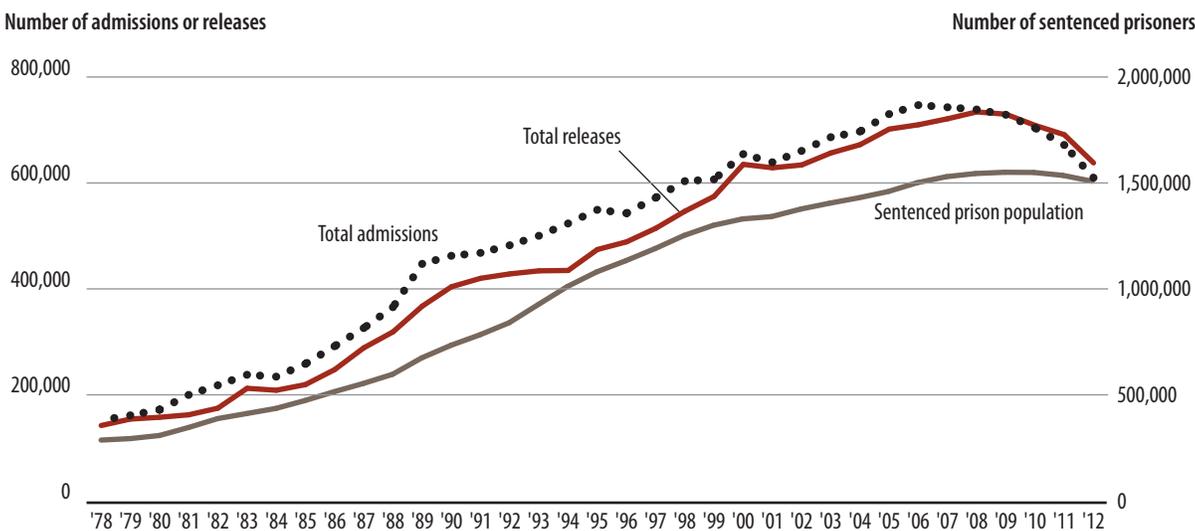
E. Ann Carson and Daniela Golinelli, *BJS Statisticians*

The prisoner population in the United States in 2012 declined for the third straight year, from 1,599,000 at yearend 2011 to 1,570,400 at yearend 2012. On December 31, 2012, the number of persons sentenced to serve more than 1 year (1,511,500) in state or federal prison facilities decreased by 27,400 prisoners from yearend 2011 and by 42,600 from yearend 2009, when the U.S. prison population was at its peak (figure 1). Between 1978 and 2009, the number of prisoners held in federal and state facilities in the United States increased almost 430%, from 294,400 on December 31, 1978, to 1,555,600 on December 31, 2009. This growth occurred because the number of prison admissions exceeded the number of releases from state prisons each year. However, in 2009, prison releases exceeded admissions for the first time in more than 31 years, beginning the decline in the total yearend prison population. Admissions to state and federal prisons

declined by 118,900 offenders (down 16.3%) between 2009 and 2012. In 2012, the number of admissions (609,800) was the lowest since 1999, representing a 9.2% decline (down 61,800 offenders) from 2011.

This report describes changes in the types of state prison admissions and releases between 1991 and 2011. Changes over time in the total yearend prison population are influenced by changes in the number of state prisoners who make up 87% of the total prison population. The report also discusses how these changes influence sex, race, Hispanic origin, offense, and sentence length distributions. The statistics in this report are based on the Bureau of Justice Statistics' (BJS) National Prisoner Statistics (NPS) Program, National Corrections Reporting Program, and the 1991 and 2004 surveys of state prison inmates.

FIGURE 1
Sentenced state and federal prison admissions and releases and yearend sentenced prison population, 1978–2012



Note: Counts based on prisoners with a sentence of more than 1 year. Excludes transfers, escapes, and those absent without leave (AWOL). Includes other conditional release violators, returns from appeal or bond, and other admissions. Missing data were imputed for Illinois and Nevada (2012) and the Federal Bureau of Prisons (1990–1992). See *Methodology*.

Source: Bureau of Justice Statistics, National Prisoner Statistics Program, 1978–2012.

APPENDIX TABLE 7
Prisoners held in the custody of private prisons and local jails, December 31, 2011 and 2012

Jurisdiction	Inmates held in private prisons ^a				Inmates held in local jails			
	2011	2012	Percent change 2011–2012	Percentage of total jurisdiction, 2012	2011	2012	Percent change 2011–2012	Percentage of total jurisdiction, 2012
U.S. Total	130,972	137,220	4.8%	8.7%	82,053	83,603	1.9%	5.3%
Federal^b	38,546	40,446	4.9	18.6	1,439	795	-44.8	0.4
State	92,426	96,774	4.7%	7.1%	80,614	82,808	2.7%	6.1%
Alabama	545	538	-1.3	1.7	2,148	2,382	10.9	7.3
Alaska ^c	1,688	1,733	2.7	30.8	0	0	0.0	0.0
Arizona	6,457	6,435	-0.3	16.1	0	0	0.0	0.0
Arkansas	0	0	0.0	0.0	883	584	-33.9	4.0
California	697	608	-12.8	0.5	57	0	-100.0	0.0
Colorado	4,303	3,939	-8.5	19.3	116	134	15.5	0.7
Connecticut ^c	855	817	-4.4	4.7	0	0	0.0	0.0
Delaware ^c	0	0	0.0	0.0	0	0	0.0	0.0
Florida	11,827	11,701	-1.1	11.5	1,267	1,197	-5.5	1.2
Georgia	5,615	7,900	40.7	14.2	3,100	4,896	57.9	8.8
Hawaii ^c	1,767	1,636	-7.4	28.1	0	0	0.0	0.0
Idaho	2,332	2,725	16.9	34.1	588	467	-20.6	5.8
Illinois ^d	0	/	/	/	0	/	/	/
Indiana	2,952	4,251	44.0	14.7	1,504	797	-47.0	2.8
Iowa	0	0	0.0	0.0	0	0	0.0	0.0
Kansas	74	83	12.2	0.9	1	0	-100.0	0.0
Kentucky	2,050	812	-60.4	3.7	7,190	8,487	18.0	38.4
Louisiana	2,951	2,956	0.2	7.4	20,866	21,571	3.4	53.7
Maine	0	0	0.0	0.0	110	72	-34.5	3.4
Maryland	78	27	-65.4	0.1	151	178	17.9	0.8
Massachusetts	0	0	0.0	0.0	163	196	20.2	1.7
Michigan	0	0	0.0	0.0	36	42	16.7	0.1
Minnesota	0	0	0.0	0.0	562	614	9.3	6.2
Mississippi	4,669	4,334	-7.2	19.4	5,996	6,528	8.9	29.2
Missouri	0	0	0.0	0.0	0	0	0.0	0.0
Montana	1,418	1,418	0.0	39.3	523	488	-6.7	13.5
Nebraska	0	0	0.0	0.0	56	32	-42.9	0.7
Nevada ^d	0	/	/	/	100	102	2.0	0.8
New Hampshire	0	0	0.0	0.0	20	43	115.0	1.5
New Jersey	2,887	2,717	-5.9	11.7	200	109	-45.5	0.5
New Mexico	2,853	2,999	5.1	44.6	0	0	0.0	0.0
New York	0	0	0.0	0.0	14	0	-100.0	0.0
North Carolina	30	30	0.0	0.1	0	0	0.0	0.0
North Dakota	0	0	0.0	0.0	55	106	92.7	7.0
Ohio	3,004	5,343	77.9	10.5	0	0	0.0	0.0
Oklahoma	6,026	6,423	6.6	25.5	2,088	2,373	13.6	9.4
Oregon	0	0	0.0	0.0	0	0	0.0	0.0
Pennsylvania	1,195	1,219	2.0	2.4	609	489	-19.7	1.0
Rhode Island ^c	0	0	0.0	0.0	0	0	0.0	0.0
South Carolina	20	16	-20.0	0.1	366	374	2.2	1.7
South Dakota	11	15	36.4	0.4	73	64	-12.3	1.8
Tennessee	5,147	5,165	0.3	18.2	8,660	8,618	-0.5	30.3
Texas	18,603	18,617	0.1	11.2	11,906	10,814	-9.2	6.5
Utah	0	0	0.0	0.0	1,529	1,574	2.9	22.6
Vermont ^c	522	504	-3.4	24.8	0	0	0.0	0.0
Virginia	1,569	1,559	-0.6	4.2	7,474	7,389	-1.1	19.9
Washington	0	0	0.0	0.0	386	279	-27.7	1.6
West Virginia	0	0	0.0	0.0	1,677	1,735	3.5	24.5
Wisconsin	36	18	-50.0	0.1	149	70	-53.0	0.3
Wyoming	245	236	-3.7	10.7	9	4	-55.6	0.2

Note: As of December 31, 2001, sentenced felons from the District of Columbia are the responsibility of the Federal Bureau of Prisons. /Not reported.

^aIncludes prisoners held in the jurisdiction's own private facilities, as well as private facilities in another state.

^bIncludes federal prisoners held in nonsecure, privately operated facilities (8,932), as well as prisoners on home confinement (2,659).

^cPrisons and jails form one integrated system. Data include total jail and prison populations.

^dState did not submit 2012 National Prisoner Statistics (NPS) Program data. Local jail value for Nevada estimated based on 2011 data.

Source: Bureau of Justice Statistics, National Prisoner Statistics Program, 2011, 2012.

EXHIBIT B

Impact of Realignment on County Jail Populations

June 2013

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with research support from Brandon Martin

Supported with funding from the Smith Richardson Foundation

Summary

California's recent corrections realignment, authorized under AB 109, is arguably the most significant change in the state's corrections system in decades. Prompted by a federal court order to reduce the state's overcrowded prison system, this legislation, signed by Governor Brown in 2011, seeks to reduce the prison population by sentencing lower-level offenders to county jails rather than prison, thereby transferring substantial incarceration responsibility, as well as funding, from the state to its 58 counties. Proponents of realignment argue that it offers an opportunity to shift the focus from costly state incarceration to local approaches that favor rehabilitative services and treatments, while critics argue that this policy will lead to more "street time" for offenders and an increase in criminal activity. There is also concern that realignment has simply shifted the overcrowding problem, and related lawsuits, from state prisons to local jails.

We are now at a point where relevant data are becoming available, allowing researchers to assess the effects of realignment. In this report, we examine how the decline in California's prison population resulting from realignment affects county jail populations. We also investigate factors that explain the differences between counties that have relied more heavily on jails in implementing their new responsibilities and counties that have emphasized non-jail alternatives.

Our data indicate that realignment has significantly affected county jail populations. Between June 2011 and June 2012, during which time California's prison population declined by roughly 26,600, the average daily population of California's jails grew by about 8,600 inmates, or about 12 percent. As a result, 16 counties are operating jails above rated capacity, up from 11 counties in the previous year. On a statewide basis, county jails have been operating above 100 percent of rated capacity since February 2012. In addition, we have observed an increase in the number of counties reporting early release of jail inmates due to insufficient capacity. By June 2012, 35 counties reported releasing pretrial inmates and/or sentenced offenders early due to capacity constraints (compared to 27 counties in June 2011). We note that although the study is limited to data available for only the first nine months of realignment, the fact that the prison population has only declined by an additional 2,700 in the subsequent 11-month period strongly suggests that the majority of the policy's direct impact on county jails occurred during our study period.

While realignment has certainly increased the population of county jails, the overall California incarceration rate (prisons and jails combined) has declined due to realignment. That is to say, there has not been a statewide, one-to-one transfer of felons from state prison to county jails. We estimate that, on average, a county's jail population increases by one for every three felons no longer assigned to state prison. However, the effect of realignment on jail populations differs across counties, with some counties incarcerating much higher percentages of their realignment caseloads.

We also find evidence of realignment-induced jail crowd-out effects. Our analysis shows that, to a modest degree, convicted felons sentenced to jail and parolees serving time in jail for technical violations are displacing pretrial detainees as well as sentenced inmates serving time for misdemeanor offenses. More strikingly, we find strong evidence that realignment is leading to increases in capacity-constrained early releases of some inmates, especially in counties under court-ordered population caps; our results suggest that for every four realigned offenders, one sentenced inmate per month is released early due to housing capacity constraints (compared to one among every 16 offenders in non-cap counties). Moreover, we estimate that in court-ordered population-cap counties, realignment is increasing pretrial releases at a rate

of roughly one inmate for every seven fewer felons sent to prison. We do not know how much earlier these releases are taking place, only that these practices have significantly increased as a result of realignment.

We also find that factors other than the direct effect of the drawdown in the prison population help explain the post-realignment growth in the jail population. For example, pre-realignment jail capacity constraints and incarceration rates are strong predictors of post-realignment jail population growth. On the other hand, we do not find a relationship between county differences in jail population growth and the use of split sentences, where the offender serves a reduced jail term followed by probation, introduced by realignment. Furthermore, our analysis of data adjusted for county differences in the realignment-induced drawdown in the prison population indicates that underlying county differences in crime do not explain differences in post-realignment jail use.

Although realignment has certainly strained the capacity of county jails, capacity challenges are likely to diminish over time for a number of reasons. First, the impacts of realignment on the state's prison and jail populations have stabilized. We do not expect that realignment will cause further disproportionate declines in the prison population nor significant increases in the jail population. Second, jail capacity expansions on the order of 10,000 new beds are currently under way, supported in large part by funding from the state. Third, additional capacity can be found in the roughly 4,300 jail beds under federal contracts, used primarily for U.S. Immigration and Customs Enforcement to house immigration detainees. Consideration of the need for maintaining and renewing these contracts is warranted before committing to expensive jail expansions.

Taken together, these points suggest that most counties in the relatively near future will have the capacity to accommodate the considerable number of lower-level offenders redirected to their facilities, including those parolees who violate the terms of their release. However, it should be noted that although the state is funding the majority of the construction costs of the jail expansions, most of the ongoing financial burden will fall on the counties; construction costs account for only a small share of the total cost of a jail over its lifetime. This suggests that budget-challenged counties will need to seek effective alternative strategies to incarceration, including increased use of split sentencing.

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Technical appendix to this paper is available on the PPIC website:
www.ppic.org/content/pubs/other/613MLR_appendix.pdf

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Acronyms

ADP	Average Daily Population
BSCC	Board of State and Community Corrections
CDCR	California Department of Corrections and Rehabilitation
PRCS	Post-Release Community Supervision
RC	Rated Capacity

Introduction

California's recent corrections realignment, authorized under AB 109, represents the most significant change in the state's corrections system in decades (Petersilia and Snyder 2013). The legislation, implemented in October 2011, shifts substantial criminal justice oversight and funding from the state to its 58 counties. Motivated by a federal court order to reduce overcrowding in the state's prisons, the legislation affords local governments great discretion in how they exercise their new responsibilities. These include the mandate to locally sanction offenders convicted of less serious felony offenses and to manage most of the less serious offenders paroled from state prison by county probation departments. In exchange, the reform shifts substantial funding resources to the counties and affords local governments great discretion in how they exercise their new responsibilities.

Although Proposition 30 secures funding for realignment as a constitutional guarantee, many other challenges remain. Prominent among these is the management of jail populations. If realignment is to succeed, it cannot simply shift the overcrowding problem, and its related lawsuits, from the state to the counties (American Civil Liberties Union, 2012).¹ At the same time, incarceration decisions need to be weighed against their potential effects on public safety. A number of recent proposals in the state legislature reflect serious concerns about the ability of county jails to effectively enforce sanctions or house offenders, in particular parole violators who violate the terms of their release.² Although we are now approaching the two-year anniversary of realignment, its various effects, including the role of the policy in shaping county jail populations, remain uncertain.³ The intent of this report is to address some of these uncertainties, building on a previous PPIC study (Lofstrom and Kramer 2012).

The greater reliance on local jails as opposed to state prison in the post-realignment era suggests possible advantages as well as disadvantages for both offenders and the counties now in charge of their sanction and rehabilitation. On the positive side, allowing lower-level offenders to remain in their communities, while also emphasizing re-entry treatment and services, may prevent some from becoming hardened criminals; it may be less disruptive to family ties and other social relationships that may prove helpful in their rehabilitation. Moreover, interagency coordination between local sheriffs, probation departments, social services and public health agencies, and the local housing authority may lead to improved reentry and recidivism outcomes, given that offenders must often depend upon the social and public services offered across the multiple domains traditionally managed by county government.

On the negative side, realignment may simply shift the overcrowding problem, and related lawsuits, from state prisons to local jails. Prior to the passage of realignment, many counties were already operating under court-imposed population caps, and others had very little extra capacity in their jail systems. This overcrowding has been aggravated by the substantial transfer of responsibilities of inmates from the state prisons, and it is likely to grow worse if the state is forced to meet the population targets demanded by the federal court overseeing the prison system. In addition, counties face the challenge of housing inmates

¹ To date, four counties have already been sued or threatened with a lawsuit: Alameda, Fresno, Monterey, and Riverside.

² The proposals include AB 2 (which proposes to send sex offenders who violate their parole back to state prisons instead of county jails), AB 605 (which would send sex offenders who violate *any* provision of their parole back to state prison), AB 63 and SB 57 (which would make it a felony for sex offenders and other criminals to remove court-ordered GPS monitoring devices), and AB 601 (which would allow parole violators to be returned to state prison for up to one year).

³ For detailed discussions of the most pressing issues in evaluating realignment, see Petersilia and Snyder (2013) and Lofstrom, Petersilia, and Raphael (2012).

substantially longer than the pre-realignment maximum stay in county jail of one year. As of February 2013, there were 1,155 inmates serving sentences of more than five years in county jails (Lofstrom and Martin 2013). Finally, in truly constrained counties, the inability to retain active criminal offenders may lead to higher local crime rates.

In addition to overcrowding, the flexibility afforded to counties in their treatment of offenders may raise other issues. While this flexibility may spur innovation and permit the tailoring of corrections responses to local conditions, greater local control may also create large disparities across counties in how otherwise similar offenders are treated. Such disparities may result from differences in local politics, differences in jail capacity constraints, or even wealth differentials that shape the local tax base within a county.

The capacity challenges presented by realignment are readily observable in recent trends. Between June 2011 and June 2012, the state prison population declined by 26,600 inmates. Concurrently, California's county average daily jail population grew by about 8,600 inmates, and the number of counties operating jail systems above rated capacity increased from 11 to 16. If we aggregate all jail inmates and jail beds in California's 58 counties, we find that the total population of jail inmates has exceeded total rated capacity in every month since February 2012. Furthermore, by June 2012, 35 counties reported releasing pretrial inmates and/or sentenced offenders early due to capacity constraints (compared to 27 counties in June 2011). The fact that 18 counties are operating facilities under court-ordered population caps adds to these challenges.

Clearly, there has not been a statewide, one-to-one transfer of felons from state prison to county jails, as the increase in the overall jail population amounts to roughly one third of the decline in the state prison system. These aggregate statistics, however, mask great differences in how counties have responded to realignment. Some have opted to incarcerate the majority of the realigned felons assigned to them, while others have chosen alternative approaches and sanctions and hence committed relatively few offenders to jail.

This report documents the effects of realignment on local county jail populations and explores the factors that mediate the degree to which counties are employing local jails in their realignment strategies. To assess the extent to which realignment is affecting county jail populations, we take advantage of the fact that due to differences in pre-realignment prison incarceration rates, the legislation affected counties differently. Counties that relied more heavily on state prisons, measured by the number of offenders per 100,000 county residents, received a larger "dose" of realignment. The fact that the "realignment dose" in each county changes over time provides an additional mechanism for identifying the effect of the policy on county jail populations.

We also assess county-level characteristics that explain jail population growth, after accounting for the size of the "realignment dose" per county. Although our study is limited to available data spanning only the initial nine months of realignment, the fact that the prison population has declined by only an additional 2,700 in the subsequent 11-month period strongly suggests that the majority of the policy's impact on county jails occurred during the study period. In the following sections, we provide a brief overview of the realignment program and then discuss our analysis and findings.

Shifting Corrections Responsibilities to the Counties

With the implementation of Assembly Bill 109 in October 2011, the state of California greatly expanded the responsibilities of county governments in managing criminal offenders. The new responsibilities undertaken by the counties fall into three main categories:

- First, lower-level offenders convicted of nonsexual, nonviolent, and nonserious crimes with no such crimes appearing in their criminal history records will now serve their sentences under county supervision rather than in state prisons. These offenders are often referred to as “non-non-nons,” “triple-nons,” “n3s,” or 1170(h) felons. Counties are authorized to choose from a number of available sentencing options, including a full jail term, house arrest, GPS monitoring, or a split sentence in which the offender serves a reduced jail term followed by probation (assuming that the jail sentence is successfully completed).
- Second, most offenders serving time in state prison for triple-non offenses will now, upon release from prison, be supervised by county probation departments rather than state parole authorities under a function known as Post-Release Community Supervision or PRCS.
- Third, parole violators who reoffend (i.e., violate the terms of their release but do not commit a new felony) are no longer revoked to state prison but are sanctioned within counties by short stays in county jails or other forms of graduated sanctions devised by local authorities.

Realignment thus affords counties considerable discretion in exercising their new responsibilities. They are free to rely heavily on the use of local jails, effectively transferring their realigned populations from prisons to local jails. But they are also free to choose from a wide variety of less severe alternatives that rely on community corrections through practices such as electronic monitoring, house arrest, split-sentencing, and short “flash incarcerations” for those who violate the terms of their conditional release. The options that counties choose certainly depend in the short term on local jail capacity and, in many instances, court-ordered population caps. In the longer term, however, several factors are likely to influence how counties respond to their new responsibilities, including the particular characteristics of the realigned offender population and perhaps the ideological predisposition of local criminal justice officials and the county residents that they serve.

A number of factors will determine the extent to which county jail populations change as a result of realignment. To the extent that realigned felons are simply being transferred to local jails, one would expect to see an increase in the total population of local jails equivalent to the reduction in the prison population. However, as noted above, counties have a number of options at their disposal that could lower the one-to-one relationship between the decrease in the state prison population and the increase in the county jail population. For example:

- Realignment introduced a new sentencing tool for 1170(h) offenders: split sentences, which consist of a jail sentence followed by a period of probation for lower-level offenders diverted to county jails. The more that counties use this tool, which effectively reduces the time served behind bars, the lower the impact of realignment on their jail populations.
- Sanctions for parole violations have also changed in such a way that violators are now likely to spend less time in confinement. Prior to realignment, the maximum prison term for a parole violation was one year, although most parole violators remanded to state custody served substantially less time. Under realignment, the maximum term—which applies to both those on parole and probation (PRCS)—is six months. Furthermore, many PRCS violators are likely to

serve less than six months in jail because counties are encouraged to rely instead upon a “flash incarceration” sanction of no more than ten days. Finally, shorter post-release supervision may also contribute to a lower than one-to-one ratio of prison to jail transfer rate. Released offenders on county PRCS can now be discharged after six months of supervision, compared to minimum of 13 months for parolees prior to realignment.

- In addition to these changes introduced by realignment, some populations may be displaced from local jails to make way for realigned offenders. For example, local sheriffs may release pretrial detainees to make room for sentenced felons or parole violators ordered to serve time in jail. Or they may provide an early release for misdemeanor offenders, who presumably pose relatively low risk to public safety, to free up more jail beds.

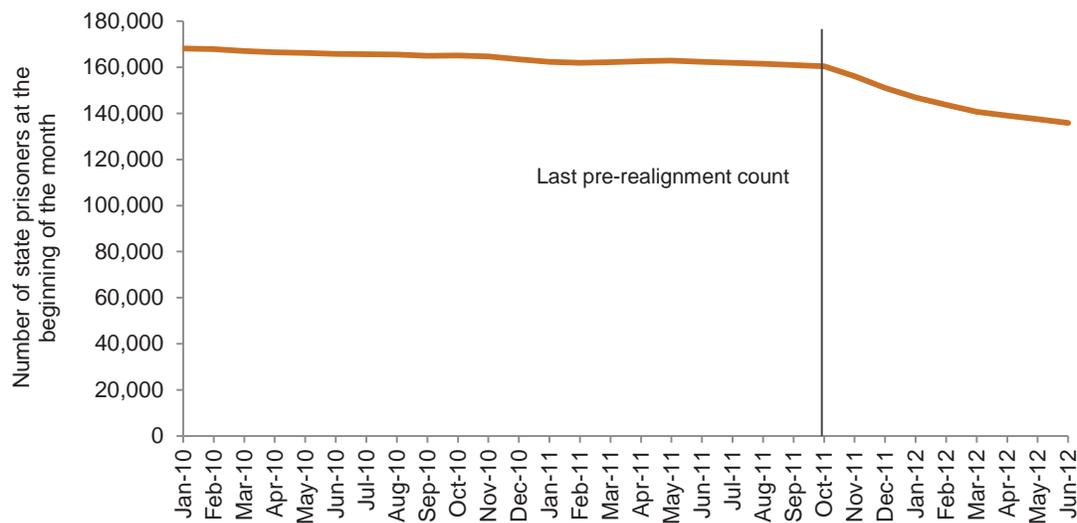
Trends at the State Level

Our analysis of state-level trends, which we describe below, led to the following conclusions:

- Realignment has produced a substantial decline in the state prison population. Concurrently, the county jail population has increased, but only by an amount equal to about one-fourth to one-third of the numerical decline in the prison population.
- State-level statistics show a small, but insufficient, increase in jail capacity; counties appear to be facing increasingly binding capacity constraints.
- To a modest degree, realigned offenders appear to have displaced those serving jail sentences or awaiting trial for misdemeanors.
- Overall, the number of inmates released due to capacity constraints has increased substantially.

Figure 1 depicts the prison population at the beginning of each month from January 2010 through June 2012.⁴ Between January 2010 and September 2011 (the pre-realignment period), the state prison population declined substantially yet gradually from 168,101 to 160,946. The lion’s share of this decline (roughly 80 percent) occurred during the 2010 calendar year. With the implementation of realignment, the decline in the state prison population accelerated. By June 2012, nine months into the post-realignment period, the prison population had declined by roughly 25,000, leaving a total prison population of 135,471. As of midnight May 15, 2013, the most recent data point available, the state’s prison population had declined somewhat further to 132,795. The last few months of weekly population reports suggest that the state’s prison population has stabilized at this lower level and that the effects of realignment on the prison population have likely run their course.⁵

FIGURE 1
California prison population, January 2010 through June 2012



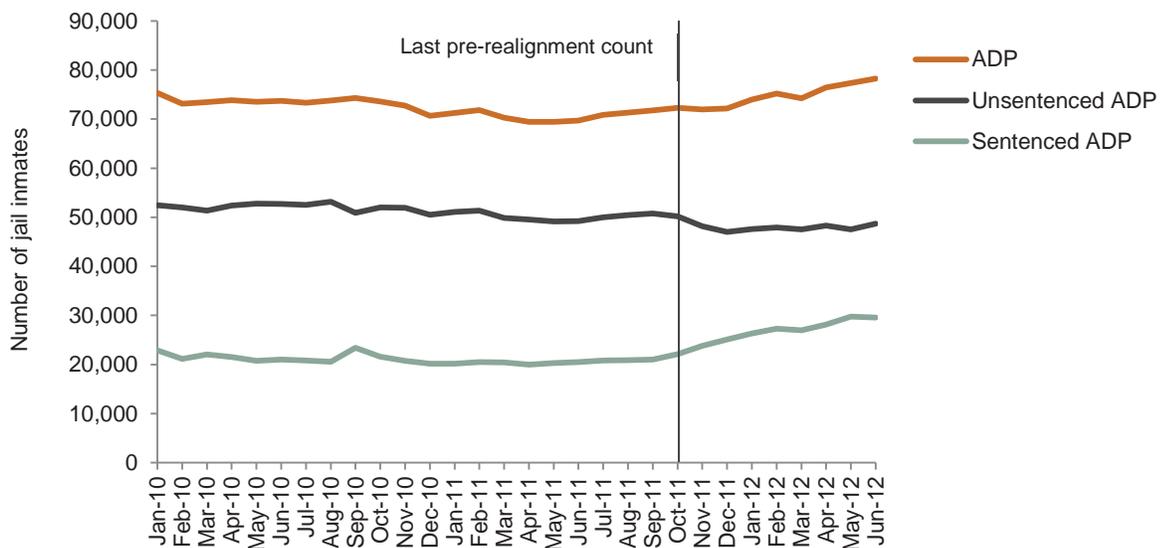
SOURCE: California Department of Corrections and Rehabilitation (CDCR) Weekly Population Reports.

⁴ The data in this figure are culled from various issues of the California Department of Corrections and Rehabilitation (CDCR) Weekly Population Reports. Current and archived weekly reports are available at www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Population_Reports.html.

⁵ None of the provisions in the legislation involved early release of anyone currently serving a term in prison. Hence the decline in Figure 1 is not caused by early releases but instead is driven in its entirety by a decline in admissions to the state prison system (Lofstrom, Petersilia, and Raphael 2012).

Figure 2 presents data on statewide average daily jail populations from January 2010 through June 2012, showing the total average daily population (ADP), the population of sentenced inmates (both felons and individuals sentenced for misdemeanors), and the population of unsentenced inmates (including pretrial detainees and parole violators serving short spells in local jails). During the pre-realignment period (January 2010 through September 2011), the average daily population of California’s local jails declined by roughly 3,600 inmates, with nearly all of the decline occurring during 2010 and a general stability evident during 2011. Between September 2011 and June 2012 (the period covering the first nine months of realignment), the total average daily jail population increased by about 6,500. Looking at the data on individual populations, we can see very large increases in the population of sentenced inmates and some evidence of displacement of unsentenced inmates. Specifically, between September 2011 and June 2012, the population of sentenced inmates increases by slightly more than 8,500, while the population of unsentenced inmates declines by roughly 2,000.

FIGURE 2
California monthly jail population, January 2010 through June 2012



SOURCE: Board of State and Community Corrections (BSCC) Monthly Jail Profile Survey.

Taken together, Figures 1 and 2 are suggestive of both a substantial shift in the incarceration site for felony offenders, from state prisons to local county jails, and the displacement of some pretrial and perhaps sentenced jail inmates to make room for these offenders.

To more thoroughly explore the avenues of realignment, we provide a more detailed breakdown in Table 1 of the change in the average daily population (ADP) of local jails. We focus on June 2011 and June 2012 to ensure comparability of the pre- and post-realignment months of analysis. Over this period, the state prison population declined by 26,642 inmates, while the ADP of local jails increased by 8,565. These numbers suggest that at least one-third of realigned inmates were serving time in a county jail rather than state prison. At the same time, we observe a small increase in the rated capacity (RC) of the state’s jails (roughly 800 beds)

and a large increase in the ratio of the ADP of local jails to rated capacity, from 92.2 to 102.4 percent.⁶ Consequently, the number of counties operating above 100 percent of the rated capacity of their jails increased from 11 to 16. Moreover, the number of counties operating under a court-ordered cap on their jail population increased from 17 to 18, suggesting that many counties were unable to adequately respond to the demands of realignment.

TABLE 1
California prison and county jail populations, June 2011–June 2012

	June 2011	June 2012	Change, 2011–12
State prison population	162,113	135,471	-26,642
Jail population and capacity			
Average daily population (ADP)	69,698	78,263	8,565
Rated capacity (RC)	75,614	76,430	816
ADP/RC	92.2%	102.4%	10.2%
# of counties operating above 100% RC	11	16	5
# of counties with court-ordered caps	17	18	1
ADP unsentenced	49,189	48,721	-468
ADP sentenced	20,509	29,542	9,033
Average # of unsentenced felons	37,669	38,129	461
Average # of sentenced felons	12,103	20,754	8,652
Average # of unsentenced misdemeanants	7,088	6,247	-841
Average # of sentenced misdemeanants	5,717	5,227	-490
Average # of federal-contract inmates	4,611	4,318	-293
Average # of state-contract inmates	1,484	1	-1,483
Average # of county-contract inmates	15	19	4
# of capacity-constraint pretrial releases	6,192	7,856	1,664
# of capacity-constraint sentenced releases	3,583	6,086	2,503

SOURCES: CDCR Weekly Population Reports and BSCC Monthly Jail Profile Survey.

⁶ All California jail facilities are given a specific “rated capacity” by the Board of State and Community Corrections. The BSCC defines rated capacity as the number of inmate occupants for which a facility’s single and double occupancy cells or dormitories (except those dedicated to health care or disciplinary isolation housing) were planned and designed in conformity with specific minimum standards and requirements.

Dividing the change in the local jail population by whether the inmates are sentenced or unsentenced and by whether the controlling offense is a felony or misdemeanor reveals several of the adjustment mechanisms that counties are employing to handle their new realignment caseloads. First, we see an overall decline of 468 in the number of unsentenced inmates. While this is smaller than the decline from September 2011 through June 2012 discussed above, it is still suggestive of some displacement of the unsentenced from county jails due to realignment. Moreover, we observe an increase in the sentenced population of 9,033, which exceeds the overall increase of 8,565 in the jail population.

The remainder of Table 1 explores whether realignment may have displaced certain inmate populations by disaggregating the populations into felons and misdemeanants.⁷ We see increases in both the population of sentenced felons (by 8,652) and unsentenced felons (by 461), suggesting both diversion of realigned offenders from prisons to jails as well as some limited diversion of parole violators (who are presumably counted as unsentenced inmates). We also observe declines in the population of unsentenced misdemeanants (841) and sentenced misdemeanants (490). Hence, the statewide statistics suggest that to a modest degree, counties are releasing lower-level offenders among both pretrial detainees and sentenced individuals to make room for realignment inmates.

Finally, the table presents estimates of the total number of inmates released early in June 2011 and June 2012 due to housing capacity constraints. Over this time period, the number of releases among pretrial detainees increased by 26.9 percent (1,664 inmates), and the number of early releases among sentenced inmates increased by 69.9 percent (2,503 inmates). The data do not include information on how early these releases occurred, and hence we are unable to estimate the ultimate impact of early releases on the average daily jail population. The table also shows a decrease in the number of beds contracted out to federal and state government or to other counties. The virtual elimination of state-contract beds most likely reflects the fact that technical parole violators are no longer the state's responsibility.

As informative as these state-level changes are, they cannot demonstrate the extent to which realignment is responsible for the observed changes. To unravel the role of realignment, we need to examine county-level responses and, ultimately, adjust for confounding factors. We undertake this task in the following section.

⁷ The average number of sentenced and unsentenced inmates by felony or misdemeanor is not reported by every county. Hence, these numbers do not necessarily add up to the total ADP or to sub-total ADP in the sentenced and unsentenced categories.

Observed County Responses

The degree of county differences in the use of the state prison system prior to realignment is striking, with the highest incarceration counties having prison incarceration rates many times those of low incarceration counties. These differences are critical when it comes to measuring and assessing the impact of realignment on county jails, since counties that used prison more intensively experienced the largest increases in their local corrections caseloads. However, we also found that as the legislation shifted the financial responsibility of incarcerating lower-level felons to the counties, county incarceration differences declined. In sum:

- Realignment affects counties differently, depending on prison incarceration rates prior to the implementation of the legislation.
- Although counties continue to differ dramatically in the number of residents incarcerated in prison and jail, realignment has narrowed these differences.

A simple strategy for gauging the impact of realignment on a specific county's corrections caseload is to measure the change in the number of county residents in state prison per 100,000 residents. This measure allows for easy and meaningful comparison across counties. We refer to this measure as the "county-specific prison incarceration rate," which should be distinguished from the rate of county residents incarcerated in local jails.⁸

The data show quite clearly that prison incarceration rates vary considerably across counties, as do the reductions in these rates following realignment. For example, as shown in Table 2, between June 2011 and June 2012, the state prison incarceration rate for Kings County declined by 234 inmates per 100,000 county residents. At the other extreme, Marin County experienced a decline in its state prison incarceration rate of only 17 inmates per 100,000 residents. The rate of decline in some of the state's largest counties fell in the mid-range of the statewide data. For example, in Los Angeles and San Diego Counties, the prison incarceration rate dropped by 70 and 67 inmates per 100,000 residents, respectively, a decline very close to the Sacramento County rate decline of 75 (which is also the statewide rate of decline between June 2011 and June 2012).

⁸ We refer to county-specific prison incarceration rates throughout this study. This term does not refer to the number of state prisoners housed at a facility within the county, which would be impractical since state prisoners are often housed outside of their county of residence. Rather, we intend for the county-specific incarceration rate to refer to the degree of intensity involved in a county's use of the state prison system.

TABLE 2
Incarceration rates before and after realignment

Incarceration rates per 100,000 residents									
County	Prison			Jail			Total		
	June 2011	June 2012	Change	June 2011	June 2012	Change	June 2011	June 2012	Change
Largest rate of decline in prison population									
Kings	1,052	818	-234	215	318	103	1,268	1136	-131
Sutter	461	283	-178	250	253	3	711	536	-175
Shasta	852	679	-174	128	125	-3	980	803	-177
Smallest rate of decline in prison population									
Nevada	126	98	-28	152	207	55	278	304	27
Santa Cruz	209	188	-21	171	157	-13	379	345	-35
Contra Costa	182	165	-18	136	150	14	319	315	-4
Marin	152	135	-17	116	122	6	267	257	-10
10 largest counties									
Los Angeles	549	479	-70	140	179	39	689	658	-31
San Diego	381	314	-67	152	169	17	533	483	-50
Orange	295	236	-59	202	229	26	497	465	-33
Riverside	485	423	-62	143	174	31	629	597	-32
San Bernardino	590	441	-149	254	260	7	843	701	-142
Santa Clara	300	248	-51	198	200	2	498	449	-49
Alameda	281	235	-46	245	212	-33	526	448	-78
Sacramento	540	465	-75	272	284	12	812	749	-63
Contra Costa	182	165	-18	136	150	14	319	315	-4
Fresno	514	400	-114	184	255	71	698	655	-42
Statewide	435	360	-75	185	207	22	620	567	-53
Lowest	126	98	-28	96	97	1	267	257	-10
Highest	1,052	818	-234	508	574	65	1,268	1,136	-131
25th percentile	280	230	-50	175	189	14	494	448	-46
75th percentile	516	409	-107	254	285	32	747	655	-92
Range									
Highest-Lowest	927	720	-206	412	477	65	1,000	879	-121
75th-25th	236	180	-57	79	96	17	253	208	-46

SOURCE: County-level prison admissions and release data provided to the authors by CDCR and jail population data from BSCC's publicly available Jail Profile Survey.

Table 2 clearly shows the narrowing in prison incarceration rates between counties after the implementation of realignment. For example, the difference in incarceration rates between the county with the highest rates (Kings at 1,052 before realignment and 818 after) and the lowest (Nevada at 126 before realignment and 98 after) declines by 206 inmates per 100,000. We can also see this narrowing in differences between counties when we compare counties at the 25th and 75th percentiles.⁹ Before realignment, the difference between a low-incarceration county at the 25th percentile (San Benito at 260) and a high-incarceration county at the 75th percentile (Del Norte at 516) was 236. After realignment, the prison incarceration rates dropped to 230 at the 25th percentile (now San Luis Obispo) and 409 at the 75th percentile (still Del Norte). In other words the difference declined by 57 inmates per 100,000.

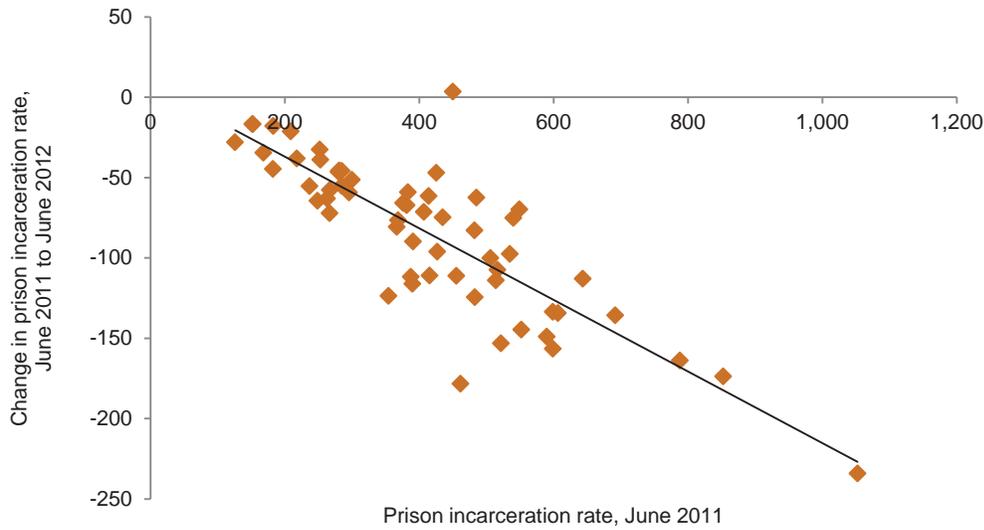
However, we also found that the equalizing effect of realignment on prison incarceration rates is somewhat undone by increases in jail incarceration rates. As we can see in Table 2, total incarceration rates (including both prison and jail) are quite a bit higher than prison incarceration rates. Moreover, as with prisons, jail incarceration rates vary substantially across counties. The highest jail incarceration rate both before and after realignment is in Yuba County (508 and 574, respectively), and the lowest is in Sierra County (96 and 97). We can also see considerable difference across counties in the increase in jail incarceration rates following realignment (103 in Kings County, 71 in Fresno, 7 in San Bernardino), and in some cases even a decrease in rates (e.g., Alameda, -33).

Focusing on the extent to which realignment has reduced county differences in total incarceration rates, we see (in the last column of the “Highest” and “Lowest” rows) that the difference between the highest incarceration county (Kings County, declining from 1,268 to 1,136) and the lowest (Marin County, with a modest decline from 267 to 257) decreased by 121 inmates per 100,000 residents. As with prison incarceration rates, the equalization is evident in the difference between the 75th and 25th percentile, which decreased by 46 inmates per 100,000 residents. Statewide, the prison incarceration rate declined by an impressive 75 inmates per 100,000 residents (from 435 to 360), a more than 17 percent decline. The total statewide incarceration inclusive of prison and jail inmates rate also dropped, but by less, 53 per 100,000 (from 620 to 567).

In general, counties that experienced the largest per-capita impact of realignment are those that used the state prison system more intensively prior to the implementation of the reforms. We document this fact in Figure 3. The figure presents a scatter plot of the change in the county-specific prison incarceration rates between June 2011 and June 2012 against each county’s incarceration rate in June 2011. Each data point represents a specific county’s experience over this period. The data cloud reveals a very strong negative relationship between the county’s prison incarceration rate prior to realignment and the decline in the county’s state prison incarceration rate (essentially the number of realigned offenders per 100,000 residents, or the realignment “dose”) corresponding to realignment’s implementation. For example, the dot at the low end and to the far right of the data cloud represents Kings County, which used the prison system more intensively than any other county and experienced the largest per capita reduction in inmates following realignment. At the upper end and to the far left are counties with low pre-realignment prison incarceration rates, such as Marin, Nevada, and San Francisco Counties, where subsequently the realignment “dose” is low.

⁹ In other words, the incarceration rate at the 25th percentile exceeded that of only 25 percent of California counties, while the incarceration rate at the 75th percentile is greater than that of 75 percent of the counties.

FIGURE 3
Relationship between county prison incarceration rates before and after realignment



SOURCE: County-level prison admissions and release data provided to the authors by CDCR.

NOTE: Scatter plot of the change in the number of county residents per 100,000 in a state prison between June 2011 and June 2012 against the county's incarceration rate in a state prison in June 2011.

The fact that the decline in county differences in incarceration rates becomes smaller when we consider the incarceration rate inclusive of jail inmates suggests that those counties that receive more prison inmates per capita as a result of realignment are also on average experiencing greater increases in their jail population. This is our first hint of the fact that the pattern observed for the state overall (i.e., declining prison populations juxtaposed against growing jail populations) is playing out across the state's 58 counties. Of course, factors that are county specific are likely to influence this process. (These might include, for example, court-imposed population caps and a general predisposition among local criminal justice representative toward incarceration.) In the following paragraph, we provide a brief description of our methodological strategy for studying the cross-county relationship between the "realignment dose" (i.e., the shift of sending felons to the counties instead of state prison) per capita and jail population growth.

So far, the data we have examined strongly suggest that realignment has led to increases in the state's total jail population by an amount that partially offsets the decline in the state prison population. However, the observed changes may be the result of factors other than, or in addition to, realignment. To determine realignment's specific role in the observed changes, we use a regression analysis that isolates the effect of realignment from confounding factors. In our analysis, we use county-level prison admissions and release data from CDCR and monthly county-level jail population data from the BSCC Jail Profile Survey. The [Technical Appendix](#) provides a detailed discussion of our empirical approach and a host of results that extensively probe the robustness and reliability of our model estimates to various modeling assumptions.¹⁰ We discuss the results of our regression analysis in the following section.

¹⁰ In particular, we present two complete sets of results: one that accounts for seasonal variation in jail and prison population based on pre-realignment trends and one that does not. While the results are generally consistent across these two groups, there are a few differences. In the discussions that follow, we focus on our preferred estimates that incorporate seasonal adjustments. However, we provide a complete set of results in the [technical appendix](#) so that readers can review the full range of estimates and arrive at their own conclusions with regard to the specific magnitudes of the effects.

Realignment's Prison-to-Jail Transfer Rate

Our analysis of transfer rates, which we discuss below, produced the following principal findings:

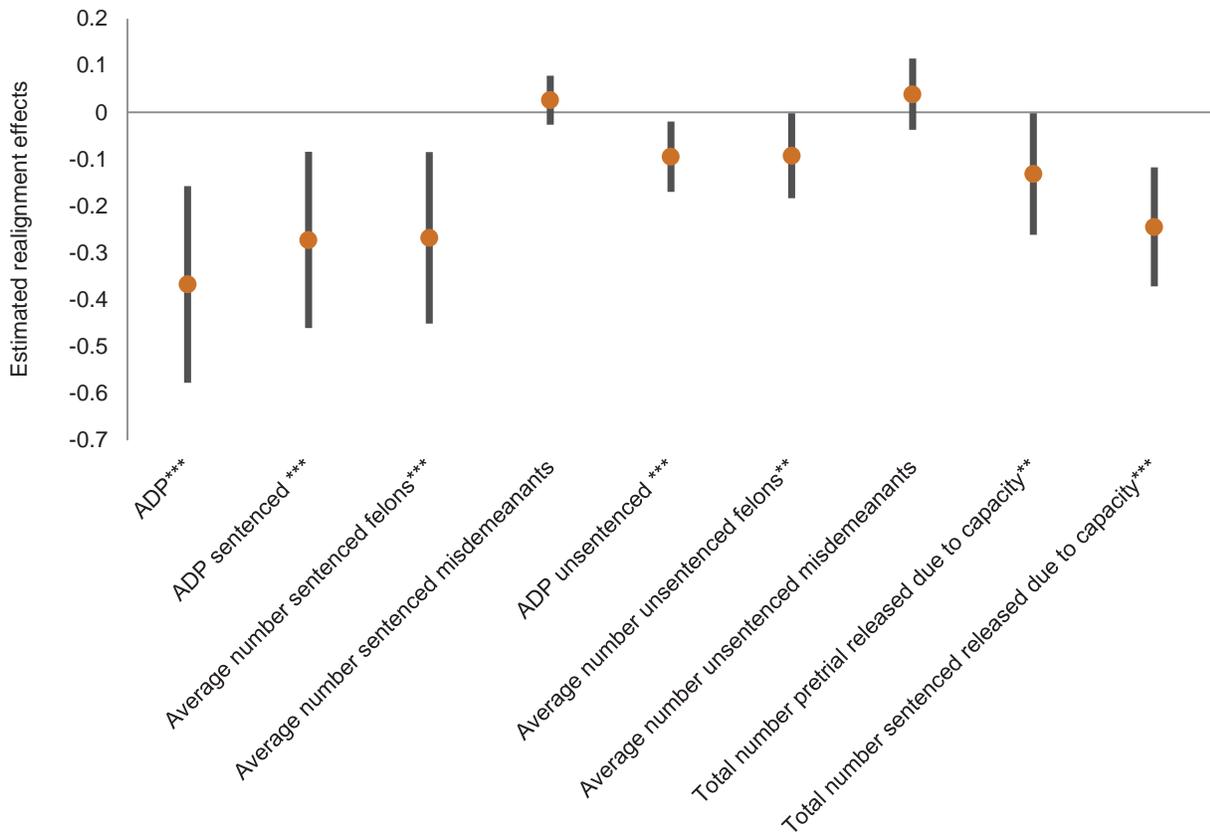
- Realignment increased the average daily jail population by roughly one inmate for every three fewer offenders going to state prison.
- Roughly three-quarters of the increase in county jail populations stems from realigned felons who have been sentenced for a new crime; unsentenced felons (presumably parole violators) account for the remaining quarter.
- The data suggest that parole violators who would have been returned to the custody of the state prison system in the past are spending much less time behind bars as a result of realignment.
- We find strong evidence that counties have made room for realigned offenders by increasing the number of pretrial releases and early releases of sentenced offenders.

The empirical results obtained using county differences in the realignment “dose” (i.e., the shift of state prisoners) to determine the rate at which the reduction in the prison population translates into increases in county jails corroborates what we observe in the state-level data. Figure 4 presents our estimates of the effects of a one-person increase in a county’s prison incarceration rate on the county’s jail incarceration rate as well as 95 percent confidence interval of the range of the estimated response. (These results and additional estimates exploring the sensitivity of the choices and assumptions made are presented and discussed in the [Technical Appendix](#).) Negative coefficients indicate that declines in the prison rate *increase* county jail incarceration rates. The first bar in Figure 4 shows the confidence interval around our estimate (represented by the dot) of realignment’s effect on the overall average daily jail incarceration rate. The estimate indicates that each additional offender realigned from the state prison system to the county results in an increase of 0.367 in the number of jail inmates. That is, realignment increased the average daily jail population by roughly one inmate for every three fewer offenders sent to state prison.

Applying this estimate to the observed June 2011–June 2012 decline in the statewide number of prisoners (about 26,600) suggests that realignment induced an increase in the monthly average number of jail inmates by about 9,800 offenders. This “back of the envelope” calculation is somewhat smaller than the reduction in the prison population of newly sentenced felons and parolees receiving new sentences (10,500). This is consistent with a slight decrease in the reliance on incarceration for offenders convicted of new realignment offenses, due either to shorter sentences in jail relative to the sentence that would have been served in prison prior to realignment or a greater tendency among counties to use sanctions other than incarceration to punish these offenders. Part of the increase in the jail population likely reflects parole violators serving time in county jail. In general, however, the fact that the estimated transfer rate from prison to jail from the regression falls far short of one-for-one indicates that either parolees who technically violate the terms of their parole or triple-nons who have committed new offenses are serving less time under realignment than they would have served in the past.

To further explore this issue, Figure 4 also presents estimates of the effects of realignment on various inmate subpopulations: sentenced inmates (all sentenced inmates and the subcategories of sentenced felons and sentenced misdemeanants) and unsentenced inmates (again, the total and the subcategories of felons and misdemeanants). Last, the two most rightward dots and bars characterize the extent to which counties responded to realignment by resorting to capacity-constrained releases.

FIGURE 4
Estimated county jail incarceration responses to realignment



SOURCE: Authors' estimates based on county level prison admissions and release data provided to the authors by the CDCR and the BSCC Jail Profile Survey.

NOTES: Dots in the figure are regression coefficients from separate regressions of the difference-in-difference characterization of the change in the county's jail incarceration rate on the corresponding change in the county's prison incarceration rate, and lines show the 95 percent confidence interval. (See the [Technical Appendix](#) for a detailed discussion.)

*** Coefficient statistically significant at the one percent level of confidence.

** Coefficient statistically significant at the five percent level of confidence.

* Coefficient statistically significant at the ten percent level of confidence.

The results indicate that the lion's share of the transfers from prisons to jails is driven by higher jail incarceration rates for sentenced felons. The data suggest a slight increase in the numbers of unsentenced inmates (the category that includes technical parole violators). In addition, those who would have been returned to the custody of the state prison system in the past are spending much less time behind bars (in either prison or jail) as a result of realignment. Technical parole violators make up a large share of the realignment-reduced prison population (about 55 percent); we would therefore expect a substantially greater upward pressure on the unsentenced population than our estimates show if these offenders received sanctions similar to those they received prior to realignment.

The data also reveal strong evidence that counties have made room for realigned offenders by increasing the number of pretrial releases and early releases of sentenced offenders. This includes increasing pretrial releases at a rate of roughly one more such release for every seven fewer felons sent to prison as a result of realignment. Sentenced inmates are also released early, at a rate of approximately one more such release for every four realigned offenders. Unfortunately, we do not know how much earlier these releases are taking place, only that these practices have increased significantly as a result of realignment.

Responses and Capacity Constraints

Our major findings in this area of our study included the following:

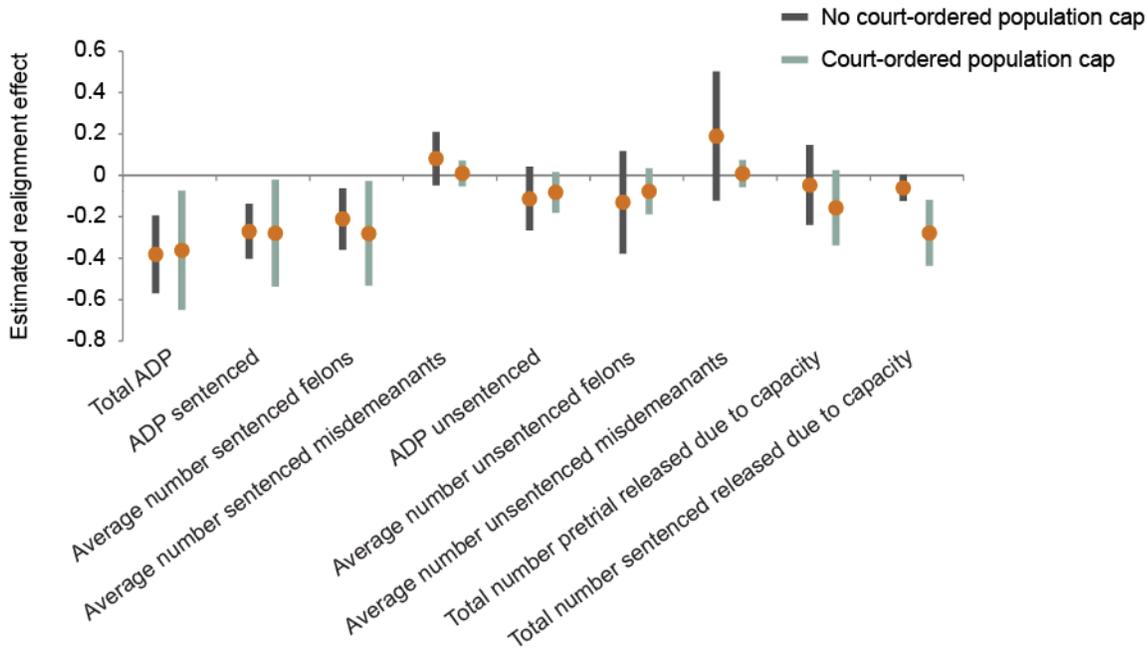
- Realignment's effect on the average daily jail population is roughly the same in counties with a court-ordered population cap as those that are not subject to this constraint.
- A major response to realignment in cap counties is to increasingly rely on pretrial and early sentenced releases.
- There is some evidence that realigned felons are displacing misdemeanants in non-cap counties.

As noted above, 18 counties are currently operating jails under a court order that limits their inmate populations. One might expect that the adjustment to realignment in terms of jail populations would differ in counties facing population caps relative to counties facing no such caps. Specifically, counties without a population cap may incarcerate less of their realigned offender population through the use of split sentences, longer spells in jail for parole violators, and less use of early release. By contrast, counties facing population caps may be forced to engage in more early releases and to rely more on alternatives to incarceration for triple-non offenders convicted of new offenses and for those who violate the terms of their community supervision. To explore these different responses to realignment, we divided counties into two groups, based upon whether or not they faced court-ordered population caps, and then reestimated our models separately for each of the groups.

Figure 5 presents these results separately for population cap and non-cap counties. The estimates indicate that the effects of realigned offenders on the overall jail incarceration rates are, in fact, similar in counties with and without court-imposed population caps. Moreover, we still find that this relationship is driven principally by an impact of realignment on the number of sentenced felon jail inmates.

However, capacity-driven releases of pretrial inmates due to realignment are limited to counties with court-ordered population caps. These counties increased pretrial releases at an approximate rate of one for every six realigned offenders. In contrast, we find no convincing evidence that counties without court-ordered population caps are increasing their release of pretrial inmates as a result of realignment. However, both groups of counties are increasingly resorting to early releases of sentenced inmates due to the policy shift. The increase is particularly noticeable in the counties facing court-ordered caps; our results imply that one sentenced inmate per month is released early for every four realigned offenders (compared to one for every 16 offenders in non-cap counties). Again, it is important to note that we do not know how much earlier these releases are taking place, only that they have increased as a result of realignment.

FIGURE 5
Estimated county jail incarceration responses to realignment by counties with and without a court-ordered population cap



SOURCE: Authors' estimates based on county level prison admissions and release data provided to the authors by the CDCR and the BSCC Jail Profile Survey.

NOTES: Dots in the figure are regression coefficients from separate regressions of the difference-in-difference characterization of the change in the county's jail incarceration rate on the corresponding change in the county's prison incarceration rate and lines show the 95 percent confidence interval. (See the [Technical Appendix](#) for a detailed discussion.)

The following coefficients are statistically significant at the one percent level of confidence: Total ADP (cap and no cap), ADP Sentenced (no cap), Average number sentenced felons (no cap) and Total number sentenced released due to capacity (cap).

The following coefficients are statistically significant at the five percent level of confidence: ADP Sentenced (cap), Average number sentenced felons (cap) and Total number sentenced released due to capacity (no cap).

The following coefficients are statistically significant at the ten percent level of confidence: ADP Unsented (cap) and Total number pretrial released due to capacity (cap).

The observation that realignment caused roughly the same increase in the overall jail population in counties with and without a population cap, while the cap counties responded with substantially more capacity-constrained releases, raises the question of how non-cap counties absorbed the new population. Our data do not provide a very clear picture, but our estimates suggest that realigned offenders in non-cap counties might have crowded out misdemeanants (both unsentenced and sentenced). However, these estimates are not very precise and thus not statistically distinguishable from a zero response.

High and Low Jail-Use Counties

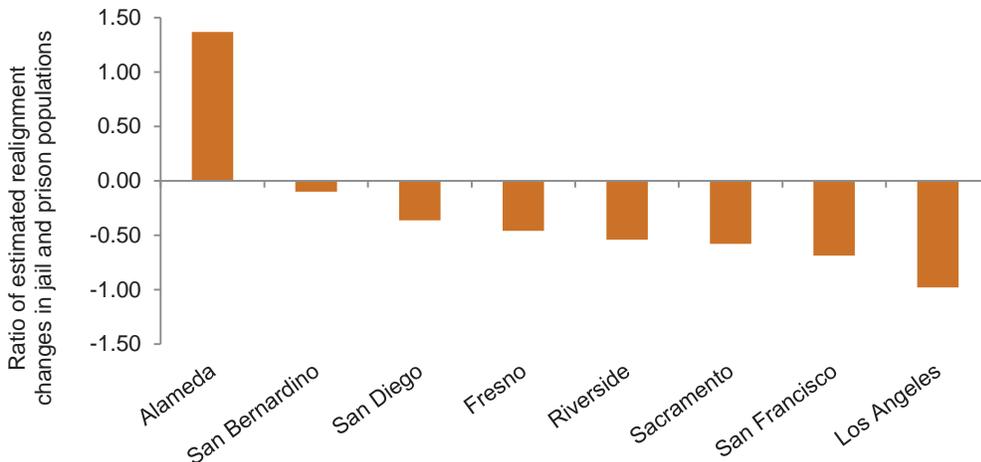
Our analysis of post-realignment jail population growth produced three significant findings:

- Counties differ substantially in their jail incarceration response to realignment.
- Factors other than the realignment dose contribute to the post-realignment changes in the jail population.
- The strongest and most reliable predictors of realignment-adjusted jail population growth are capacity related.

Clearly, the diversion of responsibility for less serious offenders to the counties has increased the population of county jails throughout the state. Our estimates suggest that for every three-person reduction in the prison population caused by realignment, the county jail average daily population has increased by one. Moreover, counties receiving more inmates per capita as a result of realignment also experience relatively larger increases in their jail incarceration rates. However, these responses vary substantially across counties, and the breakdown by court-ordered population caps suggests that capacity constraints are a contributing factor.

Figure 6 presents a measure of the jail-use responses that highlight the range across counties (measures for all counties are shown in [Technical Appendix Table A1](#)). The responses represent the ratio of the estimated realignment changes in the jail and prison populations, where -1 represents an increase in the jail population by one for every offender not sent to state prison. The increases in the jail populations in San Diego and Fresno Counties were roughly similar to the overall increases we observed in the state, while in Los Angeles County the jail population increased nearly one-for-one with the reduction in the number of its residents in state prison. At the same time, in a few counties (such as Alameda) the county jail populations declined despite increases in their community corrections caseloads. A number of factors likely contributed to these changes, including the fact discussed above that the realignment dose differs considerably across counties.

FIGURE 6
County jail incarceration responses to realignment



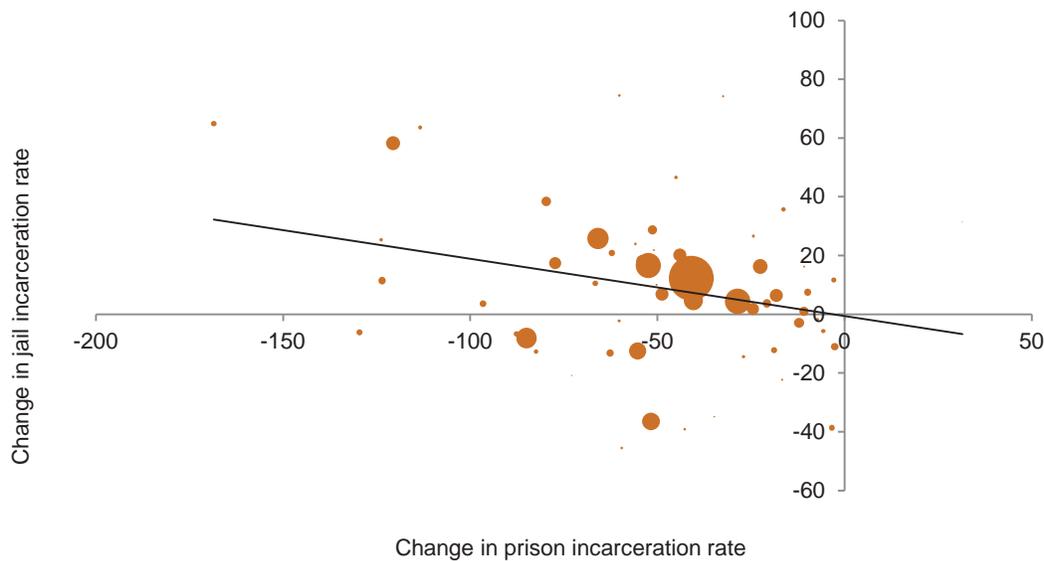
SOURCE: Authors' estimates based on county-level prison admissions and release data provided to the authors by the CDCR and BSCC Jail Profile Survey.

NOTES: The ratios are calculated by first obtaining the change in the respective populations between September 2011 and June 2012. These are then adjusted to account for seasonality and near-term trends by subtracting out the changes between the same months in the year before realignment was implemented (i.e., changes between September 2010 and June 2011). The ratio is then obtained by dividing the adjusted jail population change by the adjusted prison population change. The ratios for all counties, and the changes in jail and prison populations are presented in [Technical Appendix Table A1](#).

However, we also find considerable variation across counties in recent jail trends that is independent of the realignment dose that any one county received. Figure 7 illustrates this point by presenting a scatter plot of the county-by-county changes in jail incarceration rates against the changes in the prison incarceration rates. The figure also depicts the estimated realignment effect on the average daily population, shown as the regression line through the data cloud. The negative slope of the line indicates that counties experiencing larger declines in their prison incarceration rates experience larger increases in their jail incarceration rates (the basic finding from the previous section).

Many counties deviate from the regression line, clearly showing that factors other than the realignment dose contribute to the post-realignment changes in the jail population. (Data points above the line indicate counties where changes in jail incarceration rates exceed expectations, based on the decline in each county’s prison incarceration rate. Similarly, data points below the line represent counties where the change in each county’s jail incarceration rate falls short of expectations.) The figure reveals many instances of large departures from what one would expect in both the positive and negative direction. Hence, in exercising their new responsibilities in managing lower-level offenders, some counties are pursuing a high jail incarceration rate strategy while others are pursuing a low jail incarceration rate strategy. What distinguishes these counties from one another?

FIGURE 7
Realignment changes in jail incarceration rates against corresponding changes in prison incarceration rates



SOURCE: Authors’ estimates based on county level prison admissions and release data provided to the authors by CDCR and BSCC Jail Profile Survey.

NOTES: The dots represent seasonally adjusted changes in jail incarceration rates against changes in the prison incarceration rates for the last of the post-realignment month in our data. The size of the dot indicates size of the county population. The line represents the predictions resulting from the regression, shown in the top row, middle column of Table A4.

The results so far suggest that differences in capacity constraints might be an important determinant of the incarceration response and growth in the jail population, but other factors may also contribute to this situation. To answer the above question, we first estimate the average change in each county’s jail incarceration rate after netting out the effect of the number of inmates realigned to each county (the details of this estimation is presented in the [Technical Appendix](#)). Next, we employ regression analysis to explore the

relationship between increases in the jail incarceration rate and particularly capacity constraints. However, in doing so we also need to account for several other plausible factors (which are interesting in and of themselves) that might affect a county's realignment strategy, including:

- Ratio of average daily jail population (ADP) to rated capacity prior to realignment. Counties with relatively full jails prior to realignment's implementation may have incorporated this capacity constraint into their realignment planning. To the extent that a lack of excess capacity led to realignment plans that deemphasize jail, we would expect lower incarceration growth in jails with high population-to-capacity ratios.
- Pre-realignment jail incarceration rate. Counties with already-high jail incarceration rates may be reluctant to devote more resources toward county jails or may face greater constraints in expanding jail capacity. Hence, we would expect such counties to have lower jail incarceration growth during the post-realignment period.
- Use of split sentences. Realignment introduced the concept of split sentences for newly sentenced triple-non felons (so-called 1170(h) offenders). This criminal justice approach consists of a jail sentence followed by a period of probation to deal with lower-level offenders diverted to county jail. One might expect that counties that make greater use of split sentences will have lower jail incarceration growth. Hence, we include a measure of the proportion of 1170(h) convictions that employ split sentences.
- Local crime rates. Since crime rates vary across California counties, one might expect larger increase in jail incarceration rates in counties with higher crime rates before the introduction of realignment. In consideration of this possibility, we include controls for the number of property crimes and the number of violent crimes per 100,000 residents in 2011.
- Local political sentiment regarding crime control policies. Local political conditions vary considerably across California, with residents in some counties demonstrably more favorable of tougher sentencing policies than others. To the extent that criminal justice officials, both elected and appointed, are responsive to the demands of their constituents, one might expect a greater use of local jails in the realignment strategies of more conservative counties relative to more liberal counties. To gauge such ideological variation, we consider the proportion of each county's voters that supported two propositions on the November 2012 ballot: the failed Proposition 34, which would have eliminated the death penalty, and the successful Proposition 36, which moderated the sentences for some third-strike offenders.

The regression results assessing the role of the above factors in explaining post-realignment jail use reveal several interesting findings.¹¹ We find no statistically significant effect of the use of split sentencing on jail population growth once we account for the realignment dose. Similarly, there is no evidence of effects of pre-realignment violent and property crime rates on jail incarceration growth. However, counties with high pre-realignment jail incarceration rates experience relatively lower increases in their post-realignment incarceration rates. Our regression estimates also indicate, as expected, that high-incarceration counties have lower jail population growth, and that growth is stymied in counties that are more capacity constrained. The data fail to reveal any relationship between the proportion of voters supporting Propositions 34 and 36 and jail growth.¹²

To characterize the magnitude of these effects, we use the estimated regression coefficients to calculate the predicted difference in growth in county jail incarceration rates between counties below and above the

¹¹ For detailed regression model estimates, see *Technical Appendix Table A11*.

¹² Other potential factors affecting county differences in post-realignment jail growth include changes in law enforcement personnel, changes in criminal charges and court sentences (other than split sentences) as well as county differences in rehabilitative efficacy. Unfortunately, at this time no suitable data exist for these potentially contributing factors.

median in terms of the most significant factors analyzed.¹³ These calculations, shown in Figure 8, reveal that the jail population in high pre-realignment jail incarceration counties (those at the 75th percentile) grew by roughly 16 fewer inmates per 100,000 residents compared to the growth in low-incarceration counties (those at the 25th percentile). Similarly, jail growth in capacity-constrained counties (those counties around the 75th percentile of the ratio of ADP to rated capacity) grew by about 6 fewer inmates per 100,000 than counties with no immediate capacity constraints (those at the 25th percentile).

FIGURE 8
Estimated realignment jail incarceration growth beyond the realignment-induced population shock



SOURCE: Authors' calculations based on regression coefficients of the county-level change in jail incarceration rates net of the effect of the realignment inmate dose experienced by the county.

NOTES: The shown effects represent the difference in the relevant factor equal to the interquartile range (the value at the 75th percentile minus the value at the 25th percentile). All estimates and discussion of the empirical approach can be found in the Technical Appendix.

Are the effects of these additional factors on jail incarceration rates large? When benchmarked against the statewide change in county jail incarceration rates between June 2011 and June 2012 (22 per 100,000),¹⁴ indeed they are. Another point of comparison is cross-country differences in the realignment dose. Over this period the county at the 25th percentile of this distribution experienced an increase in their local offender caseload of 50 per 100,000 county residents as a result of the decline in the county's prison incarceration rate. The comparable figure for the county at the 75th percentile of this distribution is 107. Combined with our estimate of the prison-jail transfer rate (0.367), this implies that the county at the 25th percentile would experience an increase in the jail incarceration rate that is 21 per 100,000 lower than the county at the 75th percentile. With a comparable effect for the pre-realignment jail incarceration of 16 and ADP per rated capacity of 6, it becomes clear that counties' pre-realignment reliance on jail incarceration and capacity constraints both substantially shaped their jail incarceration responses to realignment.

¹³ Specifically, we calculate the effect of a difference in the relevant factor equal to the interquartile range (the value at the 75th percentile minus the value at the 25th percentile).

¹⁴ See Table 2.

Conclusions and Policy Recommendations

California's recent legislation authorizing corrections realignment, AB 109, arguably represents the most significant change in the state's corrections system in decades. This legislation shifted substantial corrections responsibilities and funding from the state to its 58 counties. Motivated by state prison overcrowding, this policy shifts responsibility for managing most lower-level criminal offenders from the state to the counties. Although realignment presents opportunities for reducing expenditures on incarceration and for improving public safety outcomes, there is considerable concern about the impact realignment may have on county jails (including the possibility that the legislation will simply shift the overcrowding problem from the state prisons to county jails). More specifically, apprehensions are increasing with regard to crowded, deteriorating jail conditions (to be followed by lawsuits) as well as with sheriffs lacking the capacity to enforce sanctions and house offenders. The intent of this report has been to shed light on these issues by examining how reductions in the prison population initiated by realignment have affected county jail populations across the state over the first nine months of the new policy's implementation.

We find that the jail population has certainly increased, but not by the magnitude of the corresponding decline in the state prison population. The jail population has increased by an amount equal to roughly one-third of the decline in the state prison population, with most of this driven by an increase in the number of sentenced felons serving their time in county jail. (Parole violators who prior to realignment would be sent to prison constitute another group that exerted pressure on county jails.) Specifically, we estimate that realignment increases the jail population by roughly one inmate for every three-inmate decline in the state prison population. Our analysis also indicates that most of this relationship is driven by relatively large increases in the sentenced jail populations in counties experiencing relatively large doses of realignment (i.e., counties that relied more heavily on state prisons before the policy change).

We find evidence of increasingly binding capacity constraints in the county jail systems; a number of jails statewide are now operating at or above their rated capacity. Our analysis also suggests that newly sentenced realigned felons, as well as released prison inmates now under the jurisdiction of local community corrections, are displacing lower-level offenders from local jails. More specifically, convicted felons sentenced to jail and parolees serving time in jail for parole violations are (at least to a modest degree) displacing pretrial detainees and sentenced inmates serving time for misdemeanor offenses. Our results also provide strong evidence that realignment is leading to increases in early releases of some inmates because of capacity constraints, especially in counties under court-ordered population caps. In cap counties, we estimate that one sentenced inmate per month is released early for every four realigned offenders as a result of housing capacity problems, compared to one early release for every 16 offenders in non-cap counties. Moreover, realignment is increasing pretrial releases at a rate of roughly one for every seven fewer felons sent to prison in cap counties. We do not know how *much* earlier these releases are occurring, just that these practices have significantly increased as a result of realignment.

Counties vary greatly in how they are using jails in exercising their new responsibilities. To take two extreme examples, the jail population of Los Angeles County has increased almost one-for-one with the number of realigned inmates sent to the county. On the other hand, the jail population of Alameda County has actually declined, despite large increases in their local community corrections caseloads.

We find that some pre-realignment factors, especially capacity-related factors, partially explain county differences in jail incarceration responses. Counties with high jail incarceration rates before realignment and counties with high ratios of jail inmates to rated jail capacity tended to experience slower growth in their jail populations. However, we did not find any statistically significant relationships between crime rates prior to realignment and post-realignment jail growth, suggesting that underlying county differences in crime do not explain differences in post-realignment jail use. Nor did we find any evidence, so far, that county differences in the use of split sentences affected jail population growth once we account for differences in the realignment dose.

Our examination of the data provides important insights in light of the number of recent proposals seeking to shift some criminal justice responsibilities back to the state. An underlying assumption in these proposals is that realignment is responsible for severely limiting the ability of counties to enforce sanctions against parole violators, hence jeopardizing public safety. While our analyses support the notion that realignment has increased pressure on county jails, including some incarceration limitations, counties have not yet widely utilized some options that might reduce the pressures they are encountering. Exploring these alternatives before handing lower-level felons back to the state seems particularly prudent, given that the prison system, in spite of realignment, is still struggling with reaching the federal three-judge panel's mandated population target.

One such option examined in our report, split sentences, is used in only a fraction of all 1170(h) sentences, about 23 percent statewide. As with other realignment responses, the use of this option varies widely across counties. While some capacity-constrained counties are relying heavily on split sentences, others have chosen to avoid this strategy. Kings and Riverside Counties are two examples of jurisdictions that are facing serious capacity constraints (including court-ordered population caps). In addition to making capacity-constrained releases, these counties are alleviating some of the pressure by relying heavily on split sentences: 76 and 60 percent of all 1170(h) sentences in Kings and Riverside Counties are split sentences, respectively. Los Angeles and Kern Counties face similar capacity challenges, but both counties have, so far, been quite reserved in issuing split sentences (respectively, 5.4 and 10.1 percent of their 1170(h) sentences have been split sentences). This suggests that at least in some counties, some of the pressure can be alleviated by using tools and discretions provided by the state. Another potential strategy to free up beds is to reduce the number of inmates on federal contracts (used primarily by U.S. Immigration and Customs Enforcement to house immigration detainees). Statewide in June 2012, there were 4,300 federal-contract inmates, representing 5.5 percent of the average daily population in that month. Careful consideration should be given to the need for maintaining these contracts before committing to expensive expansions.

Looking ahead, the situation might become easier to handle. With funding made available by the state, some of the capacity constraints will be reduced through jail expansions. The Legislature passed AB900 in 2007 and SB1022 in 2012, allocating \$1.2 billion and \$500 million, respectively, to new jail construction. To date, 21 counties (including the four counties discussed above) have received grants from AB900, which will ultimately support the construction of 10,926 jail beds statewide. SB1022 funding could provide for the construction of up to 3,800 additional jail beds (Legislative Analyst's Office 2013). Although these expansions should provide counties with additional flexibility, as well as upgraded facilities and infrastructure to more effectively provide programming and services, the need to seek alternatives to incarceration will continue to be of paramount importance. As welcome as the new legislative money might be, the financial burden of the expansions will fall primarily on the counties—construction costs account for less than 10 percent of the total cost of a jail over its lifetime (California State Sheriffs' Association 2006).

And finally, the data and analysis in this report clearly indicate that realignment has significantly reduced incarceration in California. As noted above, at the county level the jail population increased by only about one inmate for every three fewer felons sent to state prison. The statewide reduction in the incarceration rate is also evident in the total combined rate of both jails and prisons, which declined from 620 per 100,000 residents in June 2011 to 567 in June 2012, a reduction of close to 9 percent. However, our data and analysis also clearly point to the fact that the composition of the incarcerated population has changed, with decreases in the pretrial detainee and misdemeanor populations, as well as less time spent behind bars by parole violators. What effect these changes will have on public safety is surely one of the most important questions yet remaining for realignment (Petersilia and Snyder 2013). The answer will depend not only on the fact that some offenders are spending less time locked up, but also on the ability of counties to effectively identify and release only low-risk offenders and to provide effective services and treatment to reduce reoffending. Researchers, including the authors of this report, are in the process of obtaining appropriate data to examine these issues.

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EXHIBIT C

**Jail Population -
Less than 24 Hours and More than One Week**

STATE	% Discharged <1 Day	% Discharged 8-30 Days	% Discharged 31-180 Days	% Discharged >180 Days	Short-Term and Long-Term ICS Customers*
AZ	48.16%	9.71%	4.07%	0.86%	62.80%
CA	19.57%	12.71%	18.97%	1.94%	53.19%
CO	24.09%	19.32%	18.44%	1.83%	63.68%
DC	7.80%	19.66%	37.63%	9.15%	74.24%
FL	20.14%	16.49%	17.37%	4.38%	58.38%
GA	40.63%	12.93%	8.32%	3.76%	65.64%
ID	37.43%	11.78%	14.66%	9.16%	73.03%
IL	25.51%	23.46%	10.93%	1.82%	61.72%
IN	9.95%	29.28%	50.81%	7.19%	97.23%
IA	46.43%	13.01%	16.33%	1.02%	76.79%
KS	14.81%	23.61%	8.33%	6.71%	53.46%
KY	25.23%	16.99%	9.61%	2.37%	54.20%
LA	15.62%	15.34%	15.45%	8.10%	54.51%
MD	21.75%	16.14%	23.51%	3.51%	64.91%
MA	4.13%	24.00%	29.87%	9.20%	67.20%
MI	9.88%	21.92%	17.97%	2.72%	52.49%
MN	38.15%	14.75%	12.00%	1.83%	66.73%
MS	20.47%	18.79%	21.81%	7.05%	68.12%
MO	2.15%	14.05%	14.24%	1.95%	32.39%
NV	23.62%	15.46%	10.09%	1.56%	50.73%
NJ	13.18%	16.82%	22.50%	18.30%	70.80%
NM	28.49%	22.04%	10.75%	3.76%	65.04%
NY	10.94%	22.66%	22.48%	8.82%	64.90%
NC	12.08%	21.84%	13.72%	1.93%	49.57%
ND	43.33%	5.00%	14.17%	0.00%	62.50%
OH	18.09%	22.65%	15.34%	1.81%	57.89%
OK	0.18%	2.91%	7.29%	24.59%	34.97%
OR	43.20%	18.00%	10.36%	0.88%	72.44%
PA	3.77%	27.65%	21.71%	11.28%	64.41%
SC	38.46%	11.60%	10.17%	1.83%	62.06%
TN	25.65%	15.75%	9.09%	4.06%	54.55%
TX	24.25%	15.92%	13.32%	3.23%	56.72%
UT	0.00%	8.09%	20.79%	0.00%	28.88%
VA	24.96%	13.74%	13.38%	5.83%	57.91%
WA	15.02%	16.90%	11.11%	4.13%	47.16%
WV	21.44%	14.03%	7.41%	5.13%	48.01%
WI	18.65%	17.22%	14.56%	3.01%	53.44%
USA	20.42%	17.19%	16.66%	4.70%	58.97%

* - Combined percentage of detainees (i) released in less than 24 hours, and (ii) in custody for more than one week."

Note on Methodology

This tabulation uses data from the Bureau of Justice Statistics' *Annual Survey of Jails: Jail-Level Data, 2012* (ICPSR 34884), available online at <http://www.icpsr.umich.edu/icpsrweb/NACJD/series/7/studies/34884>. This yearly survey samples local and county jail facilities around the country; a full census of jails was last conducted in 2005.

Since 2010, a subset of the sampled jails – 335 jail jurisdictions were included in the subsample, or about 39% of the 867 jails in the total sample¹ (C) – have been “asked to provide additional information . . . on the flow of inmates going through jails and the distribution of time served.” It is the answers to these recently added questions on which the spreadsheet relies. Additional information on the sampling methodology can be obtained from the Bureau of Justice Statistics. While the sampled jails are probably not perfectly representative,² they are numerous enough to provide a good snapshot of jails across the country.

The facilities in the subsample reported the number of inmates³ they finally discharged during the one-week period from June 24 to June 30, 2012, according to the length of their confinement (not sentence), using the following categories: less than 1 day (E), 1 to 2 days (F), 3 to 7 days (G), 8 to 30 days (H), 31 to 180 days (I), and more than 180 days (J). While these figures differ from the number of inmates confined at a given point in time who will eventually be confined for a certain length of time, this latter statistic is not collected, presumably since it could only be determined in retrospect. Based on this data, the percentages of inmates finally discharged during that week who had been confined for less than one month, one to six months, and more than six months have been computed.⁴

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¹ Note also that these subsampled facilities reported finally discharging 63,230 inmates (K) during the week of June 24 to June 30, 2012, or about 43% of the 145,601 inmates (D) finally discharged by all facilities in the sample.

² There appears to be no data from jails in Alaska, Connecticut, Delaware, Hawaii, Rhode Island, Vermont, Puerto Rico, or the United States' island possessions. Either facilities in these states did not respond, or none were included in the total sample. Furthermore, it appears that facilities in Alabama, Arkansas, Maine, Montana, Nevada, New Hampshire, South Dakota or Wyoming were not included in the subsample.

However, there is no reason to believe that either the states excluded from the total sample or those excluded from the subset would be outliers with regards to the length of jail confinement; with the exception of Alabama, the later category is comprised of states with relatively few reporting jail facilities and relatively low numbers of release inmates – and, presumably, correspondingly low total numbers of jailed inmates.

³ The questionnaire further disaggregates convicted from unconvicted inmates, but this distinction has been collapsed for present purposes.

⁴ Note that in some cases - California, Georgia, Indiana, Michigan, Oklahoma, Philadelphia, Tennessee, Texas, Washington, and West Virginia – there is a disparity between the total number of final discharges reported by facilities in the subsample (K) and the sum of the categorized final discharges reported by those same facilities (L). Because this analysis relies on the former, the percentages for some states sum to more or less than 100%.