

**SUPPLEMENTAL REPORT OF JAMES AUSTIN, PhD.**

*Coleman v. Schwarzenegger et al.,*

No. Civ. S-90-0520 LKK

*Plata v. Schwarzenegger et al.,*

No. C01-1351 T.E.H.

AUGUST 27, 2008

**James Austin - Supplemental Report**

1. This report is a supplement to the one I submitted on August 15, 2008.
2. It is based on new information I received from the CDCR which allows me to make more precise and accurate estimates of the impact of various options for safely reducing the CDCR institutional population.
3. I also received a copy of a report by James W. Marquart. I wish to respond to that report as it contains serious omissions and misrepresentations.

**Supplemental Information on the Impact of Recommended Prison Population Reductions**

4. In my report I noted the lack of a relationship between length of time served and recidivism rates. This finding was based in part on an analysis provided by the CDCR (see Table 6) and the US Department of Justice (see Table 7).
5. The CDCR forwarded a new set of data files that consisted of all prisoners released in FY 2003-04. Those data files allow me to measure the numbers of released prisoners who were re-arrested since their release date.<sup>1</sup>
6. Figure 1 represents all CDCR prisoners who were first released to parole supervision (excludes re-releases from prison) and who were re-arrested at least once within three years of their release date. As the figure clearly shows there is no variation in the re-arrest rate by the length of time served. This finding persists when the time spent in local jails is also included (Figure 2).
7. These new data also allowed me to re-calculate the re-arrest rates for those prisoners during the first four months of their release date. This information is superior to the data files that CDCR provided to me in 2007 as it allows me to measure arrests rather than the last revocation that occurred for a released prisoner. The latter measure is deficient as it can exclude all revocations and other arrests that may have occurred but did not result in a revocation. All of these deficiencies will serve to underestimate the number of arrests for released prisoners. The new rate does not affect my opinions and conclusions.
8. As shown in Figure 1, the rate of recidivism for persons released during the first four months of parole is approximately 25%. However, this higher rate does not vary by overall length of stay.
9. The 25% rate is then substituted in Table 11 which had lower rates based on the CDCR revocation data file. While this increases the number of arrests that occurred during the four month window for targeted releases, the overall impact on the state and three counties remains insignificant (less than 1% of total arrests).

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<sup>1</sup> I was assisted in the statistical analysis by Avi Bhati.

Recidivism Rate

Figure 1: Recidivism Rates by Time Served in CDC Facility

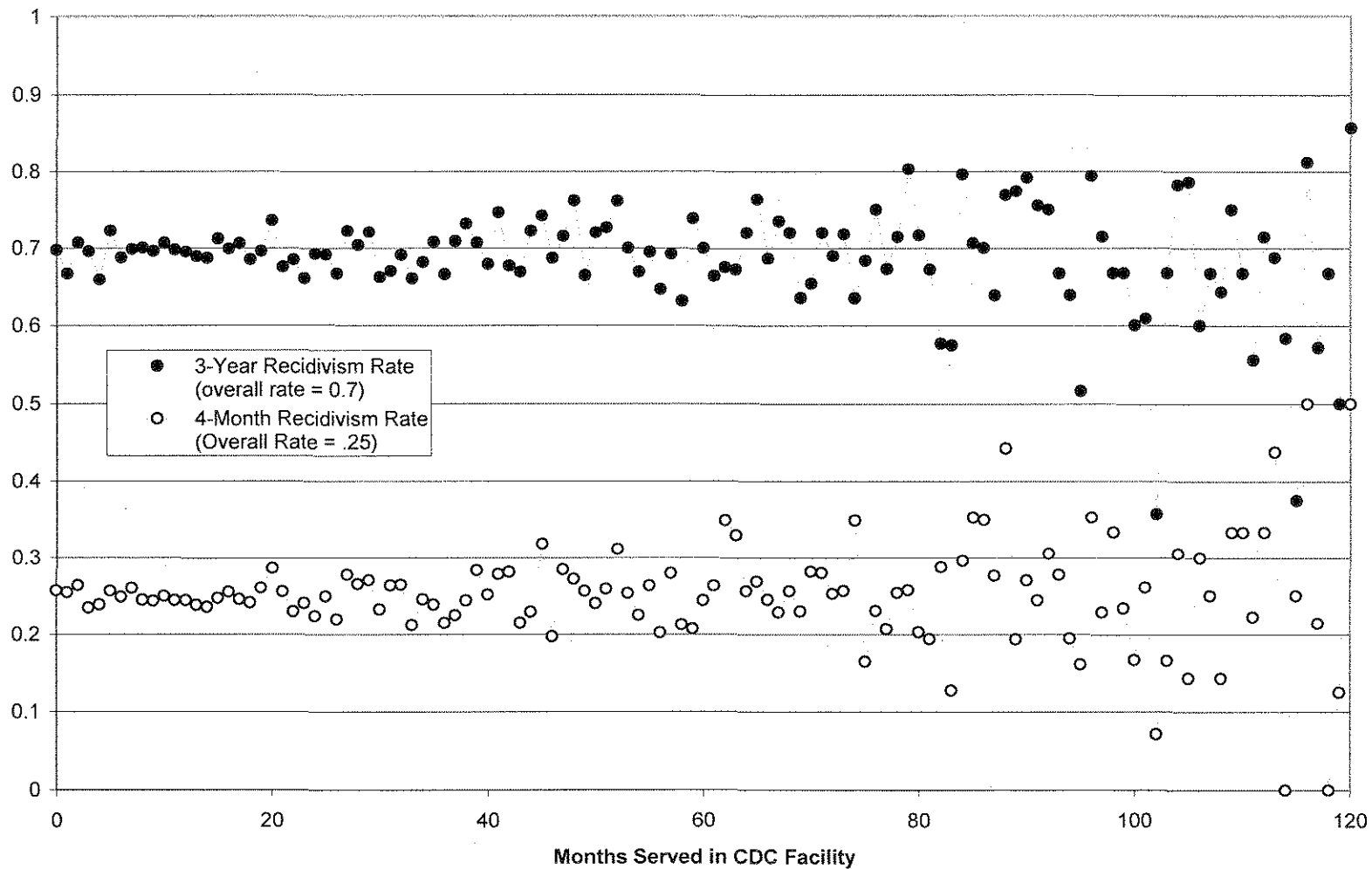
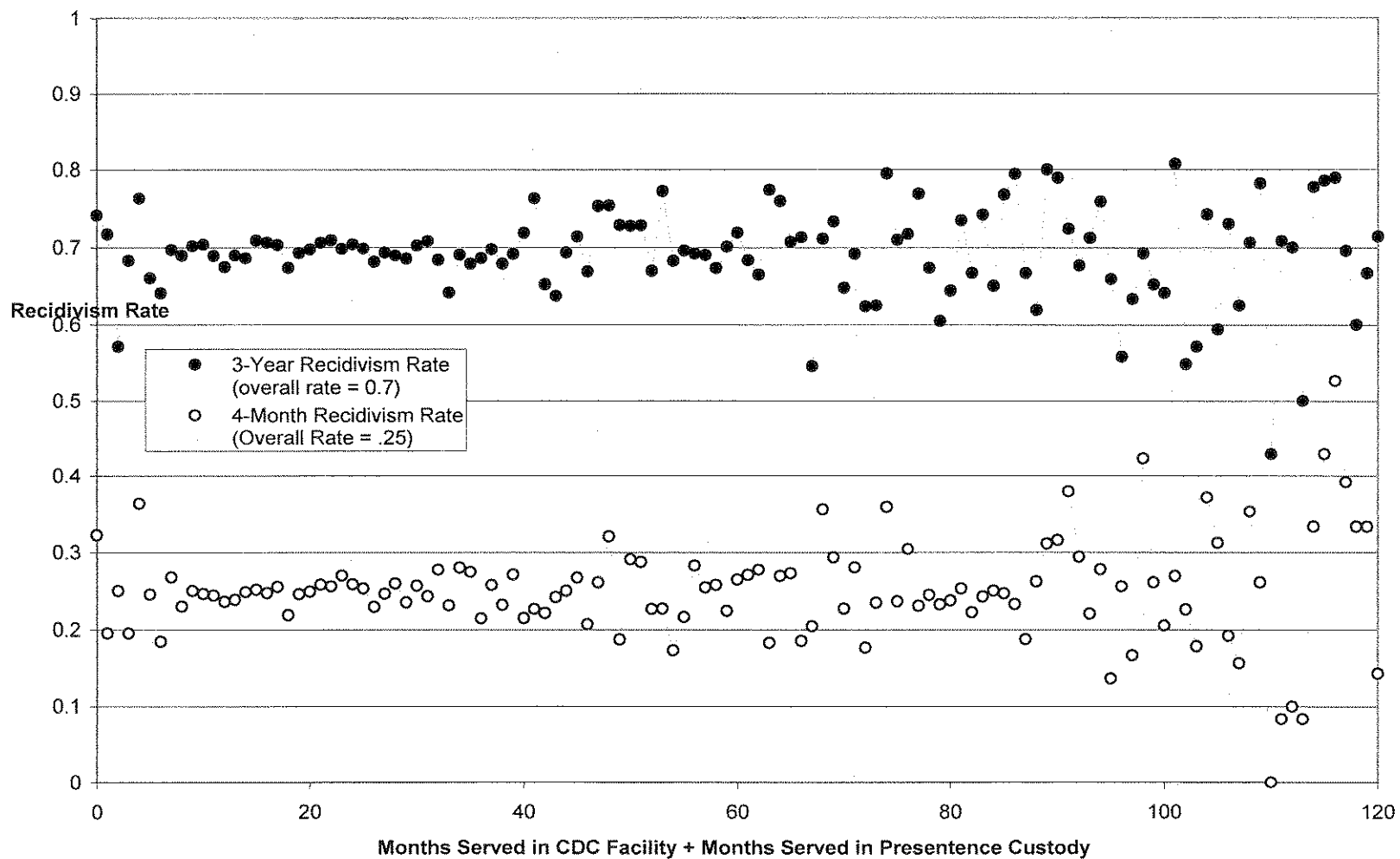


Figure 2: Recidivism Rates by Time Served in CDC Facility + Time Served in Presentence Custody



10. These re-arrest data were also used to supplement Table 10 which had a 35% re-arrest rate. These rates have been adjusted based on the actual rates calculated from the FY 2003-2004 data files. Again the overall conclusion of an insignificant impact of the recommended options on the state and local counties remains true.

### **Early Discharge from Parole**

11. At pages 33-35 of my August 15 report, I outlined a method for the state to safely reduce its prison population by offering good time credits to reduce the period of parole supervision. I was unable to complete my analysis of the impact of such a program at that time because I had only just received the necessary data. I have since received the data and I conclude that a parole discharge policy for persons who remain arrest free for 12 months would have a positive impact on prison and parole populations without affecting public safety.
12. The same re-arrest data set shows that of all persons released from prison on their first parole, 50% are re-arrested in the first 12 months. If the CDCR were to adopt a policy that all released prisoners who remain arrest free for 12 months were to be discharged from supervision, approximately 50% would be discharged from parole supervision at the 12-month date.
13. The impact of this policy would have positive effects on a number of factors. First, it would substantially reduce the CDCR parole population. In a study completed by myself and my colleagues, using data provided by the CDCR, we found that the average length of time spent on parole for persons who were on parole as of December 1, 2004, was 26 months.<sup>2</sup> This policy would limit that parole period to 12 months, which means that thousands of parolees who are arrest free would be discharged from supervision.
14. The parole revocation rate would decline as parolees who are not be charged with any criminal activity could not be returned to prison for non-criminal behavior. Based on data received from the CDCR, approximately 14,500 persons were returned to prison for purely technical violations in 2007 – in other words, they were neither charged nor convicted of misdemeanors or felony crimes. If such people had been discharged from parole supervision, they would not have been returned to prison. In 2007, more than 43,000 parolees were arrested but never charged or convicted of these mostly non-violent crimes.<sup>3</sup>
15. I am aware that CDCR is currently conducting a pilot program that would allow early discharge from parole after 6 months for certain low-risk parolees. This is possible because the Board of Parole Hearings has legal authority "to choose to not place any

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<sup>2</sup> James Austin et al., "The Lancaster to Los Angeles After Prison Initiative: A Program Proposal." March 21, 2005. Washington, DC: The JFA Institute

<sup>3</sup> Email exchange between Dr. Joan Petersilia and Thomas Hoffman, August 5, 2008 (documents E-UCI-030115 and E-UCI-030116).

parolee coming out of prison on parole at all."<sup>4</sup> Full implementation of such a program would have an even greater impact on the size of the parolee and prison population.

16. An early discharge policy would establish an incentive for released prisoners to conform to parole supervision requirements with the knowledge that they would serve no more than 12 months on supervision (or less time, if CDCR adopted a 6-month discharge policy). As noted in my earlier report, in Nevada, such a policy has increased the parole success rate to 80%.

### **Response to James W. Marquart Report**

17. The following observations are based on my review of the report by James W. Marquart, signed August 14, 2008.
18. Professor Marquart's statement that California is "by far the largest and perhaps most complex penal organization in the United States" is incorrect. The Federal Bureau of Prisons is the largest penal system in the U.S. and has far more facilities than the CDCR. The Texas prison system is roughly the same as the CDCR and has far more facilities than the CDCR.

### *The Impact of Crowding*

19. The CDCR charts Professor Marquart uses to argue that overcrowding has not had an impact on safety are deficient for the following reasons:
  - a. He ignores other measures of serious incidents—especially attempted suicides and deaths. These data were available to him from the same report from which he cites the assault data. When the other measures of serious incidents are included one sees a more dramatic increase in both the number and rate per 100 inmate population since 1991 (see Table 22, reproduced from CDCR Report, California Prisoners and Parolees, 2006).
  - b. No statistical tests are done by Professor Marquart that test his conclusions that crowding in the California prison system is not related to rates of assaults, suicides, and attempted suicides.
  - c. Two of the three reasons he states which contribute to assaults, suicides, attempted suicides, deaths and other critical incidents are clearly related to overcrowding: 1) decreased staff knowledge of inmates and 2) increased inmate self control, especially by the gangs.

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<sup>4</sup> Joan Petersilia, Meeting the Challenges of Rehabilitation in California's Prison and Parole System: A Report from Governor Schwarzenegger's Rehabilitation Strike Team, December, 2007, at 89.

TABLE 22  
 NUMBER AND TYPE OF INMATE INCIDENTS \*  
 RATE PER 100 AVERAGE DAILY POPULATION (ADP)  
 CALENDAR YEAR 1982 THROUGH 2006

CALENDAR YEAR	NUMBER AND RATE		TYPE OF INCIDENT						
	TOTAL INCIDENTS	RATE PER 100 ADP	ASSAULT WITH WEAPON	ASSAULT WITHOUT WEAPON	POSSESSION OF WEAPON	CONTROLLED SUBSTANCES	SUICIDE	ATTEMPTED SUICIDE	OTHER**
1982	3,639	11.7	456	667	814	1,357	24	54	207
1983	3,691	10.9	576	798	657	1,371	19	93	177
1984	5,102	12.7	936	980	1,159	1,693	18	91	225
1985	5,220	11.6	914	902	1,266	1,763	17	130	208
1986	5,067	9.6	896	1,036	1,138	1,603	13	177	224
1987	5,315	8.5	1,008	1,194	1,053	1,641	16	149	254
1988	4,918	7.1	939	1,146	629	1,654	17	84	249
1989	5,178	6.5	952	1,705	763	1,364	16	94	264
1990	4,184	4.7	931	1,368	635	916	22	75	237
1991	4,114	4.3	1,039	1,383	799	623	16	124	220
1992	4,982	5.0	1,325	1,496	875	864	14	163	245
1993	6,243	5.7	1,766	1,796	1,028	1,141	32	199	281
1994	6,974	5.9	1,837	2,185	1,037	1,336	16	223	340
1995	6,610	5.3	1,562	2,455	782	1,106	22	188	465
1996	6,868	5.1	1,683	2,808	746	954	19	185	473
1997	9,784	6.8	2,123	4,102	824	1,059	19	243	1,414
1998	9,981	6.7	2,225	4,167	734	1,022	22	258	1,555
1999	10,761	7.1	2,319	4,477	812	898	29	381	1,845
2000	11,861	7.8	2,463	4,785	1,021	992	14	419	2,167
2001	11,514	7.7	1,987	4,909	915	1,058	30	459	2,156
2002	11,610	7.7	1,877	4,863	1,047	1,053	21	528	2,121
2003	12,051	8.0	1,843	5,327	1,149	1,154	33	450	2,095
2004	12,290	7.9	1,790	5,427	1,274	1,211	26	472	2,090
2005	13,666	8.7	1,821	6,406	1,215	1,114	37	559	2,534
2006	14,490	9.2	1,869	7,221	1,238	1,005	42	543	2,572

\* Data are based on incident reports submitted by each institution to the Offender Information Services.  
 \*\* Natural deaths were added in 1997 to the "Other" column counts.

NOTE: Previously published numbers may vary due to modifications to the database. The increase in incidents from 1996 to 1997, according to Institution Services, is due to new reporting requirements.

*Impact of Options*

20. Professor Marquart's use of the Texas experience between 1980 and 1989 (some 20 years ago) as an example of what will happen in California today is not relevant for the following reasons.

- a. It represents a time period when the Texas (like California and most other states) was rapidly increasing its prison population. That rapid period of growth is now over and several states have implemented a number of reforms that serve to reduce their projected and/or actual prison populations. Put differently, for Professor Marquart's comparison to make sense, he would have to use recent examples of states that in the past five years have reduced their prison populations or halted their growth in prison populations and then experienced increases in crime rates. There are none. In fact, Texas recently has increased its parole grant rate using risk based guidelines to safely halt its projected prison population.
- b. The article cited in Dr. Marquart's report provides no analysis of the number of Texas released prisoners under the MPA, the amount of time they were released earlier, the amount of jail time served and the number and types of crimes committed during the window they would otherwise would have been incarcerated. Thus, any claims made on the extent to which the "early releases" affected crime rates have no scientific basis.<sup>5</sup>
- c. The use of the tragic Kenneth McDuff case that occurred in Texas in 1992 is not relevant in the present case as a person who committed such a crime and received a life sentence is excluded from the California options eligibility pool.
- d. Texas currently is diverting large numbers of technical parole violators via their Intermediate Sanction Facilities (ISF) with no adverse impact on crime rates. (Communication and data forwarded to me from Dr. Tony Fabelo, Council of State Governments).
- e. The proposed number of good time credits to be awarded in California is far less than the amounts that are now or were being awarded to Texas prisoners between 1980 and 1989.
- f. Dr. Marquart's recommendation to extend the length of imprisonment for all prisoners regardless of their risk levels for the sole purpose of receiving CDCR "treatment" is counter-productive. It would require thousands of low

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<sup>5</sup> See Marquart, J. and colleagues, 1993, "Ceremonial Justice, Loose Coupling, and the War on Drugs in Texas, 1980-1989," *Crime and Delinquency*, 39 (4): 528-542.



risk CDCR prisoners to be incarcerated for treatment they do not need and may serve to increase rather than lower their recidivism rates.

- g. Further, the idea that CDCR can quickly ramp up its treatment capabilities to provide meaningful services is also naïve.
  - h. A far better strategy would be to increase meaningful services in those targeted communities to which most prisoners are being released.
21. Dr. Marquart is in error in his statement indicating that the Expert Panel had targeted technical probation violators. The target population is not limited to technical probation violators.
22. Dr. Marquart is in error that there has been no "massive early release" program (footnote 16). Illinois implemented a "mass early release" program in the 1980s with no adverse impact on recidivism rates or crime rates.
23. One could also argue that Texas is now implementing an early release program by increasing its parole grant rates with no adverse impact on recidivism rates or crime rates.
24. Similarly, California has launched its own "early release" policy by implementing the Bridging Program and increasing the use of Work Incentive Program credits and the Conservation Camp two for one day served credits with no impact on crime rates or recidivism rates.

#### Miscellaneous Changes

25. More recent data contained in the CDCR Annual Report on Prisoners and Parolees were used to update Table 9. The number of probation admissions and an estimate of the CDCR parole population have been added to the table. These changes do not affect my opinions and conclusions
26. Figure 5 was duplicated twice in the first report. The proper representation is included in this report, on the last page.

Dated: August 27, 2008



James Austin, PhD.

**Table 9: Key Correctional Population Attributes by County – 2006**

<b>Attribute</b>	<b>Amador</b>	<b>Fresno</b>	<b>Los Angeles</b>
Prison Admissions – 2006	76	2,406	23,110
New Court Commissions	66	1,755	15,760
PVs New Felons	10	651	7,350
Prison Releases – 2006	90	2,300	22,300
Total Paroles	50	5,242	32,761
First Paroles	35	1,923	21,733
Re-Paroles	15	3,319	11,028
Prison Population – 2006	208	5,456	56,693
Adult Probation Population	1,097	9,762	69,428
Felony	385	7,473	61,122
Misdemeanor	712	2,289	8,306
Felony Probation Admissions – 2005	171	5,552	30,523
Jail Population	80	3,105	18,721
Capacity	76	3,778	22,329
Bookings	1,846	42,732	173,000
Parole Population – 2006 (estimated)	75	4,900	30,500
Total Adult Correctional Population	1,460	23,223	175,342
Total Adult Admissions	2,143	55,932	259,394
% Jail Bookings	86%	76%	67%
% Prison Admissions	4%	4%	9%
% Parole Releases	2%	9%	13%
Prison Admissions + Parole Releases % of Arrests	4%	8%	8%

Sources: data provided by CDCR and counsel for the counties

**Table 10: Estimated Effects of the Diversion of Persons Sentenced to 24 months or less non Violent, Non-Lifer, Non-Sex Registrant and Non-Strike Crimes/Sentences**

Attribute	Amador	Fresno	Los Angeles	State Wide
2006 New Court Admissions	76	2,406	23,110	69,408
Targeted Sentences of 24 months or less	22	1,366	8,881	27,765
25% Discount for risk assessment	17	1,025	6,661	20,824
% Re-arrested 12 months @50% rate	9	513	3,331	10,412
% of Arrests that are non-violent	92%	92%	92%	92%
% of Total Annual County Arrests	< 1%	< 1%	< 1%	< 1%
% of Jail Bookings	< 1%	< 1%	< 1%	NA
Estimated CDCR Prisoner Reduction	10	598	3,885	12,147

**Table 11: Estimated Impact on Public Safety on Good Time Program for Selected Prisoners**

Attribute	Amador	Fresno	Los Angeles
Total Arrests (historical)	3,193	93,084	720,959
Total Jail Bookings (historical)	1,846	42,732	173,000
Annual Releases (historical)	90	2,300	22,300
Additional Releases with good time program	9	547	5,375
% of total releases	10%	21%	24%
Additional Arrests @ 26% rate	3	143	1,398
% of total County Arrests	< 1%	< 1%	< 1%
% of Total Bookings	< 1%	< 1%	< 1%

Source: CDCR and California Attorney General Office.

Figure 5: Example of Four Month Good Time Program on Prison Releases

		2008						2009					
Admit Month		Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
24 Month LOS Cohort	Jul-06	1500											
	Aug-06	1500	1500										
	Sep-06	1500	1500	1500									
	Oct-06	1500	1500	1500	1500								
	Nov-06	1500	1500	1500	1500	1500							
	Dec-06	1500	1500	1500	1500	1500	1500						
20 Month LOS Cohort	Jan-07	1500	1500	1500	1500	1500	1500	1500					
	Feb-07	1500	1500	1500	1500	1500	1500	1500	1500				
	Mar-07	1500	1500	1500	1500	1500	1500	1500	1500	1500			
	Apr-07	1500	1500	1500	1500	1500	1500	1500					
	May-07	1500	1500	1500	1500	1500	1500	1500	1500				
	Jun-07	1500	1500	1500	1500	1500	1500	1500	1500	1500			
	Jul-07	1500	1500	1500	1500	1500	1500	1500	1500	1500	1500		
	Aug-07	1500	1500	1500	1500	1500	1500	1500	1500	1500	1500	1500	
	Sep-07	1500	1500	1500	1500	1500	1500	1500	1500	1500	1500	1500	1500
	Oct-07	1500	1500	1500	1500	1500	1500	1500	1500	1500	1500	1500	1500
	Nov-07	1500	1500	1500	1500	1500	1500	1500	1500	1500	1500	1500	1500
	Dec-07	1500	1500	1500	1500	1500	1500	1500	1500	1500	1500	1500	1500
	Jan-08	1500	1500	1500	1500	1500	1500	1500	1500	1500	1500	1500	1500
	Feb-08	1500	1500	1500	1500	1500	1500	1500	1500	1500	1500	1500	1500
Mar-08	1500	1500	1500	1500	1500	1500	1500	1500	1500	1500	1500	1500	

# **APPENDIX A**

**Appendix A to Austen Supplemental Report of August 27, 2008**

The additional documents I have reviewed in making this Supplemental Report are the following:

1. Joan Petersilia, Governor's Rehabilitation Strike Team: A Status Report and Roadmap, October 5, 2007.
2. Joan Petersilia, Meeting the Challenges of Rehabilitation in California's Prison and Parole System: A Report from Governor Schwarzenegger's Rehabilitation Strike Team, December 2007.
3. Letter of November 15, 2007, from Stephen W. Kessler, Undersecretary of CDCR, to Michael Genest, Director, Department of Finance.
4. Division of Adult Parole Operations, White Paper, Earned Discharge, E\_PRIV\_166060-166056.
5. Christopher Mumola, Bureau of Justice Statistics Data Brief: Medical Causes of Death in State Prisons, 2001-2004
6. Letter from Jeffrey L. Sedgwick to S. Anne Johnson, December 18, 2007, with attached data.
7. Additional data provided to me by CDCR pursuant to arrangement between counsel.