

# 2011 Public Safety Realignment and Proposition 30

# It's About the State-Local Relationship

Governance  
Services  
Money

# 1991 Realignment

- ▶ Community Mental Health
- ▶ Indigent Mental Health
- ▶ Changed shares-of-cost in social services programs like CWS, Foster Care and CalWORKs

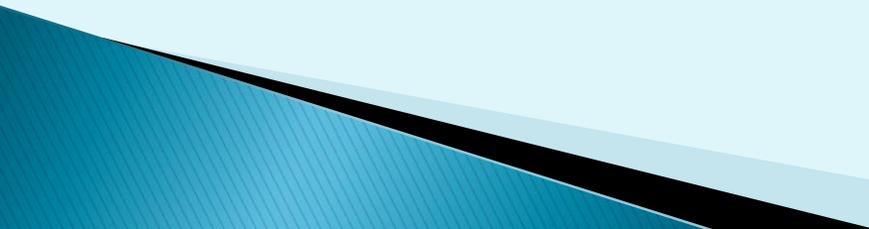
# Issues for Counties

- ▶ Realigned programs may be underfunded
- ▶ Revenue may not keep up with program growth
- ▶ New requirements cost money
- ▶ Didn't change state operations
- ▶ Entitlement programs complicate efforts
- ▶ Poison pills limit the conversation

# What Happened Between 1991 and 2011

- ▶ 1994 Community-Based Punishment Act
- ▶ 1997 Trial Court Funding Act
- ▶ 1997 CYA Sliding Scale
- ▶ 2007 Juvenile Justice Realignment
- ▶ 2009 Felony Probation (SB 678)
- ▶ Lawsuits regarding prison overcrowding

# 2011 – The Motivations

- \$26 billion budget gap and expiring taxes
  - Build on previous success
  - Move government closer to the people
  - Focus on core services/improve services
  - Interconnected programs at one level with more flexibility and accountability
  - Clarify state and local roles
  - Federal 3 Judge Panel on prison overcrowding
- 

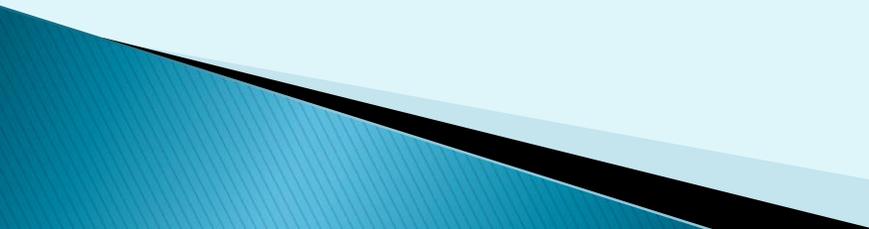
# 2011 Public Safety Realignment

- ▶ January proposal – extension of taxes and Constitutional Amendment
- ▶ March – only AB 109
- ▶ June Final Budget – All of realignment in statute
- ▶ Funded with 1.0625 cents sales tax
- ▶ AB 109 – 10/1/11
- ▶ Constitutional Amendment – November, 2012

# HHS Programs Included

- ▶ Foster Care and Child Welfare Services
- ▶ Adult Protective Services
- ▶ Mental Health Managed Care
- ▶ Early Periodic Screening, Diagnosis and Treatment Program
- ▶ Substance Use Disorder Programs
- ▶ 100% share of cost for these programs

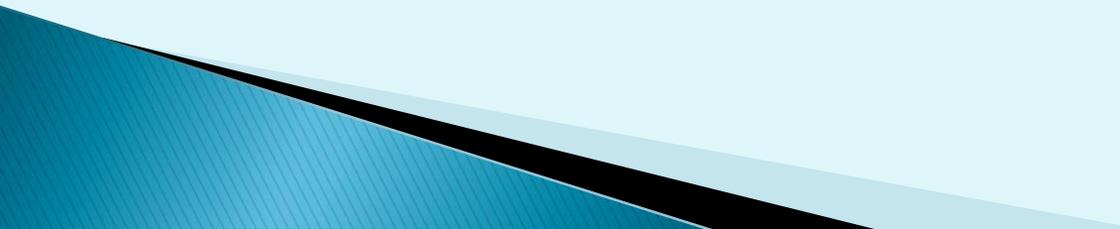
# January 2012 Proposal

- ▶ Revised estimates for caseload programs/revenues
  - ▶ Funding “superstructure”
  - ▶ Principles for allocations
  - ▶ Program statutes with policy changes/flexibilities
  - ▶ Reduction to state operations
- 

# Proposition 30 – November 2012

- ▶ Realignment funding is constitutionally protected
- ▶ Realigned programs are not reimbursable mandates
- ▶ New statutes, regulations and administrative directives that increase an entity's overall costs must be funded
- ▶ State pays 50% of required federal changes or lawsuits unless a county is negligent

# What Does This Mean?

- ▶ Fundamental shift in the state–local relationship. Counties are partners.
  - ▶ State has to be mindful of directions and requirements imposed on counties
  - ▶ Really have to understand exactly what was realigned
  - ▶ Must understand federal requirements at the time of realignment
- 

# So What Does Prop 30 Actually Say?

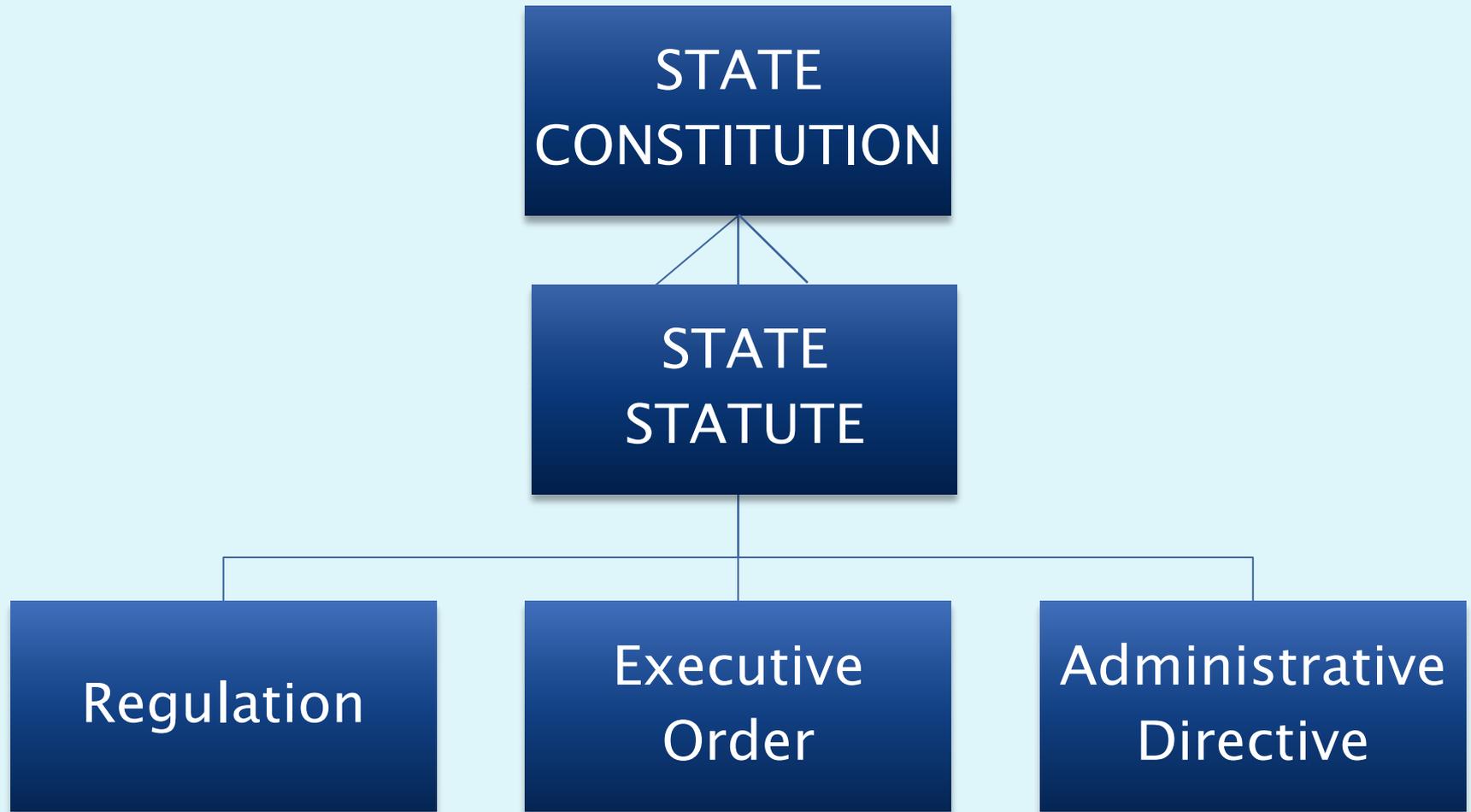
And how does that affect State actions and  
responsibilities?

# Proposition 30

Prop. 30 added article XIII, section 36 to the California Constitution.

The provisions that change the interaction between the State and local agencies are found in subdivision (c) starting with paragraph (3) of section 36.

# WHY IS IT IMPORTANT THAT IT'S IN THE CONSTITUTION?



# Summary of Cal. Const. art. XIII, § 36, subd. (c)

- ◆ FUNDAMENTAL CHANGE IN STATE MANDATE LAW
  - No reimbursable state mandate for new programs or higher levels of service required by 2011 Realignment Legislation.
  - There is no new state cost for regulations, executive orders, and administrative orders *necessary* to implement 2011 Realignment Legislation.
  - All new costs imposed by the State must be funded *annually* by the State.
  - A local agency needs to perform a new duty or higher level of service imposed by the State *only* to the extent that funding is provided on an annual basis.

# Summary cont.

- ◆ FUNDAMENTAL CHANGE IN HOW FEDERAL MANDATES WORK
  - Any new costs imposed on 2011 Realignment programs by the federal government will be shared **50/50** between the State and local government.
  - The State will not request optional changes from the federal government that increase local costs – **unless** the State funds those increased costs.
  - Any new costs imposed by federal courts on 2011 Realignment programs must be funded **50/50** between the State and local governments.
  - NOTE – the State does not need to pay if it determines that the local agency failed to perform a ministerial duty, was negligent, or acted in bad faith.

# Art. XIII, § 36, subd. (c)(3)

- ▶ *Notwithstanding Section 6 of Article XIII B, or any other constitutional provision, a mandate of a new program or higher level of service on a local agency imposed by the 2011 Realignment Legislation, or by any regulation adopted or any executive order or administrative directive issued to implement that legislation, shall not constitute a mandate requiring the State to provide a subvention of funds within the meaning of that section. Any requirement that a local agency comply with Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code, with respect to performing its Public Safety Services responsibilities, or any other matter, shall not be a reimbursable mandate under Section 6 of Article XIII B.*

Background: There were a series of bills that constitute 2011 Realignment Legislation. Some of these bills transfer responsibilities for programs and services while others control how Realignment is to operate.

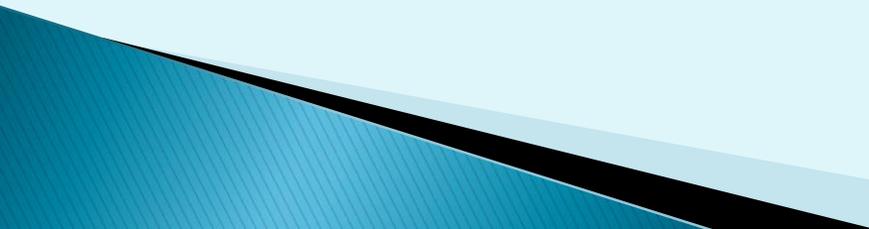
None of these statutory requirements create a reimbursable mandate. Nor do any regulation or other rule issued to and necessary to implement 2011 Realignment Legislation.

**RESULT:** The 2011 Realignment money is all that the State is constitutionally required to provide local agencies to carry out the Realigned programs.

# Art. XIII, § 36, subd. (c)(4)(A)

- ▶ *Legislation enacted after September 30, 2012, that has an overall effect of increasing the costs already borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation shall apply to local agencies only to the extent that the State provides annual funding for the cost increase. Local agencies shall not be obligated to provide programs or levels of service required by legislation, described in this subparagraph, above the level for which funding has been provided.*
- ▶ If the State enacts any statute that increases the costs of 2011 Realignment programs after September 30, 2012, the State must pay the cost for that increase each and every year that increase costs are incurred.
- ▶ Local government need not follow the statute if those costs are not provided.

# How is this different than before?

- ▶ This provision was intended to relieve the local entity from having to go through the mandate process to prove an additional requirement was imposed.
  - ▶ The funding is required to be provided annually instead of after the fact as a reimbursement.
  - ▶ The local agency is only relieved from that obligation for the portion of activities for which the State doesn't provide sufficient funding.
- 

# Subd. (c)(4)(A) examples:

- ▶ **Example 1:** The State enacts a statute requiring a local agency to provide services to a new population under a 2011 Realignment Program. The State provides no funding for the program. Then the local agency is not obligated to provide services to the new population.
- ▶ **Example 2:** The State enacts a statute requiring a local agency to provide services to a new population under a 2011 Realignment Program. The State provides some funding – but not enough to fund the service to the entire new population. Here the local entity is only obligated to fund the new population to the extent state funding is provided.

# Art. XIII, § 36, subd. (c)(4)(B)

- ▶ *Regulations, executive orders, or administrative directives, implemented after October 9, 2011, that are not necessary to implement the 2011 Realignment Legislation, and that have an overall effect of increasing the costs already borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation, shall apply to local agencies only to the extent that the State provides annual funding for the cost increase. Local agencies shall not be obligated to provide programs or levels of service pursuant to new regulations, executive orders, or administrative directives, described in this subparagraph, above the level for which funding has been provided.*
- ▶ If the executive branch creates requirements that increase the costs or levels of services on a local agency in a program required under 2011 Realignment, then
- ▶ The State must pay for that cost increase every year the cost exists.
- ▶ If the State fails to provide the funding, then the local government is not required to follow the executive order, regulation, or other administrative directive.

# Exception to art. XIII, § 36, subd. (c)(4)(B)

- ▶ The only exception to this funding requirement is if the executive order/ administrative directive is necessary to carry out the 2011 Realignment Legislation.
- ▶ **NOTE:** Necessary regulations are not ones that simply make a program better, but ones needed to make a program function.

# Example of subd. (c)(4)(B):

- ▶ A department issues an All County Letter that changes a process which increases costs on a county to carry out a 2011 Realignment program. The Letter is consistent with statute, promotes a policy of the department, but is **not** necessary to implement 2011 Realignment Legislation.
- ▶ **Result:** The county is only required to follow the Letter to the extent that funding is provided in each and every year to pay for the increased costs.

# Art. XIII, § 36, subd. (c)(4)(C)

- ▶ *Any new program or higher level of service provided by local agencies, as described in subparagraphs (A) and (B), above the level for which funding has been provided, shall not require a subvention of funds by the State nor otherwise be subject to Section 6 of Article XIII B. This paragraph shall not apply to legislation currently exempt from subvention under paragraph (2) of subdivision (a) of Section 6 of Article XIII B as that paragraph read on January 2, 2011.*
- ▶ If 2011 Realignment Legislation requires a local agency to perform a new duty or to increase a level of service provided
- ▶ Then those requirements do not constitute a reimbursable mandate.
- ▶ The only funding available for these costs is the money a local agency receives from the Local Revenue Fund 2011.

# Art. XIII, § 36, subd. (c)(4)(D)

- ▶ *The State shall not submit to the federal government any plans or waivers, or amendments to those plans or waivers, that have an overall effect of increasing the cost borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation, except to the extent that the plans, waivers, or amendments are required by federal law, or the State provides annual funding for the cost increase.*
- ▶ The State may not submit changes in the plan or waivers that govern a federal program part of 2011 Realignment in a way that increases the overall costs on a local agency unless those changes are themselves required by federal law.
- ▶ **Unless** the State funds the costs increase from a source other than 2011 Realignment.

# Art. XIII, § 36, subd. (c)(4)(D)

## Examples

- ▶ **Example 1:** The State determines it would improve a program to provide a higher level of staff to perform a particular function. This improvement is permitted by but is not required by federal law. It was not part of the program when the 2011 Realignment Legislation was enacted and upgrading the positions will increase local government costs overall. This program change may only be submitted to the federal government if the State funds the increased cost each and every year the improvement becomes part of the plan.
- ▶ **Example 2:** The State determines that youth in foster care must be visited more frequently. This increase in the level of service provided is permitted by – but is not required by – federal law and the increase in the level of service increases local costs by requiring additional staff to be hired. The State is obligated to fund the increased cost.

# Art. XIII, § 36, subd. (c)(4)(E)

- ▶ *The State shall not be required to provide a subvention of funds pursuant to this paragraph for a mandate that is imposed by the State at the request of a local agency or to comply with federal law. State funds required by this paragraph shall be from a source other than those described in subdivisions (b) and (d), ad valorem property taxes, or the Social Services Subaccount of the Sales Tax Account of the Local Revenue Fund.*
- ▶ If a local agency requests that a change be made in a 2011 Realignment program that the local agency is responsible for, and this change increases the level of service or requires the local agency to perform a new duty, the State is not required to provide additional funds for these increased costs.
- ▶ If the federal law that existed prior to requires that a program within 2011 Realignment Legislation change such that a local agency is required to perform a new duty or increased level of service that increases the local agency costs, that increase in costs is not a reimbursable state mandate.

# In summary the State is required to provide annual funding when:

- ▶ New legislation has an overall effect of increasing the costs already born by a local agency for programs or levels of service required by the 2011 Realignment Legislation
- ▶ An executive order or other administrative requirement, not *necessary* to implement a 2011 Realignment Legislation program, that increases costs on a local agency for a program or due to an increase level of service
- ▶ The State submits to the federal government a plan waiver that, is not required by federal law, and has an overall effect of increasing the cost borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation.

# Source of Funds

- ▶ The money the State uses to pay for the required costs must come from something besides property tax, the funding sources of 2011 Realignment, or an account within 1992 Realignment.

# Art. XIII, § 36, subd. (c)(5)(A)

- ▶ *For programs described in subparagraphs (C) to (E), inclusive, of paragraph (1) of subdivision (a) and included in the 2011 Realignment Legislation, if there are subsequent changes in federal statutes or regulations that alter the conditions under which federal matching funds as described in the 2011 Realignment Legislation are obtained, and have the overall effect of increasing the costs incurred by a local agency, the State shall annually provide at least 50 percent of the nonfederal share of those costs as determined by the State.*
- ▶ If there are changes in federal law that alter the conditions under which federal matching funds are provided, and
- ▶ This alteration increases the costs incurred by a local agency, then
- ▶ The State shall be obligated to provide 50% of this new increased costs.

# Subd. (c)(5)(A) Example

- ▶ The federal government determines it would improve a program to provide a higher level of staff to perform a particular function. So in order to obtain federal matching funds for a service, the service provider will be required to have a new certification. The requirement for certification was not part of the program when the 2011 Realignment Legislation was enacted and upgrading the positions will increase overall local government costs.
- ▶ **RESULT:** The State will be required to pay 50% of the increased costs, as the State determines those costs.

# Art. XIII, § 36, subd. (c)(5)(B)

- ▶ *When the State is a party to any complaint brought in a federal judicial or administrative proceeding that involves one or more of the programs described in subparagraphs (C) to (E), inclusive, of paragraph (1) of subdivision (a) and included in the 2011 Realignment Legislation, and there is a settlement or judicial or administrative order that imposes a cost in the form of a monetary penalty or has the overall effect of increasing the costs already borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation, the State shall annually provide at least 50 percent of the nonfederal share of those costs as determined by the State. Payment by the State is not required if the State determines that the settlement or order relates to one or more local agencies failing to perform a ministerial duty, failing to perform a legal obligation in good faith, or acting in a negligent or reckless manner.*
- ▶ If the State is sued or challenged before an administrative agency for a program involved in 2011 Realignment Legislation, **and**
- ▶ The final outcome of the suit or challenge imposes a penalty or otherwise increases the costs or level of service of a 2011 Realignment Legislation program, **then**
- ▶ The State shall annually pay 50% of the nonfederal share of these costs.

# Exception of the requirement to share costs under Art. XIII, § 36, subd. (c)(5)(B)

BUT if the local agency either:

- ❑ failed to perform a ministerial duty or act in good faith, or
- ❑ acted in a negligent or reckless manner AND the final outcome of the suit/challenge is related to the local agency's failures

Then State does not need to share in the costs.

NOTE: The State determines whether the local agency's failure was related to the final outcome.

# Art. XIII, § 36, subd. (c)(5)(B)

## Examples:

- ▶ **Example 1:** A federal class action lawsuit is brought against the State regarding the implementation of an existing federal program. The suit alleges that state law for the program violates the federal rights of the recipients. State law is ruled invalid, which in turn increases the costs of the program. Under this circumstance, the State must annually provide 50 percent of the increased non-federal share of the increased costs.
- ▶ **Example 2:** A federal class action lawsuit is brought against the State and a local entity. The suit alleges that the local entity has negligently and recklessly failed to provide services to those entitled under law to those services. It appears that the local agency was reckless. Based on this assessment, the parties enter into a settlement by which the local agency will demonstrate its compliance with the law by complying with certain agreed to steps. Any increased costs that local agency incurs are solely the local agency's responsibility.

# Art. XIII, § 36, subd. (c)(5)(C)

- ▶ *The state funds provided in this paragraph shall be from funding sources other than those described in subdivisions (b) and (d), ad valorem property taxes, or the Social Services Subaccount of the Sales Tax Account of the Local Revenue Fund.*
- ▶ If the State is required to provide funding either because:
  - ① changes in federal law; or
  - ① the State is sued or challenged before an administrative agency
- ▶ Then the State must pay for these costs from something besides property tax, the funding sources of 2011 Realignment, or an account within 1991 Realignment.

# Art. XIII, § 36, subd. (c)(6)

- ▶ *If the State or a local agency fails to perform a duty or obligation under this section or under the 2011 Realignment Legislation, an appropriate party may seek judicial relief. These proceedings shall have priority over all other civil matters.*
- ▶ If any state or local entity fails to perform a duty required by 2011 Realignment Legislation or by section 36 of the Constitution, then that entity can be sued in court.
- ▶ This proceeding shall have priority over all other civil matters in a court.