Established in 1991, UCC serves as the representative voice for state legislative advocacy for high-population counties in California. Initially composed of seven counties, the association has grown to 14 today. Just over 80 percent of the state's population reside in UCC counties. Consequently, urban counties carry out critical programs and services to the state's most vulnerable populations. For more information, including details on our Board of Directors, please visit our website.

March 1, 2024

Multiple Moving Parts as Legislature Explores Optimum Approaches to Addressing Retail Theft, Other Crime Concerns

Among other high-profile topics to be considered by the Legislature this year, members will be deliberating an array of legislative proposals to address retail theft and potentially amend provisions of Proposition 47 (2014). In addition, a ballot measure currently proceeding through the signature gathering process could qualify for the November 2024 ballot that would, in part, modify aspects of Proposition 47.

Below we provide an update on several interrelated aspects of policy deliberations on matters relating broadly to crime. In addition to dozens of bills already introduced that touch on aspects of Proposition 47 and various efforts to address organized retail theft, we also wanted to highlight several other notable activities and developments.

Proposition 47 (2014): The Safe Neighborhoods and Schools Act

As a backdrop, recall that the voters approved Proposition 47 in 2014. The main elements of the measure were to:

1) Reduce penalties (from felonies or wobblers to misdemeanors) for certain non-serious and non-violent drug and property crimes;
2) Allow persons incarcerated for these specified crimes to seek resentencing and records reclassification;

3) Create a mechanism by which state correctional system savings associated with these changes would be calculation; and
4) Redirect identified state savings to three categories, as follows:
    a. behavioral health treatment and diversion programs (65 percent);
    b. programs to improve outcomes for K-12 students and reduce truancies (25 percent); and
    c. support for victims' services through trauma recovery centers (10 percent).

Approximately $800 million in state savings derived from the implementation of Prop 47 has been dedicated to these initiatives since the ballot measure passed a decade ago. Recently, the Board of State and Community Corrections (BSCC) released a statewide evaluation report regarding outcomes associated with the second cohort of Prop 47 grant funded behavioral health and treatment diversion programs; those results were overall positive with the top-line findings showing that among program participants there was a 60% decrease in homelessness, a 50% increase in unemployment, and a recidivism rate of 15.3%.

Proposition 47 is not, however, without its detractors; considerable concern about the impacts of Prop 47 continues to be debated in the court of public opinion and among lawmakers, with many drawing a direct line from the provisions of Prop 47 to a decrease in drug court participation, a proliferation of smash-and-grabs and other retail theft, and an overriding sense that there are virtually no consequences for theft. Although legislative efforts and a previous ballot measure that sought to curtail aspects of or fully repeal Proposition 47 have been unsuccessful over the years, more focused, bipartisan legislative attention is being given to reviewing the problem and exploring potential solutions this year.

Assembly Select Committee on Retail Theft

Assembly Speaker Richard Rivas announced in October 2023 the creation of an 11-member Assembly Select Committee on Retail Theft. Assembly Member Rick Zbur, who represents portions of Los Angeles County, chairs the committee, which is meant to create a policy forum in which impacted stakeholders – including large retailers, small businesses, criminal justice reform advocates, law enforcement, and representatives of workers and the public – can discuss and identify solutions to this crisis. Information on the select committee, which has met twice, can be found here.

Little Hoover Commission Retail Theft Study Underway

In response to a legislative request last June, the Little Hoover Commission (LHC) launched on a study to (1) assess retail theft, shoplifting, and organized crime and (2) produce a report that covers all of the following:

- Information on the number of retail thefts, shoplifting, and organized retail thefts, including the size of the impacted businesses, the type of property reported stolen, and the monetary value of the stolen goods;
- Information on law enforcement's response to retail theft, shoplifting, and organized crime, including average time to respond, whether an investigation was undertaken, whether arrests were made, and whether referrals were made to the district attorney for prosecution;
- Information on district attorney follow-up on reports of retail thefts, including whether charges were filed and – if not – the reason that no charges were filed; and
- Countywide statistical theft information, law enforcement response, number of citations, number of cases referred for prosecution, and disposition of each case referred.

The LHC has held three convenings on this topic (November 16 and December 14, 2023 and January 25, 2024), and its study is ongoing; more details on the LHC's retail theft study may be found here.

Governor's Property Crime Framework

In mid-January, Governor Newsom – who has been clear that he opposes amending the provisions of Proposition 47 – announced support for a package of bills to address property crime, which would specifically target professional thieves involved in smash and grabs, retail theft, and car burglaries who then profit from the resale of stolen goods. Specifically, the Governor is proposing to (1) create new penalties targeting those engaged in retail theft to resell, and those that resell the stolen property — increasing felony penalties and prison time; (2) bolster existing law to ensure law enforcement can arrest suspects of retail theft, even if they did not witness a crime in progress; (3) clarify that the Penal Code allows law enforcement to combine the value of multiple thefts — even across different victims — to reach the threshold for grand theft; (4) create new penalties for professional auto burglary; (5) eliminates the sunset date for the organized retail crime statute, which will permit the CHP and other involved agencies continue the work of the Organized Retail Crime Task

Force beyond January 1, 2026; and (6) increase penalties for large-scale resellers of stolen goods. Many of these provisions now appear in various pieces of newly introduced legislation in 2024.

It should also be noted that the Newsom Administration has made several hundred millions of dollars in various initiatives to address crime beginning in 2021, including more than $270 million in competitive grants to 55 law enforcement agencies across the state administered through the BSCC that seek to address organized retail theft.

Notable Assembly Bills Introduced

Dozens of Assembly bills have been introduced in 2024 addressing various aspects of theft, including several that propose to amend aspects of Proposition 47. While Governor Newsom and Senate President pro Tempore Mike McGuire both have expressed support for retaining Proposition 47 as it stands, the Assembly has yet to make such a pronouncement. Two bills of note have been introduced in the Assembly:

- **AB 2943**, by Assembly Member Zbur – who serves as Chair of the Select Committee on Retail Theft – and Assembly Speaker Robert Rivas, proposes to create a new crime (retail theft with the intent to sell) to address the issue of coordinated retail theft undertaken for the express purpose of reselling those good online. It would also allow prosecutors to aggregate cross-jurisdictional crimes or against multiple victims. Other provisions would expand the use of diversion and rehabilitation. AB 2943 does not amend the provisions of Proposition 47.
- **AB 1794**, by Assembly Member McCarty who also serves as the recently appointed chair of the Assembly Public Safety Committee, has introduced a spot bill that expresses legislative intent to "enact legislation to address problems relating to retail crime and controlled substances in California by adopting new laws to curtail repeat offenders, reassessing public safety accountability measures, and reexamining [Proposition 47]." Whether and in what form the author plans to move this bill forward remains unknown.

Our initial list of all newly introduced bills in both houses across the spectrum of Prop 47 reforms and retail theft can be found here.

Senate Democrats Release 14-Bill Package for a Safer California

On February 26, Senate President pro Tempore and dozens of his Democratic colleagues released their three-pronged approach to addressing the fentanyl crisis, retail theft, and community-based crimes. Under the banner "Working Together for a Safer California," the Senate has identified 14 measures grouped into two broad categories that take a public health focus to addressing these multi-faceted issues:

- With respect to an evidence-based approach to fentanyl, the Senate has introduced six measures to increase access to treatment, two measures to enhance substance use disorder services in the criminal justice system, and one measure to prevent fentanyl trafficking of Xylazine;
- Under the combatting retail theft and community-based crime, the Senate has introduced one bill regarding prevention of criminal activity, one crime that seeks to deter repeat offenders and crack down on large-scale professional thieves, and three bills to strengthen tools for law enforcement by facilitating arrests and prosecutions of brazen criminal activity.

Crime Ballot Measure in the Works

Finally, an initiative is currently circulating that – if qualified – would appear before voters in November 2024. By increasing penalties for certain drug and theft crimes, the ballot measure would reverse certain penalty reductions enacted under Proposition 47. Additionally, the ballot measure would create a new court process for certain drug possession crimes and require a warning of future criminal liability for people convicted of drug distribution. We will be monitoring the ballot measure in the months ahead, but progress reportedly is being made in the campaign's signature gathering efforts.

Array of Fentanyl Bills Introduced in 2024

The other dimension of the larger public safety conversation is the Legislature's continued interest in the fentanyl crisis. We will be tracking the multiple bills that have been introduced in 2024.

Assembly Bill Tinkers with CCP Membership and Applies Apparent Overlay of Funding Prioritization

Given our firm's direct involvement in the 2011 Realignment fiscal structure and larger statutory design, we are exceptionally sensitive to bills that propose to revise to any degree programmatic or fiscal provisions for realigned responsibilities. With that in mind, we ask that counties review the provisions of AB 2882 by Assembly Member McCarty – the chair of the Assembly Public Safety Committee. Below we summarize the main provisions in this measure, which is co-sponsored by the Steinberg Institute and Californians for Safety and Justice.

AB 2882 would:

- Add two members to the full Community Corrections Partnership, which was established under the performance incentive program for county probation departments under SB 678 in 2009 and then assigned new responsibilities for developing an AB 109 implementation plan in 2011;
- Revise the membership of the CCP Executive Committee, which was established as part of AB 109 in 2011 (and as further amended by AB 117 later that year) for the specific purpose of voting on the AB 109 implementation plan. Specific changes would – rather than have the local board of supervisors identify one from among three specified county departments – require each of those county leaders (social services, mental health, SUD or equivalent agencies) to participate on the CCP Executive Committee;
- Imposes additional oversight and accountability requirements on the board of supervisors with respect to attesting that the local AB 109 plan has been accepted and is accurate before it is submitted to the Board of State and Community Corrections (BSCC);
- Requires (rather than recommends) inclusion of specified plan elements and then mandates inclusion of additional analysis, goals, and recommendations.
- Creates entire new reporting responsibilities to the BSCC with particular focus on categories of expenditure, including behavioral health investments.
- Requires BSCC to create a publicly available dashboard that permits year-over-year and cross-county comparisons.

AB 2882 is eligible for a hearing in policy committee no sooner than March 17. Stay tuned.

Assembly Holds Joint Hearing on Electric Vehicle Charging

The Assembly Select Committee on Electric Vehicles and Charging Infrastructure and the Assembly Committee on Utilities and Energy held a February 21 hearing entitled “More than a Car: Improving the EV Owner

Charging Experience" which highlighted ongoing issues related to access and reliability of EV charging infrastructure.

California Energy Commission (CEC) Commissioner Patricia Monahan's testimony laid out a key theme for the hearing, noting that state needs to have a roughly ten-fold ramp up in EV charging infrastructure over the next seven years to meet goals to have 1 million chargers deployed by 2030 and 2 million in 2035. Legislators highlighted their personal experiences with EV charging reliability, and asked panelists, including both state regulators and private sector organizations working in the EV space, on whether recent regulation on reliability and maintenance of charging stations was sufficient.

Legislators also asked whether greater consolidation of state oversight in the EV charging space was necessary. Commissioner Monahan answered that state roles have become better defined, with the Air Resources Board focused on vehicles and the CEC focused on charging infrastructure, including through a contractual relationship with the Department of Transportation, which receives EV-charging related funding from the federal Infrastructure Investment and Jobs Act.

Legislators have already introduced several bills related to the content of the hearing, including:

- **AB 2029 (Jackson) –** Would require Caltrans to complete a study of electric vehicle charging station public access.
- **AB 2037 (Papan)** – Would allow a county sealer of weights and measures to close an inaccurate electric vehicle charger.
- **AB 2427 (McCarty)** – Would create a model ordinance for permitting curbside electric vehicle charging stations and require consultation with local governments and other stakeholders.
- **AB 2697 (Irwin) –** Spot bill on electric vehicle charging infrastructure.
- **AB 2815 (Petrie-Norris) -** Would create a program to provide grants for repairs to electric vehicle charging infrastructure.
- **SB 1510 (Stern)** – Spot bill on state and local electric vehicle charging permitting.

Materials from the hearing are available online, and the background paper is available here.

Assembly Convenes First MCO Tax Budget Hearing

Assembly Budget Subcommittee No. 1 had its first hearing of 2024 and devoted the entire agenda to discussing the Managed Care Organization (MCO) tax. The discussion focused on four issues in the budget related to the MCO tax, including: 1) the proposal to increase the tax to raise $1.5 billion in additional state revenue; 2) the proposal to shift $3 billion in MCO Tax reserves to general support for Medi-Cal; 3) the Targeted Rate Increases (TRI) for Medi-Cal providers; and 4) the state's budget proposal on Medi-Cal Targeted Provider Rate Increases and Investments Workload.

The agenda directed the Department of Health Care Services (DHCS) to address two questions regarding:
1) whether the proposed diagnosis-related group (DRG) rate system for Designated Public Hospitals (DPHs) will adequately cover their Medi-Cal costs and 2) how the Targeted Rate Increases proposal affects cost-based supplemental payments to DPHs.

DHCS responded that they are working with public hospitals on the proposal. DHCS intends the DRG to be sufficient to cover existing costs, and they have modeled a range of different estimates. The department intends to work closely with CAPH to evaluate the extent to which the DRG will cover costs, which will be heavily dependent on assumptions related to enrollment and utilization. DHCS will have significantly more clarity in the coming months. The department reiterated that they do not intend to disrupt public hospital finances.

Subcommittee heard from a panel of stakeholders. The following is a summary of the comments from panelists:

- *California Association of Public Hospitals*. Because of very low Medi-Cal rates, the MCO tax is a huge opportunity to support low-income communities. Public hospitals are comfortable and supportive with DRG structure, but they have concerns about the proposal to eliminate cost based supplementals. CAPH noted that $150 million in DRG payments would come nowhere close to covering public hospital costs, and some public health care systems could lose money. Further, CAPH is hopeful that the concern with elimination of the cost-based supplementals can be addressed in the coming weeks and months. Public hospitals also expect to benefit from other buckets, such as training, emergency department and behavioral health.

- *SEIU California*. SEIU is supportive of the MCO tax, concurred with the comments on public hospitals, and commended the Administration for early engagement. SEIU also made supportive comments about the MCO tax workforce investments.
- *California Hospital Association*. CHA reminded the subcommittee of the low Medi-Cal reimbursements and cost pressures impacting hospitals, including pandemic losses, inflation pressure, and workforce shortage. CHA also pointed out that DHCS's methodology for Targeted Rate Increases are complex with significant details outstanding.
- *California Medical Association*. CMA noted that the MCO tax is the largest investment in Medi-Cal program in existence and reminded members that providers have not seen base payment rate increases since 1998. CMA also pointed out the overarching problem of access across the state. Overall, the goal is to increase providers participating in Medi-Cal. The vast majority of providers will see rate increases 18 months later. It will take time to expand their practices. CMA urged the Legislature to keep the provider rate framework deal intact. CMA stated that providers need stability and need to know there is a deal that will continue to allow providers to expand their practices.
- *California Primary Care Association*. The clinics appreciated the subcommittee's conversation on their supplemental payment pool. There are some outstanding issues with the managed care directed payment and clinics look forward to resolving with DHCS before the transition to directed payment. They are supportive of the directed payment.
- *Planned Parenthood*. MCO tax is a sustainable funding solution. They applauded the base rate increases, rather than supplemental payments. Planned Parenthood has had issues with timely payments of supplemental payments.
- *Local Health Plans of California.* LHPC represents the 17 community-based Medi-Cal managed care plans that operate in 51 of 58 counties. The MCO funding critical in short term to increase providers and in the long term to stabilize Medi-Cal and pipeline training. LHPC reminded the subcommittee that even simple rate increases will be complicated because of complex Medi-Cal payment arrangements, like delegated arrangements. LHPC urged that the rate increases be administered through known financing mechanisms and suggested to the subcommittee that the details of the mechanics are very important. They also suggested simplifying the approach to the rate increases and allow plans a degree of flexibility.

The Assembly left all items open. Senate Budget and Fiscal Review Subcommittee No. 3 is anticipated to discuss the MCO tax on April 4 when they hear Medi-Cal budget items.

Office of Health Care Affordability Continues Spending Target Discussions

The Office of Health Care Affordability (OHCA) Board met on February 28 for more than six hours to discuss several items; chief among them was continued deliberations on setting the statewide spending target (agenda, materials).

OHCA has heard from the board and the public about potential factors that should be considered when assessing an entity's performance against the target. Such factors may contextualize an entity's spending growth as well as potentially mitigate steps in the progressive enforcement process. Some of the potential factors that have been surfaced to OHCA by the Board, Advisory Committee, and stakeholders, as well as described in the statute include:

- Statutory changes impacting health care costs
- Investments to improve care and reduce future costs
- Acts of god or catastrophic events
- Emerging and unforeseen advances in medical technology
- Emerging high-cost / high-value pharmaceuticals and cost increases related to specialty pharmaceuticals
- Costs associated with increased organized labor costs
- Annual changes in age and sex of the entity's population

Staff then engaged the Board in discussion on additional factors to consider when measuring performance against the target. Highlights of the discussion include:

- Questions about how the Board is going to operationalize factors to consider in performance. Board members urged transparency in that process. Is the Board going to create policies so there is consistency and clarity to the covered entities so they know what to expect?
- Medi-Cal is underfunded; the Board should figure out how to correct for underfunded entities.
- How will the spending target incorporate public health?
- Should there be a clinical risk adjustment?
- Develop criteria and algorithms that are explicit as possible.

- Concerns that those entities that can put together an argument better will do better at arguing for adjustments (those that have resources v. those that don't).
- With 3% target we should expect lots of requests for adjustments. At what point will be discussing adjustments in the target itself? There are two ways to address a low target: to adjust the target itself or have individual adjustments.
- Several items on this list may be strongly correlated with age and gender. Are we thinking about different types of adjustments or granularity, such as regions or medical groups? Will there be adjustments based on the size of the organization?
- Regarding historically underfunded entities, is there a scenario where PCP practices are exempted? Or a rural adjustment? When will we have those conversations? How are we looking at health plans and intermediaries like PBMs

The Board heard extensive public comment on the spending target. A number of labor groups, including Unite Here, hotel workers, carpenters' union, the California Federation of Teachers, the California Faculty Association, and consumer groups, such as Health Access and the California Pan Ethnic Health Network, continue to voice strong support for the 3% target.

Providers – including hospitals and physicians – and health plans continue to express concerns with the target. The California Hospital Association urged the board to reconsider 3% target, asserting it represents a 40% drop in health care spending compared to historical trends. On its own the MCO tax will increase health care spending by 1% or 1/3 of target. Medi-Cal is expected to grow 5-6% on a per capita basis. A lot of work has yet to be done on the enforcement process. Because the spending target is the most impactful decision OHCA board will make this year, CHA urged the Board to take the time needed to make a thoughtful decision, and specifically asked the Board to deliberate at March meeting and make decision at subsequent meeting.

The public hospitals continue to raise concerns about considerations related to Medi-Cal. Imposing this target in Medi-Cal implies that baseline spending is adequate to begin with, but Medi-Cal reimbursement is nowhere close to covering the cost to provide care and this must be taken into account. Furthermore, Medi-Cal financing is complex and little discussion has been had on how the spending target program will apply in Medi-Cal. For example, stakeholders are unclear as to what spending will be measured, how certain financing arrangements will be treated, or how spending would be attributed, among other issues. They urged the Board to adopt a more realistic and attainable spending target and to limit it to an initial one-year cycle.

The California Association of Health Plans reiterated that it would be a mistake to make a quick decision on the spending target and suggested that a May vote would be more appropriate to take time to consider stakeholder feedback. Kaiser noted their pharmaceutical and labor costs are nowhere near 3%.

The next OHCA Board meeting is March 25.