



2011-2012 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT

AB 109/AB 117 REALIGNMENT: IS SANTA CLARA COUNTY READY FOR PRISON REFORM?

Introduction

As a result of a lawsuit brought by inmates of California state prisons,¹ the United States Supreme Court ordered the State of California to reduce its prison population by more than 30,000 inmates over a three-year period of time.² The state intends to achieve this reduction through legislation created to transfer responsibility for incarceration and supervision of certain low-risk offenders from the State to its 58 counties. The legislation that accomplishes this transfer of responsibility is Assembly Bill 109, the Public Safety Realignment Act (AB 109).³ AB 109 and a companion bill AB 117 (collectively referred to herein as AB 109) transfer the responsibility of supervising certain low-risk offenders being released from state custody back to their county of legal residence for supervision by a county agency. The legislation also changes the penal code and sentencing laws to allow new offenders to be sentenced to local jail rather than to state prison.

From the beginning, AB 109 was widely criticized as a drastic and hasty implementation of the Supreme Court's Order. The media, and to some extent law enforcement agencies, painted a vision of how AB 109 would create unsafe communities. Reports of counties being inundated with vicious parolees and overwhelmed with new criminal activity and overcrowded jails were typical.

The Grand Jury sought to better understand AB 109 and whether Santa Clara County (the County) was adequately prepared for its implementation.

Background

The objective of AB 109 legislation is to reduce California's prison population. It further gives counties the option to invest in alternatives to jail, including out-of-custody rehabilitative treatment or programs. The legislation makes it clear from the outset that:

¹ Prisons are state-run incarceration facilities; jails are county-run incarceration facilities. An inmate who serves a sentence that includes post-release supervision is supervised by parole if released from a prison or probation if released from a jail.

² See <http://www.cdcr.ca.gov/news/docs/2011-05-23-three-judge-panel-background.pdf>

³ AB 109 was signed into law on April 4, 2011. Subsequently, Assembly Bill 117 (AB 117) was signed by the Governor on June 30, 2011, further outlining provisions of realignment. See California Penal Code Sections 1128 – 1233.8

- No inmates currently serving their sentence in state prison will be transferred to county jails to finish serving their sentence
- No inmates currently in state prison will be released early
- All persons sent to state prison will serve their entire sentence in state prison
- All persons convicted of more serious or violent offenses, felony sex offenses, sex offenses against children, and gang-related felonies will go to state prison.

To be classified as an AB 109 offender, the individual's crime must be non-violent, non-sexual or non-serious related. These are referred to as "N/N/N" crimes.

The County has received state funding for the first year of AB 109 implementation (FY 2011/2012) totaling \$14.1M. Future state funding is not guaranteed, although reportedly the state is budgeting AB 109 funding for FY 2012/2013.

AB 109 further dictates that each county must form a Community Corrections Partnership (CCP), chaired by its Chief Probation Officer, to implement the legislation. The County's CCP developed implementation and spending plans.⁴

Consistent with the legislation's intent that realignment plans would include non-jail alternatives, the County's plan outlines a "treatment versus reincarceration" strategy with the following objectives:

- Increased use of out-of-custody sanctions and programs versus reincarceration
- Increased connections and coordination among potentially helpful persons and services in the community
- An efficient system that strengthens cross-agency coordination and use of services
- More successful outcomes related to housing, sobriety and employment
- Reduced offender recidivism rates
- Reduced prison sentences from the County
- Reduced racial and ethnic disparities in key decisions across the criminal justice system courts.

Although the transfer of control is gradual, the County expects to receive approximately 1100 individuals released from prison to probation supervision at full implementation.⁵ Additionally, an estimated 800 individuals sentenced by local courts to serve time in County jail will eventually be released to probation.

⁴ Santa Clara County 2011 Public Safety Realignment Implementation Plan. Find more details and copies of the County's implementation plan at: <http://www.sccgov.org/keyboard/attachments/BOS%20Agenda/2011/September%2027,%202011/203452059/TMPKeyboard203690958.pdf>

⁵ 2011 Public Safety Realignment Implementation Plan, pg. 5.

Methodology

The Grand Jury investigated the following topics:

- The County's Implementation plan, including the Re-entry Resource Center (RRC) and the CCP's approach to re-entry programs
- The CCP and its roles and responsibilities
- Facilities concerns
- Funding
- Measurements: Defining success
- AB 109 N/N/Ns versus other offenders released from jail.

The Grand Jury interviewed members of the CCP and others who are closely connected with AB 109 implementation. The Grand Jury attended numerous public meetings to observe the CCP in action. This provided an understanding of how community-based organizations (CBOs), mental health, and other treatment providers were involved in the planning and implementation efforts.

The Grand Jury toured the jail facilities and the RRC. The Grand Jury also reviewed the *Santa Clara County 2011 Public Safety Realignment Implementation Plan* and its corresponding Spending Plan, as well as other documents related to AB 109.

Discussion

A broad spectrum of approaches, from incarceration to treatment, is available to counties in dealing with individuals who fall within the AB 109 N/N/N criteria. The County's plan is focused toward treatment rather than reincarceration. It is based on the assumption that changing underlying beliefs, attitudes and criminal thinking is key to changing an offender's behavior. This approach is not new to the County's criminal justice system. The Grand Jury learned that preceding AB 109 was the formation of the County's Re-Entry Network, which first embraced the treatment versus reincarceration approach. The Re-entry Network was established by the Board of Supervisors (BOS) in May 2011 to help the County develop cross-departmental and comprehensive re-entry and recidivism reduction strategies. These strategies included those needed to prepare the County for state realignment under AB 109. The efforts of the Re-entry Network had been limited due to lack of funding; however, because the implementation approach to AB 109 is consistent with the vision of the Re-entry Network, the County is able to accomplish some Re-entry Network recommendations using AB 109 funds.

For example, the CCP has implemented a new probation approach, which focuses on a cognitive behavioral therapy (CBT) approach to AB 109 inmates. The CCP has also identified a network of support and treatment programs as conditions of probation. A revised system of graduated sanctions and rewards is also available. The new approach of sanctions does not automatically start with a probation violation and a return to jail; however, the courts retain the option to reincarcerate as the more serious deterrent.

Successful AB 109 implementation depends on many county agencies working together. Under the leadership of the CCP, agency interdepartmental barriers, such as lack of coordination among similar providers, are beginning to break down, which will facilitate realignment implementation. However, some barriers continue to exist as discussed below.

The County's Implementation Plan

The CCP developed the County's realignment implementation plan, which was approved by the BOS on September 27, 2011. According to the plan, the key elements of AB 109 that the counties must plan for include the following:

- **Redefining Felonies:** Revises the definition of a felony to include certain crimes that are punishable in the county jail for terms in excess of one year. Offenders serving their commitment locally will be eligible for release programs and may be subject to a period of "mandatory probation."
- **Post-Release Community Supervision (PRCS):** Offenders released from state prison on or after October 1, 2011 after serving a sentence for an eligible offense shall be subject to a period of post-release community supervision for a period not to exceed three years.
- **Revocations:** PRCS, mandatory probation and parole revocations (i.e., violations) will be served in local custody, with a maximum revocation sentence of up to 180 days.
- **Custody Credits:** County jail inmates will be able to earn four days of credit for every two days served, which is comparable to credits earned when serving state prison commitments. Time served on home detention (e.g., electronic monitoring, global positioning system) is credited as time spent in local county jail custody.
- **Alternative Custody:** Penal Code §1203.018 authorizes electronic monitoring for inmates being held in the county jail in lieu of bail. Eligible inmates must first be held in custody for 60 days post-arraignment (30 days for those charged with misdemeanor offenses).
- **Community-Based Punishment:** Authorizes counties to use a range of community-based punishment and graduated sanctions other than reincarceration alone or traditional probation supervision.

Generally, the County's approach is to work with offenders through counseling, services and treatment on the problems that lead to criminal behavior. This approach produces improved social behaviors, such as working, avoiding substance abuse, performing community service and paying court-ordered obligations.

The plan addresses the PRCS population, who are those released under AB 109 from state prison. The plan also serves those who commit a new offense that falls under the AB 109 N/N/N criteria and are serving their sentence in jail.

To prepare for AB 109 implementation, the County initiated a pilot program to assess state prison inmates about to be released. The re-entry team, made up of representatives from Probation, Mental Health and the Office of the Sheriff, interviewed 50 inmates using a risk and needs assessment tool. This assessment information was used to develop individualized case plans. The risks so identified helped the team to determine the appropriate level of supervision required. The needs so identified helped to link offenders to appropriate community services. The assessments took into consideration the individual's past criminal history. This assessment knowledge mitigates the risk that an offender who is of more serious concern than their N/N/N status indicates will move into the community because Probation is able to plan appropriate supervision. Following the pilot program, assessments are now being conducted by Probation agents for individuals being released from state prison or by rehabilitation agents for individuals being released from County jail. Individualized case plans better prepare offenders to successfully re-enter society. The breadth and effectiveness of these assessments will, in large measure, determine the County's future AB 109 pre-release assessment strategy.

The re-entry teams also provide intensive supervision and services for 30 to 90 days after release to ensure the needs of the offenders are addressed and they are adjusting in the community. Following this initial team supervision, offenders will be supervised by the Probation Department.

For both the re-entry teams and probation, the plan calls for a new case supervision management protocol that incorporates the principles of evidence-based practices.⁶ This protocol includes motivational interviewing techniques,⁷ graduated sanctions and the use of cognitive-based therapy (CBT)⁸ interventions.

The Community Corrections Partnership

AB 109 mandates that counties establish a CCP consortium to plan for and implement AB 109 requirements. The CCP makeup was mandated by the legislation to ensure cross-departmental representation. The County added mental health and other treatment providers to its team. The County's CCP includes the following individuals:⁹

⁶ Evidence-based practices are those that have been proven in practice to have positive effects.

⁷ Motivational interviewing is a semi-directive, client-centered counseling style for eliciting behavior change by helping clients to explore and resolve ambivalence

⁸ Cognitive behavioral therapy is defined by the Mayo Clinic as a common type of mental health counseling where one works with a mental health counselor in a structured manner.

⁹ Asterisks indicate individuals who also serve on the Executive Committee of the CCP, tasked with the development of the implementation plan and leading the overall realignment effort in SCC.

- *Sheila Mitchell, Chief Probation Officer (Chair)
- *Karen Fletcher, Deputy Chief Probation Officer
- *Laurie Smith, Sheriff
- *Richard Loftus, Jr., Presiding Judge, Superior Court
- *Mary Greenwood, Public Defender
- *Kevin Kyle, Chief of Police, City of Santa Clara
- *Jeff Rosen, District Attorney
- *Bob Garner,¹⁰ Director, Department of Alcohol and Drug Services
- *Nancy Peña, Director, Mental Health
- *Gina Sessions, Acting Director, Social Services Agency
- Gary Graves, Chief Operating Officer
- Erin O'Brien, CEO/Director, Community Solutions
- Rose Amador, President/CEO, Center for Training & Careers
- David Tran, Director, Victim Witness Assistance Program
- Charles Weis, Superintendent, County Office of Education.

The CCP serves a critical role in developing cross-departmental collaboration to accomplish the AB 109 goals. The partnership is working together to implement new, improved approaches to treatment versus incarceration. It should be noted that the penal code provides that the CCP is responsible for the implementation plan, but is silent on its future purpose.¹¹ The Grand Jury observed that the CCP serves a valuable role in coordinating the stakeholder functions. The following sections provide an overview of the CCP member department roles.

Probation

The Probation Department (Probation) is heavily impacted by the changes mandated by AB 109. For this reason, Probation chairs the CCP and plays a key role in shaping the County's approach to AB 109 implementation. New Probation officers are being hired to handle the influx of those released. As noted above, Probation is a member of the re-entry team, which plans for an individual's re-entry needs. In addition, Probation officers are being trained in CBT interviewing techniques. This will support the new

¹⁰ Now retired.

¹¹ See California Penal Code Sections 1128 – 1233.8

approach of treatment versus reincarceration should a probationer violate the terms of their probation. These interviewing techniques and more intense case management and treatment support are intended to achieve long-term success. This will help probationers constructively get their lives under control, which in turn is expected to result in fewer offenders returning to criminal activity, thereby reducing recidivism and jail population.

Sheriff—Department of Correction

The Office of the Sheriff, which operates the Department of Correction (DOC) is also significantly impacted by AB 109 mandates. DOC, which manages the incarceration facilities, anticipates an increase in the jail population. The near-term impact of AB 109 will be a minor increase in booking activity at the Main Jail. According to Sheriff's staff, new N/N/N crimes being committed in the county will also drive the need for additional beds and increased DOC staff at the Main Jail and the Elmwood Correctional Facility. The anticipated increase in jail population is between 5% and 18%. Current Average Daily Population (ADP) is approximately 3500.¹² Jail bed space totals approximately 3825. While there appears to be capacity to accommodate the newly sentenced AB 109 felons, the DOC points out that jail facilities are not conducive to long-term stays.

The DOC is also responsible for supervising some of the alternative sentences, including electronic monitoring, day reporting and home confinement that may alleviate jail population and are available under AB 109. Alternative sentences are still custody responsibilities of the DOC and may require additional staffing or a shift in responsibilities of existing deputies to actively monitor individuals sentenced to non-jail custody.

Rehabilitation officers (ROs) provide the individual case-management attention the County's implementation plan deems so critical to success. Prior to release, they complete an assessment that ultimately recommends an out-of-custody course of action. Adding ROs makes sense and is consistent with the overall CCP initiatives. As stated in the AB109 Implementation Plan, re-entry planning is essential for individual success. According to the Implementation Plan, the DOC will "have to be involved in the attempt to reduce recidivism by taking an active part in re-entry. Providing re-entry programs for the inmate in their actual county of residence is an opportunity to achieve a higher level of success."¹³

¹² Per interviews with the DOC.

¹³ Santa Clara County, California, 2011 Public Safety Realignment Implementation Plan, August 25, 2011, p. 30.

Superior Court

Santa Clara County Superior Court (the Court) has been implementing certain provisions of AB 109 even before the legislation was passed. For example, efforts are underway in mental health courts, drug courts, and family wellness courts to redirect low-risk individuals away from incarceration to court-supervised programs and treatment. The philosophy is that when courts intervene to motivate these individuals to contribute positively in the community, a more serious life of crime may be averted. To this end, the Court employs a variety of incentives and sanctions where treatment and rehabilitation are provided; however, if the probationer violates probation and poses a substantial risk to the community, is likely to reoffend or has refused or not benefited from alternative treatment, the Courts have the authority to reincarcerate. The efforts of Department 64, under the purview of Judge Manley, are particularly well aligned with the County CCP's AB 109 Implementation Plan philosophy. In this courtroom, the Judge takes a strict but encouraging approach, providing many resources for alternatives to reincarceration

The District Attorney and the Public Defender's Offices

Interviews with the Offices of the District Attorney (DA) and the Public Defender (PD) acknowledged that AB 109 has a relatively small impact on their day-to-day work. This is underscored by the latest spending plan status, which reports a total of four positions have been added to their staffs largely devoted to PRCS violation hearings. However, their involvement with the CCP ensures these departments are informed about the strategies and approach of the CCP, particularly as it relates to the probation revocation process. This would include, for instance, graduated sanctions as opposed to reincarceration. The DA and PD are committed to consistent implementation of these sanctions to ensure consistency in the supervision and prosecution of PRCS violation hearings.

Law Enforcement¹⁴

Law enforcement agencies have expressed concern that they will see more criminal activity with the introduction of re-entering offenders; however, these are individuals who would have been released to their county of residence via state parole, with or without AB 109. Under AB 109, the County seeks to support these individuals in rehabilitative ways not previously tried.

Law enforcement also expressed concern that AB 109 releases N/N/Ns in accordance with their most recent crime, without taking into consideration the person's complete criminal history. The County mitigates this risk with its approach to assessment, which takes into consideration the individual's complete past criminal history. The tailored re-

¹⁴ For the purposes of this report, law enforcement refers to the town and city police departments and the Office of the Sheriff.

entry plans can alleviate risks associated with an individual whose criminal history suggests that the individual is a greater risk than the more recent N/N/Ns criteria alone would indicate.

Department of Alcohol and Drug Services (DADS)

DADS is a gateway for individuals seeking treatment of alcohol and drug addiction, including detoxification treatment, transitional housing or residential treatment. Reportedly more than 80% of the jail population has drug or alcohol abuse problems, meaning DADS' role is critical in the County's AB 109 efforts. A significant barrier to correcting behavior is finding a way to control one's drug or alcohol addiction. Treatment experts interviewed agree that addiction is a disease that may result in persons living chaotic lives. Such individuals have difficulty seeking effective treatment. Therefore, providing a structured approach to controlling the chaos will aid in controlling addiction. DADS further supports the CCP-recommended longer period of providing structured service—three to nine months—but recommends starting services prior to release, with continuity during the re-entry process.

Mental Health

Mental Health offers a key role in conducting the individual pre-release assessments. Using the Re-entry Multi-Agency Plan (Re-entry MAP), which is a pilot assessment tool funded outside AB 109, the assessment seeks to gather information to develop a plan for each individual released to the community. Other agencies participating in the Re-entry MAP are Probation, Custody Health Services, DADS and SSA. The assessments seek to address the following:

- What needs do the re-entry individuals have?
- What treatments, programs or services are available to meet these needs?

Individual re-entry plans are developed from this information (also known as Re-entry service plans or case plans). The aggregated assessments are used to analyze whether county-wide policies and programs or service level changes are needed to meet the broader needs and achieve maximum outcomes for this population. The Mental Health department has outlined desired outcomes and is developing ways to measure the effectiveness of the assessment tool.

Social Services Agency

The Social Services Agency (SSA) provides transitional assistance either directly or through various CBOs contracted by SSA. This assistance includes money, food stamps, transitional housing and child support. AB 109 will have minimal impact on SSA because they would provide their services to inmates released from prison or jail, whether or not they are classified under AB 109.

Community-Based Organizations (CBOs)

The County contracts with numerous CBOs to provide the critical services needed for those re-entering our community. These services include drug and alcohol addiction treatment, mental health treatment, sober living housing, transitional housing and more.

Faith-Based Initiatives

The Re-entry Network, which pre-dates the AB 109 plan, has already activated reliance on faith-based organizations as partners in fulfilling the Re-entry Network's vision.¹⁵ Faith-based organizations have shown interest in partnering to accomplish the goals reducing recidivism. Although faith-based organizations are not an official partner of the AB 109 Implementation Plan, nor do they receive AB 109 funding, their potential supporting role could be significant. In collaboration with other support programs, faith-based groups offer the connections to potentially helpful persons who can broaden and strengthen the safety net offered to released individuals.

Reducing Recidivism: The CCP's Approach to Re-Entry Programs

The Grand Jury's interviews with experts in Health and Human Services underscored a common theme: treatment, programs and services are effective rehabilitation tools. But these experts recommended that it is critical to begin them while in jail and continue them—without interruption—upon release. A common observation made by interviewees is that when individuals are released to the community without support or specific community connections, they are likely to wind up back in jail. Without a specifically identified mentor or support program to go to, released individuals will likely go back to their old ways.

Probation picks up this re-entry planning task when an individual is released; however, the DOC could further contribute to the success of AB 109 by increasing the availability of programs to more inmates and/or by increasing the number of ROs to ensure all inmates are aided with pre-release treatment strategies and with re-entry planning.¹⁶ Starting treatment in jail and working with a provider that will continue treatment upon release eases the re-entry transition. This also ensures the released individual is held accountable by the same person throughout their reintegration process.

In addition, out-of-custody program sentencing requirements should look for longer periods of treatment rather than the typical 30 – 45 days. According to criminal justice experts interviewed, longer periods (e.g., 6 months to a year) for treatment or safe housing are more effective in helping individuals succeed, make better decisions and choose to avoid criminal behavior.

¹⁵ Re-entry Network Presentation, August 2011 and Joint City of San Jose City Council - Santa Clara County Board of Supervisors Meeting, October 28, 2011.

¹⁶ For a discussion of in-custody programs and re-entry planning, see the 2011-2012 Grand Jury report titled, "Custody or Rehabilitation? The County's Approach to Women Inmates at Elmwood."

Re-entry Resource Center (RRC)

Among the most noteworthy accomplishments of the CCP is the implementation of the RRC, located at 151 Mission Street, San Jose, close to the courts and the Main Jail. According to the Office of the County Executive:

The RRC is a “one stop shop” where individuals released to County supervision will receive referrals and/or services that will assist their personal success, and prevent recidivism. Agencies and Services at the RRC include (but are not limited to) Drug and Alcohol Services, Mental Health, Peer Support, Vocational Training, Employment and Education and Support Services. Ministry and Mentorship opportunities will be provided through the Faith Based Collaborative, a partnership in the process of being designed in conjunction with Mental Health as a MHSA¹⁷ Innovation Project. The RRC is a perfect location for the referrals and services to be provided that will assist our county residents facing the challenge of restructuring their lives.¹⁸

The RRC includes partnerships with various county departments and CBO agencies working together to offer opportunities such as adult education and training in assisting individuals with obtaining gainful skills for re-employment. For example, facilitators from Milpitas Adult Education will deliver on-site learning in dedicated classrooms.

With rare exceptions, DOC officers are trained in correction (or law enforcement), not rehabilitation. However, the RRC is clearly a center dedicated to re-entry and rehabilitation support. To date it has been staffed without any staff that specializes in case management. A rehabilitation objective carried out by supervision-oriented staff seems to be at odds with the CCP’s overall vision.

Facilities Concerns

Not including AB 109 sentences, the average length of time in jail is 155 days; longer jail sentences of up to 18 – 24 months are also served. The DOC contends that inmates sentenced under AB 109 can potentially serve in county custody for up to six years, and therefore the DOC requires upgrades at Elmwood to accommodate longer sentences. But evidence does not yet support that individuals sentenced under AB 109 will serve longer sentences than the longest of those inmates already housed in jail. According to the criminal justice system experts interviewed, this is because AB 109 allows for reduced sentences and out-of-custody supervision, considerably shortening the time in custody. In the meantime, the DOC is conducting a facilities needs assessment, which will recommend areas for improvement should that need arise.

¹⁷ Mental Health Services Act.

¹⁸ County of Santa Clara Office of the County Executive, report back from the Center for Leadership and Transformation’s Re-Entry Transformation Team, March 14, 2012, Commission Agenda Item 4, p. 5.

Funding

The County's initial and current funding allocations are shown in Table 1.¹⁹ Initially, the allocations were roughly equally divided among the DOC, Probation and programs. The latest allocation substantially increases the DOC's funding from 24% to 33% of the total funds allocated (as of April 2012).

Table 1: Initial vs current allocation of AB 109 funds to County Agencies

	In Custody/ Out of Custody	Initial Allocation (September 2011)		Current Allocation (April 2012)	
		\$	% of Total	\$	% of Total
DOC	In Custody	3,469,588	23%	4,989,876	33%
Probation	Out of Custody	3,339,692	22%	3,806,239	25%
Programs/ Services	Out of Custody	3,653,077	24%	4,008,077	26%
Custody Health	N/A	852,678	6%	882,678	6%
Misc	N/A	1,200,444	8%	1,314,342	9%
Reserve	N/A	2,741,053	18%	255,320	2%
Total		15,256,532		15,256,532	

The state has funded AB 109 implementation through the end of FY 2011/2012. Future funding for FY 2012/2013 should be in place July 1, 2012 if the state continues to fund county AB 109 implementation efforts. Following the passage of AB 109, the legislature passed several bills geared to fund the costs of realignment. Although County officials understood this year's funding, they are unable to calculate precisely what will be forthcoming in future years.

Separate from implementation money, the Penal Code does allow for incentive and performance funding through an elaborate set of metrics.²⁰ Generally speaking, the incentives are based on keeping individuals out of jail using approaches similar to those included in the County's implementation plan. It would be prudent for the County to familiarize itself with the criteria for incentive-based payments and begin steps to maximize its potential for future AB 109 funding.

¹⁹ The detailed initial funding allocation is provided in Appendix A. The detailed current allocation is included in Appendix B.

²⁰ Penal Code Sections 1233.4 – 1233.61

Measurements: Defining Success

The planning and early implementation of AB 109 has been good. The CCP implementation plan offers the following “Proposed Outcome Measures”:²¹

- Increase use of out-of-custody sanctions and programs
- Increase connections between and coordination among offenders and potentially helpful persons and services in the community
- An efficient system that strengthens cross-agency coordination and use of services
- Increase outcomes related to housing, sobriety and employment
- Reduce offender recidivism rates
- Reduce prison sentences from the county
- Reduce racial and ethnic disparities in key decisions across the criminal justice system courts.

These are not measures; they are goals and do not identify the specific metrics by which to gauge the implementation approach’s success or failure.

Measuring recidivism is a complicated matter, and no two agencies interviewed agreed on how it should be measured. Nevertheless, the penal code sets forth metrics for determining success, and the CCP should plan to develop a method for collecting and reporting the data accordingly.

Allocating future funds based on sound metrics can help to de-politicize funding decisions, and such data will be invaluable in assisting the BOS in making future criminal justice and support programs’ funding decisions. Additional oversight, such as through an independent auditor, offers a means to ensure funds are effectively spent.

AB 109 Releases versus Others Released from Jail

Special attention is being given to those offenders released under AB109 because the County is required to do so. But hundreds more are being released from the jails to the community with similar histories who would also benefit from the re-entry planning afforded to those who fall under AB109.

If the County wants to further reduce recidivism, AB 109 efforts may warrant being offered to more individuals than just the N/N/Ns. For example, if re-entry assessments and plans are provided for more than AB109 releases, it may lead to even safer communities.

²¹ Implementation Plan, pg. 36.

Conclusion

The Grand Jury concludes media claims that painted a vision of how AB 109 would create unsafe communities have thus far not materialized. The County's approach is unique, humanitarian and has been widely recognized as one to be noted for its groundbreaking potential.

The approach each county undertakes to implement AB109 is unique. The County's approach is focused on treatment versus reincarceration and is based on evidence that this strategy works to reduce crime. The County CCP's efforts at implementing AB 109 are based on an assumption that rehabilitation is a responsibility shared by all stakeholders on the CCP. The County's approach is building a stronger partnership among county providers seeking to ensure all parties share in the need for a consistency of message and consistency of how the N/N/Ns individuals are treated.

The Grand Jury found the County's CCP planning efforts to be inclusive of agencies that have a direct role in controlling the outcomes. It is thorough in its approach and is progressive in looking to implement supervision, counseling and treatment alternatives to reincarceration. The CCP serves a valuable role in coordinating the stakeholder functions, which should further ensure success. The CCP can serve a continued role in gathering data, evaluating progress and adjusting the plan, funding, and personnel recommendations to ensure the client needs are served over agencies' desires to augment budgets.

With the success of the County's approach to AB 109, the treatment versus reincarceration approach could be expanded to more individuals than just the AB 109 N/N/Ns. Long term, if the County's approach to AB 109 proves effective, one could anticipate a decrease in jail population. Additionally, the jail can expand its rehabilitative role, which is consistent with the Sheriff's assertion in the Implementation Plan that the DOC needs to play a larger role in re-entry planning.²²

Although the amount of future funding to be received is not yet known, AB 109 is a funded mandate and the counties have little choice but to implement this legislation. However, the County can augment future funding by aligning with and reporting on incentive metrics. It should be noted that all interviewees stated AB 109 is the most significant change to the state's criminal justice system in decades. Implemented effectively, the County's strategy is expected to contribute to reducing the state's prison population and to reducing crime, consequently leading to safer communities.

²² Implementation Plan, pg. 30.

Findings and Recommendations

Finding 1:

The County, through the CCP, has developed a well thought out and progressive approach to AB 109, based on a strategy of treatment versus reincarceration.

Recommendation 1:

None

Finding 2:

The County has missed the opportunity to proactively communicate its work and progress to the community at large. This leaves county residents vulnerable to misinformation.

Recommendation 2:

The County should proactively and regularly communicate its approach to AB 109 and its progress, through community outreach or the media to communicate its successes, to educate the public, and debunk misunderstandings.

Finding 3:

The County has not defined the metrics it will use to measure success. State-funded incentive payments will be measured by metrics detailed in the penal code.

Recommendation 3:

The County should ensure the County Probation Officer is developing a means of gathering the data and reporting on the metrics outlined in the penal code, as well as developing the metrics to evaluate the success of the CCP Plan as a whole.

Finding 4:

The County's CCP is a cross-functional team made up of the right stakeholders who are collaborating effectively on AB 109 implementation.

Recommendation 4:

The County should consider establishing a long-term role for the CCP to ensure the gains made by their collaboration continue.

Finding 5:

The CCP recommended and the BOS approved a Re-entry Resource Center (RRC) located in a convenient, central county location, for both AB 109 releases and others being released from county jail.

Recommendation 5A:

The County should ensure the RRC continues to be fully staffed with the County agencies and CBO representatives needed for effective re-entry, including the addition of case managers to aid in out-of-custody rehabilitation planning.

Recommendation 5B:

The County should communicate broadly, with a clear and consistent message to in-custody and out-of-custody clients, that the RRC is open for business and what resources are available there.

Finding 6:

The Sheriff argues that Elmwood Correctional Facility was not designed to house longer-term inmates and needs funds for facility upgrades.

Recommendation 6:

The County should continue to monitor the AB 109 length of stays to determine whether long-term facilities upgrades are needed.

Finding 7:

The County's approach to implementing AB 109 is progressive, evidence-based and focused on treatment versus reincarceration. It is currently limited to just those individuals that fit the AB 109 N/N/Ns criteria.

Recommendation 7:

The County should consider expanding its AB 109 approach to support other individuals being released from jail.

Appendix A: Santa Clara County 2011 State Realignment Spending Plan Allocation, September 2011

Attachment A - Spending Plan

COMMUNITY CORRECTIONS PARTNERSHIP - SPENDING PLAN

IDENTIFIED FUNDING SOURCES FOR REALIGNMENT	
AB 109: Post-release Community Supervision or local incarceration	\$12,566,312
AB 109: District Attorney/Public Defender - Revocation Cases	\$450,444
AB 109: Training/Retention (one-time)	\$886,700
AB 109: CCP Planning (one-time)	\$200,000
Subtotal AB 109	\$14,103,456
MHSA: Mental Health Services Act	\$853,076
SB 678: Probation	\$300,000
Subtotal Non-AB 109	\$1,153,076
All Identified Sources: Total	\$15,256,532

ADMINISTRATION'S RECOMMENDATION			DEPARTMENT'S INITIAL PROPOSALS		
<i>Department/Proposed Uses</i>	<i>FY 12 Allocation*</i>	<i>New FTEs</i>	<i>Department/Proposed Uses</i>	<i>FY 12 Allocation*</i>	<i>New FTEs</i>
Probation (Operational and service costs)	\$2,515,427	21	Probation (Operational and service costs)	\$4,184,156	33
Probation (8 existing Prop 36 positions)**	\$824,265		Probation (8 existing Prop 36 positions)**	\$824,265	
Sheriff/DOC (Operational costs of additional beds and in-custody programming as possible)	\$3,469,588	25	Sheriff/DOC (Operational costs of additional beds and in-custody programming as possible)	\$4,986,097	52
Custody Health	\$852,678	5	Custody Health	\$1,265,469	7.9
Programs and Services	\$3,653,077	6	Programs and Services	\$3,653,077	5.0
District Attorney and Public Defender	\$450,444	4	District Attorney and Public Defender	\$0	
Training/Retention	\$550,000		Training/Retention	\$0	
CCP Planning	\$200,000		CCP Planning	\$0	
Reserve	\$2,741,053		Reserve	\$0	
Total	\$15,256,532	61	Total	\$14,913,064	97.9
*9 months costs (10/11-06/12) **AB 109 will reimburse General Fund in FY12					

FY 2012 Revenue	\$15,256,532
FY 2012 Expenses	\$15,256,532
Surplus (Shortfall)	\$0

Appendix B: Santa Clara County 2011 State Realignment Spending Plan Allocation, April 2012

COMMUNITY CORRECTIONS PARTNERSHIP - SPENDING PLAN

FY12 AB109 FUNDING SOURCES FOR REALIGNMENT	
AB 109: Post-release Community Supervision or local incarceration	\$12,566,312
AB 109: District Attorney/Public Defender - Revocation Cases	\$450,444
AB 109: Training/Retention (one-time)	\$886,700
AB 109: CCP Planning (one-time)	\$200,000
Total AB 109	\$14,103,456

BOARD APPROVED - INITIAL SEPT. 27, 2011			BOARD APPROVED - MIDYEAR FEB. 7, 2012			BOARD APPROVED - ADJUSTMENT APRIL 10, 2012		
Department/Proposed Uses	FY 12 Allocation	New FTEs	Department/Proposed Uses	FY 12 Allocation	New FTEs	Department/Proposed Uses	FY 12 Allocation	New FTEs
Probation (Operational and service costs)	\$3,339,692	21	Reserve Balance as of Sept. 27, 2012	\$2,741,053		Reserve Balance as of Feb. 7, 2012	\$1,775,476	
Sheriff/DOC (Operational costs of additional beds and in-custody programming as possible)	\$3,469,588	25	Sheriff/DOC (Staffing at Re-Entry Center; Management Analyst; Bus Passes)	(\$319,482)		Sheriff/DOC (Re-Entry Center cabling; \$1.18m technical adjustment Prisoner Housing Revenue)	(\$1,200,806)	
Custody Health	\$852,678	5	Probation (Supervision; Management Analyst; Bus Passes)	(\$166,547)		Probation (Vocational; Employment; Cognitive Behavior services)	(\$300,000)	
Programs and Services	\$2,500,000	7	Mental Health (Housing Vouchers)	(\$355,000)		Information Services (Data Collection/Sharing Project)	(\$19,350)	
District Attorney and Public Defender	\$450,444		Information Services (Re-Entry Center network; Data Collection/Sharing Project)	(\$94,548)	4			
Training/Retention	\$550,000		Custody Health - Bus Passes	(\$30,000)				
CCP Planning	\$200,000							
Reserve	\$2,741,053							
Total: Expenditures	\$14,103,455	62	Total: Reserve Balance	\$1,775,476	10	Total: Reserve Balance	\$255,320	0.0

FY 2012 Revenue	\$14,103,456
FY 2012 Allocation	\$13,848,136
Balance as of April 10, 2012	\$255,320

Prepared by: OBA 4/10/12

This report was **PASSED** and **ADOPTED** with a concurrence of at least 12 grand jurors on this 29th day of May, 2012.

Kathryn G. Janoff
Foreperson

Alfred P. Bicho
Foreperson pro tem

James T. Messano
Secretary