

PUBLIC SAFETY REALIGNMENT

What it Means to the Citizens of San Diego County

SUMMARY

The Public Safety Realignment Act of 2011 (also known as AB 109)¹ shifted many basic responsibilities in the California criminal justice system from the State to counties. Effective October 1, 2011, people who commit non-violent, non-serious, non-sex crimes will serve their time in county jails rather than state prisons. In addition, many of those released from state prisons on parole that used to be supervised by the State Parole Board will now report to the County Probation Department. As a result, an estimated four thousand offenders in these two groups will require county-funded services over the program's first two years. These include court hearings, supervision in jail and after release, substance abuse and mental health treatment, and housing and other services intended to reduce recidivism.

Public Safety Realignment offers both opportunities and challenges for San Diego County. With an increase in the number of criminals doing time locally come new pre-trial and sentencing alternatives (e.g., home detention, work furlough) that could reduce the strains on local jail capacity. Other new programs will improve the quality of jail and post-release programs and reduce recidivism.

However, these new programs – and the increase in offenders serving time locally – cost money. The State has budgeted funds for counties to implement Public Safety Realignment for the first two years, but those monies come from sales taxes and vehicle license fees. Those sources vary with the general economy. While the State currently is on track to provide all the promised funds, there are no guarantees for the future.

It is too early to tell what the full impact of this law will be on the county. Future funding is not secure although the state has promised that revenues will be made available. The 2011/2012 San Diego County Grand Jury is confident, however, that the County has a good plan in place. The Grand Jury commends the numerous San Diego County agencies and non-governmental partners who developed a comprehensive plan to implement these changes to the criminal justice system without compromising public safety.

INTRODUCTION

When the Grand Jury learned about the Public Safety Realignment Act, they were concerned that it could cause jail overcrowding and have an adverse financial impact. Members of the public were alarmed at the rumors of convicted felons wandering the streets, and little accurate information was available. Therefore, the Grand Jury prepared an informational report on how Realignment works and what its effects were on County services and finances in the first six months of implementation.

¹ Assem. Bill No. 109 (2011-2012 Reg. Sess.)

PROCEDURE

The Grand Jury interviewed representatives of the following offices:

- San Diego County Chief Administrative Office
- San Diego County Office of the District Attorney
- San Diego County Office of Finance
- San Diego County Health and Human Services Agency
- San Diego County Probation Department
- San Diego County Public Defender
- San Diego County Sheriff's Department
- San Diego Superior Court

The Grand Jury also reviewed reports from numerous sources, including the Community Corrections Partnership's Public Safety Realignment Implementation Plan and subsequent progress reports, and public safety reports by the San Diego Association of Governments (SANDAG), state agencies, and the Little Hoover Commission. Extensive Internet research on the legislation was used for background.

DISCUSSION

Background

The crisis in California's criminal justice system has a long history. The system grew from four prisons housing 12,000 inmates in 1950 to 33 prisons designed for 88,000 but actually housing 142,000 inmates in 2011. The budget for the California Department of Corrections and Rehabilitation (CDCR) increased 52 percent between 2002-2007. CDCR was unable to recruit sufficient correctional officers to keep pace with the rising prison population. The department had thousands of openings, resulting in huge overtime bills and mounting stress for the officers. In 2011, CDCR spent more than \$10 billion to operate this system while California faced a budget deficit of more than \$28 billion.

Despite the new facilities and surging budgets, prisons remained overcrowded, with inmates sleeping in gyms, hallways and classrooms. Federal courts placed inmate medical and mental health care in receivership and those programs were managed by federal judges. The recidivism rate was 70 percent, nearly the highest in the nation. Proposals for constructive change throughout the 2000s were stymied when the institutional framework and/or funding to implement them failed to materialize.²

Early in 2011, the United States Supreme Court, in response to a lawsuit citing overcrowding and poor medical and mental health care, ordered CDCR to reduce its prison population by 32,000 inmates by 2013.³ The Governor and State Legislature responded with the Public Safety Realignment Act.

² Little Hoover Commission, Solving California's Corrections Crisis: Time Is Running Out, Report to the Governor and Legislature (January 25, 2007) <http://www.lhc.ca.gov/studies/185/Report185.pdf>

³ *Brown v. Plata* (2011) 563 U.S. ___, 131 S. Ct. 1910.

The Public Safety Realignment Act

On April 4, 2011, Governor Jerry Brown signed the Public Safety Realignment Act.⁴ This 652-page law fundamentally altered the criminal justice system by changing felony sentencing, shifting housing for low-level offenders from state prison to county jails and transferring the supervision of designated parolees from CDCR to local county agencies.

Companion bills⁵ provided funding and designated the County Community Corrections Partnerships as the group responsible for developing a Public Safety Realignment Implementation Plan. The legislation took effect on October 1, 2011.

Felony Sentencing

Before Public Safety Realignment, the definition of a felony was a crime punishable by death or imprisonment in state prison. The 2011 law added imprisonment in a county jail for more than one year. The law specifies 500 crimes that now are punishable by county jail terms. These crimes are considered non-violent, non-serious, and non-sexual, and the offenders are referred to as “non-non-nons” – N3s for short.

A companion law to Public Safety Realignment⁶ gives judges the option of splitting N3 sentencing between county jail and mandatory probation. If an N3 serves the full term in jail, there is no post-release supervision.

Post Release Community Supervision

The Public Safety Realignment Act also transferred to counties responsibility for supervising most felons released from state prison after October 1, 2011. These include N3s in state prison on that date as well as low- to mid-risk sex offenders and those who had one prior conviction for a serious or violent offense. These felons, referred to as Post Release Offenders (PROs), are now supervised by the County Probation Department instead of CDCR’s Department of Adult Parole.

PROs who violate the terms of their release may be sent to county jail for up to 180 days, or – depending on the severity of the offense – may be subject to lesser sanctions including:

- Community service
- Electronic monitoring
- Home detention
- Referral to Re-entry Court or Drug Court, or
- Flash incarceration (a jail stay of 10 days or less).

Felons who do not violate the terms of their release may be discharged from Post Release Community Supervision after six months. If they remain violation-free for 12 months they must be discharged. The maximum term of supervision is three years.

⁴ Assem. Bill No. 109 (2011-2012 Reg. Sess.)

⁵ Assem. Bill Nos. 116, 118 (2011-2012 Reg. Sess.); Sen. Bill Nos. 87, 89 (2011-2012 Reg. Sess.)

⁶ Assem. Bill No. 116 (2011-2012 Reg. Sess.)

The Community Corrections Partnership

In 2009, the California legislature passed the California Community Corrections Intensive Probation Services Act.⁷ This law funded county probation department programs that use evidence-based practices to reduce recidivism. Funds came from cost savings in the prison system.

Evidence-based practices replace traditional parole/probation officer meetings with interventions designed to effect and reinforce behavioral change. The interventions begin with risk screenings and needs assessments, address motivation to change, and provide appropriate positive or negative reinforcement. The probation officer considers individual characteristics (e.g., culture, gender, learning style) when matching offenders with services, and focuses primary supervision and treatment resources on offenders who are at higher risk to commit new crimes.

In order to receive funds, a county had to establish a Community Corrections Partnership (CCP) to develop the programs. The law specified the CCP would be chaired by a county's Chief Probation Officer and would include the following officials:

- The presiding judge of the superior court.
- A county supervisor or chief administrative officer.
- The district attorney.
- The public defender.
- The sheriff.
- A chief of police.
- The heads of the county departments of social services, mental health, employment, alcohol and substance abuse programs, and education.
- A representative from a community-based organization with experience in successfully providing rehabilitative services to persons who have been convicted of a criminal offense.
- An individual who represents the interests of victims.

The 2009 law also charged CCPs with implementing programs that use intermediate sanctions (e.g., electronic monitoring, mandatory community service, home detention, work furlough), and providing more intensive probation supervision. The CCPs were required to evaluate the effectiveness of these rehabilitation and supervision programs.

In 2011, the California legislature assigned implementation of Public Safety Realignment to an executive committee of the CCP, comprised of the Chief Probation Officer as chair, the District Attorney, Public Defender, a Court representative, a Chief of Police, the Sheriff, and the head of the Department of Social Services. The San Diego County Board of Supervisors adopted this group's Implementation Plan in September 2011. The CCP has continued to meet monthly to track implementation of Public Safety Realignment.

⁷ Sen. Bill No. 678 (2009-2010 Reg. Sess.).

San Diego County Realignment Implementation Plan

The San Diego County CCP developed a Realignment Implementation Plan (Plan) focused on maintaining the highest level of public safety and reducing recidivism.⁸ The Plan envisions that San Diego county public safety organizations, in cooperation with non-governmental partners (including those from healthcare, housing, human services, and faith-based organizations), will work to keep communities safe by using jails efficiently, providing treatment for those in need, and using proven methods to reduce recidivism and move offenders back into our communities as productive members.

The CCP identified three main goals to achieve this:

1. **Use Jail Capacity Efficiently.** The County Jail system currently has 5,600 beds, around 65 percent of which are occupied by inmates awaiting trial or sentencing. With Realignment, most beds will be used for N3s and those who violate the conditions of their release. The Implementation Plan anticipates minimizing the impact of the potential increase in the jail population with greater flexibility in pre-trial and sentencing options. These include modifying bail schedules, expediting drug diversion cases, reducing the number of hearings through early settlements and immediate sentencing, and using alternative custody options (e.g., home detention, electronic monitoring, work furlough). New provisions on credit for time served will reduce sentences by 50 percent.⁹
2. **Improve Life Skills through Jail Programs.** The Plan aims to reduce recidivism through development and improvement of life skills that are necessary for successful reintegration into society.
3. **Incorporate Evidence-Based Practices into Supervision and Case Management of Post Release Offenders and in Sentencing for Felony Offenders.** The Plan applies principles and practices proven to reduce recidivism through more effective sentencing, supervision and intervention services for both N3s and PROs.

The Implementation Plan outlines five specific strategies and policies to modify, amend, and improve criminal justice systems. The first four are designed to re-engineer and improve current criminal justice practices to reduce the impacts of Public Safety Realignment. The fifth addresses PROs – an entirely new population that requires development of new practices. See Appendix for further details.

⁸ County of San Diego, Executive Committee of the Community Corrections Partnership, Public Safety Realignment and Post-Release Community Supervision, 2011 Implementation Plan (hereinafter cited as Implementation Plan).

⁹ Assem. Bill No. 109 (2011-2012 Reg. Sess.)

Funding

The Public Safety Realignment legislation¹⁰ provides funding to counties for the first two years of implementation. In addition, the counties received one-time grants to develop an Implementation Plan, and to hire and train additional Probation Department staff.

Most Public Safety Realignment funding for the first two years comes from sales taxes (1.0625 percent of revenues collected statewide) and vehicle licensing fees (a portion of the 0.65 percent that goes to local law enforcement). Those sources vary with the general economy and could fall short of the County's needs. Based on the funding formula and State revenue projections, in the first year of Realignment San Diego County is projected to receive \$25.1 million for custody, supervision and treatment services, plus around \$900,000 for District Attorney/Public Defender parole revocation activities. Based on payments received as of March 31, 2012, County officials believe they will receive all the promised funds for the first year of Realignment.

However, no guaranteed source of funding is available for future years. Governor Brown is proposing a constitutional amendment for the November 2012 ballot that requires the State to continue allocating the sales taxes and vehicle license fees to pay counties for programs realigned. If those sources fall short, the amendment would require the State to find the money in some other account.¹¹

Anticipated Impacts on San Diego County

Public Safety Realignment will have unavoidable impacts on San Diego County jails, the Probation Department, mental health and substance abuse treatment programs, and providers of re-entry services such as work furlough, housing and employment.

Jails

The San Diego County Sheriff's Department (SDSO) operates seven detention facilities throughout the county with housing available for around 5,600 inmates¹². When Realignment was in the planning stages, CDCR estimated that San Diego County jails would house around 2,000 N3s annually.

The Sheriff anticipated the County's jails would be at capacity within eight months of the onset of Realignment.¹³ Data for the first six months of implementation suggest the CDCR estimates may be low. On September 30, 2011 (the day before Realignment took effect) there were approximately 4,631 inmates in custody (62-65 percent of whom were awaiting trial or sentencing). On March 31, 2012, there were 5,071 inmates. Of those, 1,126 were realigned inmates, including 568 N3s, 400 state parole violators, and 158

¹⁰ Assem. Bill No. 118 (2011-2012 Reg. Sess.).

¹¹ The proposed amendment also would temporarily increase state sales tax by 0.25 percent and personal income tax rates for those earning over \$250,000 annually, with the revenues allocated to school and community college districts. Legislative Analyst Office, The Schools and Local Public Safety Protection Act of 2012, Version 3 (March 16, 2012).

¹² San Diego County Grand Jury, San Diego County Detention Facilities: Condition And Management (2012)

¹³ Implementation Plan

PROs, with the remainder those who would have served time locally regardless of Realignment.

However, the County's mens jails reached 96 percent of capacity in mid-January 2012. The Sheriff used his discretionary powers to shorten jail terms by 10 percent and/or five days, and in late January more than 300 male inmates were released early.¹⁴ County programs providing alternatives to custody are projected to be implemented in April or May 2012, which should alleviate the potential for overcrowding in the near term.

In the long term, the County is adding jail beds. New housing for 400 inmates is under construction at the East Mesa Detention Facility. In addition, the County leases a 1,154 bed detention facility adjacent to East Mesa to the Corrections Corporation of America to house federal detainees. That lease expires in December 2015 and the County could decide to take over that property. As beds are added, additional deputies will be required to supervise the increased number of inmates.

The type of inmate and length of stay also are changing. Before Realignment, the average stay was 75 days. Despite new credits for time served, the sentencing guidelines for N3s require longer stays. The longest sentence in the first few months of implementation was 10 years – seven in jail with three years mandatory supervision. Many inmates will require special custody (e.g., administrative or protective segregation, medical). The type of custody is the initial management challenge Realignment posed.¹⁵

Whatever its impacts on local jails and their management, Realignment is accomplishing its goal of alleviating overcrowding in State prisons. Grand Jury members toured Donovan State Correctional Facility in March 2012 and observed the 152 empty beds in each of three gymnasiums – temporary quarters that are no longer needed.

Probation

In September 2011, the San Diego County Probation Department supervised around 14,500 adult probationers with approximately 100 probation officers. 22 percent of the probationers were at high risk to re-offend. At that time, CDCR estimated that San Diego County would assume responsibility for at least 2,000 PROs annually and an unknown quantity of N3 offenders sentenced to mandatory probation. Based on CDCR's monthly projections, San Diego County expected to receive 1,185 total PROs by February 29, 2012; the actual number was 1,477. The Probation Office anticipates hiring an additional 75 officers through the first two years of Realignment.

The San Diego County probationer recidivism rate in Fiscal Year 2009/2010 was 31 percent. The Implementation Plan estimates that 22 percent of probationers are high risk to commit another offense. To help reduce recidivism, the probation officers will carry a 50-to-1 case load for the highest risk probationers, and 100-to-1 for medium and low risk

¹⁴ Littlefield, *Sentences Cut to Avoid Crowding*, U-T San Diego (Jan. 27, 2012).

¹⁵ Community Corrections Partnership, January 26, 2012 meeting.

offenders. To reduce recidivism, probation officers will rely on evidence-based practices based on interventions targeted to achieve behavioral change.

Judicial System

In developing Realignment, the State estimated that 10 percent of the PROs will violate the law again, requiring further Court proceedings, as will offenders on mandatory supervision who violate the conditions of their release. Every court proceeding will affect the workload of the District Attorney's office, the courts, the Sheriff's Department, the Probation Department and the Office of the Public Defender. The Probation Department will be required to provide reports to substantiate the violations. The District Attorney's office will be responsible for reviewing, charging, and prosecuting many violations of PRO and N3 offenders. The Office of the Public Defender will be responsible for representing the majority of these offenders on violations. The Sheriff's Department may have to house and provide transportation to and from court for these offenders.

Social Services

In September 2011, the State estimated that 85 percent of the N3s and PROs would need substance abuse treatment and 20 percent would have mental health problems (e.g., schizophrenia, bipolar disorder, severe depression). After six months of implementation, data suggests that the number of PROs with mental health problems is closer to 30 percent.¹⁶

Before Realignment, San Diego County's Health and Human Services Agency (HHS) contracted for 358 residential substance abuse treatment beds and had a waiting list. Additional treatment capacity will be needed.

COMMENDATION

The 2011/2012 San Diego County Grand Jury commends all those involved in implementing the Public Safety Realignment Act. In the 2000s, when the State was trying to reform its criminal justice system, San Diego County was held up as a model for using evidence-based practices to reduce recidivism. Our Community Corrections Partnership was already well-established when Realignment occurred. They and their non-governmental partners worked quickly to develop a well-conceived Implementation Plan focused on preserving public safety and reducing recidivism while mitigating local impacts through full use of the flexibility in custody, sentencing and treatment built into Realignment.

¹⁶ Gorman, *State convicts arrive in L.A. County with costly mental illnesses*, Los Angeles Times (Jan. 8, 2012).

APPENDIX

Elements of the San Diego County Community Correction Partnership's

Public Safety Realignment Implementation Plan

- 1. Expand Pre-Trial Custody Options to Use Current Jail Capacity More Effectively.** As stated earlier, people awaiting trial currently occupy around 65 percent of County jail beds. With full implementation of public safety realignment, most of those beds will be needed by inmates with long sentences and post-release offenders. Therefore, this strategy focuses on reducing the number of beds needed by pre-trial inmates through options such as modifying bail schedules; using home detention, electronic monitoring, work furlough and other alternatives to jail; and increasing the use of residential treatment beds for those with significant substance abuse problems. Those evaluating individuals' eligibility for these pre-trial alternatives will assess the potential risks involved for each individual.
- 2. Improve and Streamline Felony Settlement.** Strategy 2 focuses on minimizing the number of court hearings, or even eliminating the need for a felony trial, if possible, thus reducing the amount of time between arrest and trial. Probation Officers will identify low-risk individuals whose cases might be settled early, or who might be offered probation. Increasing the criminal justice system resources available also can reduce the number of hearings held and expedite settlement conferences. The Implementation Plan also anticipates expanding the use of existing San Diego County collaborative courts (e.g., Drug Court, Re-entry Court, Veteran's Court, Behavioral Health Court).
- 3. Encourage the Use of Evidence-Based Practices in Sentencing for Felony Offenders.** Evidence-based practices replace traditional parole/probation officer contacts with effective interventions intended to effect and reinforce behavioral change. These begin with risk screenings and needs assessments, address motivation to change, and provide appropriate positive or negative reinforcement. It considers individual characteristics (e.g., culture, gender, learning style) when matching offenders with services, and prioritizes primary supervision and treatment resources for offenders who are at higher risk to re-offend. This strategy would facilitate the choice of appropriate sentencing options for felony offenders, including probation, split sentencing with mandatory probation, full sentencing, or state prison. This would enhance the impact of sentencing and reduce reliance on custodial sanctions by using the offender's risk and need information.

- 4. Employ Alternative Custody Options and Jail Programs.** The objectives of this strategy are to use jail capacity efficiently to accommodate new populations by reducing the number of lower risk offenders in jail. This would be accomplished through the use of alternatives to jail as well as jail programs and services. There is a potential pool of 1,000 to 3,000 low- and medium-risk offenders who may be eligible for work release/work furlough, home confinement/electronic monitoring, GPS supervision, or work camp. Decisions regarding eligibility will consider in-custody behavior, participation and progress in jail programs and services, current charges and prior convictions, and availability of the alternatives to incarceration best suited for the inmate.

This strategy also will expand jail programs and services to address offenders' risks and needs that may lead to further crimes (e.g., dysfunctional family relations, anti-social peers, substance abuse, low self-control, and anti-social values and attitudes). The current Local Reentry Program (LRP) is an example of a pre-release strategy to address needs prior to release. LRP currently provides substance abuse services, educational/vocational programming, counseling services, and cognitive behavioral programming.

- 5. Provide Evidence-Based Supervision and Intervention Services for Post-Release Offenders.** The objective of this strategy is to reduce recidivism by holding offenders accountable and providing services for PROs and any N3s supervised in the community.

PROs may not be returned to state prison unless they commit a new felony offense. To hold PROs accountable to the terms of supervision, probation officers will use evidence-based practices to determine the suitability of a range of intermediate sanctions, short of revocation, to respond to violations. These may include: community service; work projects; home detention; electronic or GPS monitoring; referral to Reentry Court; referral to Drug Court (if PROs are deemed eligible); and up to 10 days of flash incarceration. The PROs' supervision will be incentive based – offenders will receive positive reinforcement (i.e., early discharge) for achieving benchmarks (e.g., completion of substance abuse treatment, compliance with mental health medications, and clean drug tests) during their term of supervision.

Locally-supervised offenders (PROs and N3s) may have substance abuse and/or mental health needs that will be addressed as part of the case plan in an effort to reintegrate them into the community. Additional needs may include employment, vocational training and transitional housing. To address these needs, Strategy 5 will involve procuring mental health and substance abuse treatment services, either by expanding capacity and types of treatment services offered by existing County contractors, or adding new licensed and certified contractors.

The Probation Department will also work with community providers to obtain services related to employment, behavioral treatment, family counseling, and housing.