# San Bernardino County

# 2011 Public Safety Realignment Plan

# Assembly Bill 109

Produced by the San Bernardino County
Community Corrections Partnership
Executive Committee

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## Attachments

- Budget
- Day Reporting Center Flow Chart – Treatment Services
- Memo – Working Group's signatures of approval for recommendation

## SUMMARY OF AB 109

On April 4, 2011, Governor Edmund G. Brown signed Assembly Bill 109 (AB 109), The Public Safety Realignment Act, which created a significant change to the California correctional system. The focus of AB 109 is on the California Department of Corrections and Rehabilitation (CDCR) parolees, who have been classified as "low-level" offenders. The bill also created a provision for the adjudication of parole violations at the local level, rather than returning these offenders to the prison system. Essentially, the realignment displaces responsibility for the supervision of these offenders from the state to the local level. This is accomplished by the release of those deemed to be low risk offenders by CDCR. Parolees categorized as low risk offenders are titled "Post Release Community Supervision" or PRCS offenders, after their current offense is determined to be non-serious, non-violent, and non-sex related. Realignment dictates that they be released for supervision to the local county where they were originally sentenced. Additionally, the Penal Code has been modified to prevent PRCS offenders from being sent to state prison for violation of their terms and conditions of parole/probation. The legislation also requires that best practices be utilized for treatment and rehabilitation.

Assembly Bill 109 also changes the law to realign certain other responsibilities for the less serious adult offender from state jurisdiction to local jurisdiction. Funding for the realignment has been appropriated through the state budget process for Fiscal Year 2011-2012. However, the ultimate goal is to have a guaranteed dedicated funding stream for realignment costs beyond the current year.

## Key Provisions of the 2011 Public Safety Realignment

AB 109 mandates that the state's thirty three (33) prisons reduce the number of inmates to 137.5% percent of intended capacity by May 24, 2013, as ordered by the United States Supreme Court. Provisions of the 2011 Realignment are funded by a dedicated portion of sales tax revenue and Vehicle License Fees (VLF) as outlined in the trailer Assembly Bill 118 and Senate Bill 89. All provisions in Assembly Bill 109 are to take effect on October 1, 2011.

## Local Planning Process

AB 109 expands the role and purpose of the Community Corrections Partnership (CCP), which was previously established in Penal Code 1230. It requires the CCP to develop and recommend to their County Board of Supervisors an implementation plan for the 2011 Public Safety Realignment and create an Executive Committee from the CCP members comprised of the following:

- Chief Probation Officer (Chairperson)
- Chief of Police
- Sheriff
- District Attorney
- Public Defender
- Presiding Judge of the Superior Court
- A representative from either the County Department of Social Services, Mental Health, or Alcohol and Substance Abuse Programs, as appointed by the County Board of Supervisors. (In San Bernardino County, the Assistant Executive Officer of Human Services is on the Executive Committee.)

## Post Release Community Supervision (PRCS) Population

During the first year following implementation of the realignment provisions, from October 1, 2011 through June 30, 2012, the San Bernardino County Probation Department anticipates receiving 2,500 PRCS offenders for supervision. During the second and third years following implementation, it is expected that this number will increase to between 5500 and 6500 PRCS offenders. Statistics provided by CDCR indicate that these offenders were committed to state prison for offenses categorized as follows:

- 44% Drug Offenses
- 41% Property Offenses
- 14% Other
- .72% Sex Offenses (Failure to Register)

The San Bernardino County Probation Department currently supervises 19,000 adult felony offenders. Their convictions by type of offense are:

- 38% Drug Offenses
- 29% Serious and/or Violent Offenses
- 16% Sex Crimes
- 14% Property Crimes
- 3% Other

It is critical to recognize that although these PRCS offenders are deemed "low risk" due to their committing offense, CDCR classification gives no consideration to gang involvement, prior criminal history, prior violence, etc. It is expected that some of these PRCS offenders will present a high risk for violence and reoffending, and will represent a risk to public safety that cannot be immediately observed by only their status of classification as a PRCS offender.

## Local Custody

In addition to the release of prisoners to local communities for supervision, AB 109 allows non-violent, non-serious and non-sex offenders to serve their sentence in a county jail facility instead of the state prison system. According to state officials, no inmates currently in prison will be transferred to county jails. However, newly sentenced offenders who will serve time in jail are:

- Non-violent offenders
- Non-serious offenders
- Non sex offenders

To house this new classification of offenders in local jails without disruption to jail operations or release of those normally held in the jail population, local custody and supervision efforts must include:

- Alternative custody options for county jails
- Home detention for low-level offenders
- Local jail credits that mirror prison (day-for-day)

No inmates currently in prison will be released early although discussion on this issue is still ongoing as AB 109 does not appear to reduce the number of prisoners to the United States Supreme Court ordered capacity. All current inmates in prison will continue to serve their sentence in state prison. It is hoped that the court ordered mandate can be achieved through attrition levels and AB 109 provisions.

Felons convicted of serious, violent or sexual crimes against children, will continue to be sentenced to prisons and required to register as a sex offender pursuant to Penal Code 290.

- Prior or current serious or violent felonies as described in Penal Code 1192.7 9(c) or 667.5(c).

Furthermore, other specified crimes [contained in approximately sixty (60) additional exclusions from the "low-level" definition] will still require a state prison commitment and housing in the prison system.

## Contracting Back

AB 109 also provides that counties may "contract back" with the state to send local offenders to state prison as an incarceration option. However, the cost is extremely high and would exceed available funding. Contracting back does not extend to parole revocations.

It is estimated that San Bernardino County will receive approximately 300 PRCS offenders effective October 1, 2011. Within three years we will reach a capacity of approximately 5,500 to 6,500 PRCS offenders.

## Post Release Community Supervision – County Level vs. State Level

The State of California Department of Corrections and Rehabilitation will continue to have jurisdiction over offenders placed on state parole prior to the October 1, 2011 implementation date. The local jurisdictions will supervise the non-violent, non-serious and non-sex offenders that are released from prison after October 1, 2011. PRCS offenders released from prison and supervised by the local counties will include:

- Current non-violent offenders (irrespective of priors)
- Current non-serious offender (irrespective of priors)

Inmates released after serving a life term (i.e., murderers, violent sex offenders and third strikers) will be returned to state prison on revocations if ordered by the Board of Prisons. State Parole will continue to supervise the following offenders:

- "Third Strikers" - individuals who were committed to state prison and whose third strike was for a non-violent offense. They will remain under the supervision of State Parole
- Offenders convicted of a serious or violent felony as described in Penal Codes 1192.7(c) or 667.5(c)
- High risk sex offenders as defined by CDCR
- Offenders classified as Mentally Disordered Offenders (MDO)
- Offenders on parole prior to October 1, 2011

## Parole Revocations

The parole revocation process will continue under the Board of Parole Hearings until July 13, 2013. However, parole revocations will be served in county jails, not to exceed one hundred and eighty (180) days.

Contracting back to the state for revocations is **not** an option. Only persons previously sentenced to a term of life can be revoked and returned to state prison. For the remaining low-level offenders on parole after implementation of realignment, parole has the authority to discharge the parolee if no violations have occurred.

AB 109 also provides the following under Post Release Community Supervision (PRCS):

- Authorizes offenders to be incarcerated in the county jail for parole revocations for up to one hundred and eighty (180) days.
- Authorizes the Probation Officer to incarcerate a PRCS offender in a local county jail for up to 10 days without a court hearing.

## SAN BERNARDINO COUNTY PROBATION DEPARTMENT

For the past four years**,** the San Bernardino County Probation Department has successfully utilized a Day Reporting Center (DRC) concept for juvenile offenders in the San Bernardino, West Valley and Victorville areas. The San Bernardino County Probation Department has incorporated the recognized Evidence-Based National Curriculum Training Institute (NCTI), which includes effective interventions, validated tools and instruments, motivational interviewing techniques and Cognitive Behavior Therapy (CBT) interventions on a targeted population of juvenile offenders and at risk minors. The San Bernardino County Probation Department plans to expand and model these types of Evidence-Based supervision practices for the adult PRCS population.

In addition, the department will continue to utilize Evidence-Based practices implemented via Senate Bill 678, "Recidivism Reduction Program." The goal of the program is to reduce prison incarceration and recidivism by instructing felony adult probationers in Evidence-Based practices (i.e., motivational intervention, cognitive restructuring, etc). Reducing recidivism will allow the State of California to reduce overcrowding at the state prison, reduce the cost of incarcerations, enhance public safety and provide PRCS offenders with a variety of alternatives.

Presently, the San Bernardino County Probation Department supervises approximately nineteen thousand (19,000) adult offenders. Probation Officers are trained to have a broad knowledge of the criminal justice system, their roles, relationships, and responsibilities to the courts, community, and the offenders under their supervision. The department has a close working relationship with the local law enforcement agencies and community organizations that provide a variety of services to adult and juvenile probationers. Currently 70% of Probation Officers are armed and are trained in a continuum of use of force, arrest techniques, searches and seizure, and legal requirements. In addition, these officers are trained in various types of treatment services including motivational interviewing and cognitive restructuring.

### Systematic Interventions

Research supports that when Evidence-Based practices are firmly embraced, implemented, and properly monitored by a correctional agency and combined with systematic interventions, the

results are a reduction in recidivism. The San Bernardino County Probation Department will establish AB 109 objectives for systematic interventions with the PRCS offenders. The basis for this model will be to effectively assess the risks and needs of each offender and supervise them accordingly. An offender who is likely to recidivate or commits a violent offense would be classified high risk and placed in an enhanced level of supervision or on a specialized caseload. The Probation Department's specialized caseloads consist of a Mental Health Unit, Domestic Violence Unit, Sex Offender Unit, and Gang Unit. Each of these existing units will be expanded to accommodate these PRCS offenders. In addition, probation officers will be assigned to each law enforcement agency in the county with a high risk caseload from that city. The department will collaborate with municipal law enforcement agencies and the Sheriff's Department to provide enhanced levels of supervision, searches, etc. for this high risk population.

The North Pointe Institute for Public Management's "Correctional Offender Management Profiling for Alternative Sanctions" (COMPAS) assessment is an Evidence-Based tool that identifies the needs and risk level of the offender and will be part of the overall classification and supervision plan. This assessment instrument allows for effective identification of those at the greatest risk to reoffend or commit violent offenses and will facilitate appropriate classifications for supervision.

## Day Reporting Centers

In addition to community supervision, the Probation Department plans to establish three Day Reporting Centers (DRC) for adults in each of the geographic areas of Central Valley, West Valley, and High Desert. The DRCs are a best practice in the field of probation for providing treatment and rehabilitation services, and this concept meets the intent and requirements of the AB 109 legislation (flow chart attached).

The DRC services will ensure accountability and provide the offender with a "one stop concept" that offers a variety of comprehensive treatment services to assist them in transitioning successfully into their communities. Offenders will have the opportunity to access resources that will assist them in substance abuse, improve health issues, finding and maintaining employment, and resources for family services. Probation Officers will also be housed at the DRC for additional enforcement of probation/parole terms.

The Probation Officers at the DRCs will be responsible for coordinating all of the services and will ensure that each offender complies with his/her terms and conditions. The Probation Officers will work closely with the Workforce Development Department to provide PRCS parolees/probationers with job readiness, employment referrals, and vocational training to prepare them to interview for jobs. Representatives from the following county agencies will also be located at the DRC:

- Behavioral Health
- Transitional Assistance Department
- Workforce Development Department
- Public Health
- Department of Aging and Adult Services (On a referral basis)
- Mexican Consulate (On a referral basis)

Community based organizations and contract agencies will also be utilized to augment the DRC resources. The DRC will include the following program components with additional services added as the program develops:

- Orientation upon release from prison or County jail
- Classification via COMPAS to assess risk and needs
- The development of a comprehensive treatment plan
- Daily check-in with the Probation Officer and the DRC staff for services
- Individualized and group counseling
- Substance abuse and alcohol testing
- Anger management
- Domestic violence fifty two (52) weeks of anger management
- Cognitive and Life Skills Development
- Parenting and family reintegration
- Health screening
- Educational Services/GED preparation
- Budgeting and money management
- Vocational training

- Probation/PRCS to Work Program (Workforce Development)
- Discharge planning
- Aftercare
- Referrals to other agencies

## GRADUATED SANCTIONS

The most commonly used graduated sanctions in the field of corrections are classified into three (3) strategies: incarceration, community corrections and intermediate sanction programs. Incarceration refers to jails and prisons and community corrections are defined as a variety of programs that are outside of the jails or prison. The objective of intermediate sanctions is to prevent the offender from violating their terms and conditions and ultimately reduces recidivism.

Intermediate Sanctions Programs include a variety of punishment options between probation and imprisonment. These programs are also referred to as intermediate penalties and intermediate punishments. The intermediate sanctions include:

- Day Reporting Center programs
- Assignment to intensive supervision programs
- State Fire Camp
- Home confinement with or without electronic monitoring or Global Positioning System (GPS)
- Monetary penalties (fines and restitution)
- Compulsory labor in the form of community service

The San Bernardino County Probation Department in collaboration with the San Bernardino County Sheriff's Department will have available the following intermediate sanctions:

## Day Reporting Centers (DRC)

The offender will be required to report on a daily or scheduled basis for supervision and to take advantage of resources and services. The DRC is a "one stop" program, where the Probationer/PRCS will have available structured resources such as mental health, physical health, education and vocational training.

## Flash Incarceration

AB 109 allows the Probation Officer to incarcerate a Probationer/PRCS for violations of their terms and conditions, for a maximum of ten (10) days, without a revocation hearing.

## Home Confinement and House Arrest

Requires offenders to remain under curfew in their homes for a specified number of hours per day or week. They will usually be permitted to leave their home for approved activities such as employment or activities approved by the Probation Officer.

## Electronic Monitoring (EM) and Global Positioning System (GPS)

Based on the offenders' compliance, they may be required to be monitored by EM or GPS. It is usually used in combination with home confinement, to ensure compliance.

## Work Release

The offenders who are committed to the county jail for violations of their Probationer/Parole terms and are released earlier to their communities may be required to complete the remainder of their sentence by participating in the "Work Release Program" at the Glen Helen Rehabilitation Center. The Sheriff's Department will be working closely with the Probation Department to ensure that the Probationer/PRCS that are scheduled to participate adhere to the rules and report as directed.

## Community Service

Community Service is involuntary labor on the part of the offender, in lieu of incarceration. An offender will perform labor for a certain length of time at charitable agencies or other designated locations. The Probation Department will also be working closely with a number of community agencies, including (i.e., Habitat for Humanity and the Forest Service).

## Probation Apprehension Team (PAT)

According to the information provided by the CDCR Parole Department, a substantial number of parolees abscond from supervision and can pose a threat to public safety. To ensure the

accountability of the offender, the PAT unit will track and apprehend those offenders that have disappeared from Probation/PRCS supervision.

## REVOCATION PROCESS

The revocation process presently being utilized by the San Bernardino County Probation Department for probationers will remain the same when dealing with parole/PRCS violations. The Judicial Council of California (Administrative Office of the Courts) is in the process of developing a standard "Criminal Realignment Post Release Supervision Revocation" procedure. When the revocation procedure and forms have been approved, they will be utilized by counties throughout the state starting on October 1, 2011.

According to Assembly Bill 109, the maximum amount of time a parolee can be detained in the county jail for technical violations of their parole is one hundred and eighty (180) days.

## CONTRACTING FOR SERVICE PROVIDERS

The San Bernardino County Probation Department will be selecting a variety of community based treatment providers for needed services for the PRCS. The treatment components will be housed at the DRC in San Bernardino, West Valley and Victorville areas. They will provide the emphasis in mental health, public health, substance abuse, referral for education, job preparedness, job placement and vocational training.

The Community Based Organizations must demonstrate the use of Evidence-Based treatment practices that have been successful in reducing recidivism. The Evidence-Based programs must have indicators throughout their continuum of services that have measurable outcomes. Mental health providers will need to do the following:

- Provide assessments and develop a treatment plan
- Make referrals for treatment
- Follow-up to chart the progress of the offender

Substance abuse services will include an assessment tool that will identify the offender's level of abuse and need for services. Educational, vocational and employment readiness services could be

provided by adult education institutions and local community colleges. Offenders will be referred for educational classes and vocational training as a part of the overall case plan.

In an effort to improve the delivery of services and programming, Probation staff will evaluate whether the services are meeting the needs of the offender.

## SHERIFF'S DEPARTMENT

### Issue Statement

The realignment of state prisoners and the shifting of parole violator housing to the county jails will logically increase San Bernardino County Sheriff's Department (SBSD) costs associated with housing, processing, feeding, and out-of-custody supervision. There will also be increased inmate health costs as the average length of stay for our inmate population increases.

### State Parole Revocation Hearings

The Board of Parole Hearings currently conducts parole hearings both at the California Institution for Men in Chino (CIM) and at the Sheriff's West Valley Detention Center (WVDC). Under AB 109, parole hearings will no longer be held CIM. All area parole revocation hearings will be conducted at the WVDC, and incarcerations for parole violations will be served in the county jail. The Board of Parole Hearings estimates that there may be as many as three hundred and thirty (330) revocation hearings a month at WVDC during the first year of realignment.

Currently, the state reimburses the department for every hearing at forty one (41) dollars per hearing. This funding is inadequate for the amount of resources expended to ensure the safety of the hearing officers, the public, and the security of the inmates. Additionally, this revenue source will terminate on October 1, 2011 when AB 109 takes effect.

The Board of Parole Hearings and staff administering the parole hearings at WVDC recommended staffing enhancements.

### Sentenced Inmate Management Program

The retention of approximately eight thousand three hundred (8300) additional inmates per year within the jurisdiction of the Bureau of Detention and Corrections by virtue of AB 109 creates an

enhanced need for alternative custody programs such as educational, vocational, and counseling diversion; as well as work release programs, so that qualified violators can serve their sentences in an out-of-custody setting. The establishment and administration of these programs is vital for both inmate population management and the reduction of recidivism rates within the county.

Therefore an expansion of both the mission and the staffing of the current "Work Release" program are warranted. This unit will become responsible for not only revising and administering the work release and electronic monitoring programs already in operation, but will also be responsible for initiating and administering other alternative custody programs such as county parole, as well as voluntary work release programs (such as weed abatement and flood channel clean-up) as authorized by PC 4024.2.

## DISTRICT ATTORNEY'S OFFICE

The implementation of AB 109 will also have an impact on the District Attorney's Office. In 2010, 7107 defendants were sentenced to state prison. If AB 109 had been in effect last year, 4300 defendants would have gone to County jail. Because we have virtually no open jail beds, and assuming similar sentencing practices, inmate management will result in 4300 releases from the jail of charged or convicted felons. While the expectations of this plan are to substantially improve on the state recidivism rate of 70%, even the most effective rehabilitation plan cannot eliminate recidivism. The criminal cases generated by a new population of felons who are now out of custody will have an immediate impact.

The District Attorney's Office has lost staffing in the last three fiscal years and has no current capacity to handle these additional cases. Additional staff are needed to process cases and handle victim notification under Marsy's Law in each of the three geographical regions. This will permit the District Attorney to meet the anticipated demands of these additional cases.

## PUBLIC DEFENDER

The Public Defender requests funds to fulfill their constitutional mandates to the additional clients. The funds would be used to fund the positions of one attorney, one social worker, and one Office Assistant II. Present staffing levels enable the Public Defender to devote one

attorney to this project without sacrificing current levels of service to our remaining mandated clients. The current plan calls for the construction of two separate hearing rooms at the Sheriff's facility. Not having an attorney to staff each hearing room would result in a substantial slowdown of cases being heard which would result in greater inefficiency of the overall program. It will also result in a caseload total for a single attorney which would be significantly higher than our current office standards.

The social worker will serve as the "point person" for these clients and will be responsible for assisting our clients to receive the necessary services to successfully complete the program. The social worker will meet with clients and their families outside the courtroom to assist with their compliance with the program which is a function an attorney cannot perform. The social worker will also be able to supervise two to four interns from local universities which will greatly enhance the level of service our office can provide to these clients. The use of our office social worker and interns will assist the overall success rate of the AB 109 program by providing services to our clients and their families which may not be readily available at the DRCs or will allow the other AB 109 employees at the DRCs to spend more individual time with higher need clients. Such service will increase the success rate of the clients in the AB 109 program by decreasing recidivism and improving the safety of our community.

## STAFFING AND COST OF AB 109

San Bernardino County is scheduled to receive an allocation of $25,785,600 for the Fiscal Year 2011-2012 that begins on October 1, 2011 (nine months of funding). In addition, there is one time funding for start up costs in the amount of $1,819,475. The Probation Department's increased personnel cost is approximately $11,731,755, and the Sheriff's Department increased cost is approximately $3,903,668. The District Attorney's Office increased cost is approximately $895,305, and the Public Defender's increased cost is approximately $202,542. Other county agencies involvement will cost approximately $761,754. Equipment, treatment services, infrastructure, contract services, and supplies are estimated to cost approximately $10,110,051.

## CONCLUSION

The Public Safety Realignment Act, AB 109, mandates the most sweeping change to the state's correctional system in a generation. It presents significant challenges to local jurisdictions that can only be resolved through a dynamic expansion of services on the part of the Probation Department, Sheriff's Department, and other county agencies.

We need to be clear that realignment dramatically shifts supervisorial and custodial responsibilities for a criminal population that would have been, in the past, committed to state prison.

There is some solace in the concept that the offenders being directed to our local jurisdictions are "nons"- non-violent, non-serious, and non-sex offenders. However, as this plan has pointed out, CDCR classification of these offenders is based solely upon current convictions and offenses. It is common for persons committed to state prison for a less serious offense to have significant, lengthy criminal histories that may encompass more serious or violent crimes; and to have a history of habitual non-compliant conduct and be resistive to community corrections interventions. The San Bernardino County criminal justice system should remain vigilant to potential increases in crime rates or incidents of criminal conduct that are the corollary of the re-introduction of these offenders to our communities.

However, San Bernardino County has a significant advantage toward success with the AB109/PRCS population. The Probation Department has a progressive supervision system already in place to address probationers. Probation Department supervision systems and rehabilitative programming simply need to be expanded and modified for this new, unique population of offender. The Sheriff's Department has always enjoined with the Probation Department in a unique partnership, and now stands poised to deliver suitable custody options for PRCS failures. Probation also maintains a unique collaboration with county social service agencies that can provide effective programming.

Implementation of this new system of programs will not be without its challenges. In the event of on-going significant compliance problems, absent re-offense, there are scant resources for consequences, and prison housing is not an option. Moreover, supervision and custody responsibilities will come at a significant cost. Realignment funds are provided for one year, and

the commitment for continued state funding is speculative. Pursuit of a reliable and ongoing funding stream must be a priority goal.

Lastly, our plan for development of a hybrid supervision system for realignment was based upon statistical data only available from CDCR. Probation and the Sheriff's Department believe in our ability to effectively monitor this criminal population, but that is predicated on the accuracy of those statistics. It may be necessary to make changes or re-tool the PRCS program should offender numbers or criminal propensities differ from those anticipated in this plan.

The Community Corrections Partnership Executive Committee is cautious about speculating the outcome of the parole realignment due to the significant concerns on the types of offenders, the number of offenders, budgetary issues affecting county departments, and the potential for an increased crime rate. Despite these concerns, the Community Corrections Partnership Executive Committee has developed the best possible parole realignment plan for San Bernardino County.