



**SAN MATEO COUNTY
COUNTY MANAGER'S OFFICE**
Interoffice Memorandum

Date: August 17, 2011

To: The Honorable Board of Supervisors

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Subject: 2011 Public Safety Realignment: The Legislative Context

A historic realignment of public safety programs is set to begin October 1, 2011 in California. This memo summarizes important legislative background information on this shift, outlines key elements of the recently adopted public safety realignment measures (highlighting new responsibilities to counties) and anticipated funding and new population projections.

BACKGROUND:

Senate Bill 678—Reducing Recidivism

Facing a 70 percent statewide probation failure rate, in 2009 the State Legislature passed SB 678 (Chapter 608, Statutes of 2009) designed to reduce felony probation failure rates by investing in intensive intervention practices at the local level.

Key elements of the SB 678 include the:

- Creation of the California Community Corrections Performance Incentive Act of 2009 and establishment of a system of performance-based funding to support evidence-based practices for probation supervision.
- Establishment of a local Community Corrections Partnership (CCP) to develop and implement a community corrections program. Membership of the CCP includes:
 1. Chief Probation Officer (Chair)
 2. Presiding judge of the superior court, or designee
 3. County supervisor or chief administrative officer for the county
 4. District attorney
 5. Public defender
 6. Sheriff
 7. Chief of police
 8. Head of the county department of social services
 9. Head of the county department of mental health
 10. Head of county department of employment
 11. Head of the county alcohol and substance abuse programs
 12. Head of the county office of education

13. CBO representative with experience in rehabilitative services for criminal offenders
14. Victims' representative

- Requiring that program funds must be used to provide evidence-based supervision and rehabilitation services for adult offenders on probation. These services include intermediate sanctions (e.g., electronic monitoring, mandatory community service, home detention, day reporting, restorative justice programs, and work furlough and incarceration in county jail for up to 90 days) and rehabilitative services (e.g., drug and alcohol treatment, mental health services, anger management, cognitive behavior programs, and employment services).
- Requiring counties to identify and track and annually report outcomes to the Administrative Office of the Courts and the Department of Corrections and Rehabilitation evaluating the effectiveness of the program.
- Establishing first year start-up funds, some \$45 million, from federal Byrne Justice Assistance grant funding. Program funding, an estimated \$255 million, in subsequent years was expected to come in savings to the State General Fund on reduced incarceration and parole supervision.

County Impact: *The Probation Department will receive \$1.07 million in FY 11-12. The current public safety realignment funding allocation provides for a 10 percent consideration of counties' SB 678 success rate. This rate may change in future funding years.*

State Prison Overcrowding

On May 23, 2011, the United States Supreme Court issued a decision that requires the State of California to reduce inmate crowding within its 33 adult institutions to 137.5 percent of design capacity within two years, or by May 24, 2013. The Supreme Court's decision affirmed a federal three-judge panel determination that medical and mental health care for inmates falls below a constitutional level of care and that the only way to meet the requirements is by reducing prison crowding.

In response to the Supreme Court's resolution, on July 20, 2011 CDCR filed an additional report to the three-judge panel outlining 1) whether funding has been secured for public safety realignment; and if so, when public safety realignment will go into effect; 2) the estimated reductions associated with public safety realignment and all other population reduction measures being implemented by the state; and 3) whether the state expects to meet the December 27, 2011 population-reduction benchmark and, if not, what further actions are contemplated.

CDCR estimates that as of December 27, 2011, the in-state prison population will be reduced by approximately 8,400 inmates. CDCR also preliminarily estimates that its in-state institution population will achieve 167 percent of design capacity around January 27, 2012, one month after the Court's December 27, 2011 benchmark. Public safety realignment will, according to CDCR, have a significant impact on its current prison population. Currently, it houses in its 33 prison 13,371 non-lifers serving a revocation sentence or pending a revocation hearing and 18,597 inmates serving lower level offenses that are non-serious, non-violent, and non-sex related. Once fully implemented, public safety realignment of these categories of inmates will ensure that they will no longer be housed in CDCR prisons. Based on preliminary estimates and together with other already adopted crowding-reduction measures, CDCR is projecting that realignment

will allow the state to achieve the final benchmark set by the Court. The Department will issue an updated report in August including more current population projections, final legislative modifications to public safety realignment, and better data assessing the impact of other recent population reduction measures.

DISCUSSION:

Public Safety Realignment Bills

Assembly Bill 109 (Public Safety Realignment)

On April 4, 2011, Governor Brown signed AB 109, historic legislation that realigns a number of public safety programs to counties. Under realignment, the state will continue to incarcerate offenders who commit serious, violent, or sexual crimes, and counties will supervise, rehabilitate and manage low-level offenders. It is anticipated that realignment will reduce the prison population by tens of thousands of low-level offenders over the next three years.

Implementation of this new state law is also the foundation of the state's plan to comply with the Supreme Court's decision.

The three main provisions of AB 109 include:

1. Shifting non-violent, non-serious, non-sex offenders to counties, also referred to as low level offenders, or "3 non's" to counties;
 - *Redefining Felonies:* Revises the definition of a felony to include certain crimes that are punishable in jail for 16 months, 2 years or 3 years. Some offenses, including serious violent and sex-offenses, are excluded and sentences will continue to be served in state prison.
2. Shifting adult parolees to counties under post-release community supervision and a new court administered parole revocation process;
 - *Post-Release Community Supervision:* Offenders released from state prison on or after October 1, 2011, after serving a sentence for an eligible offense, shall be subject to, for a period not to exceed 3 years, post-release community supervision provided by a county agency designated by that county's Board of Supervisors. The Probation Department will serve as the lead agency in San Mateo County.
 - *Revocations Heard & Served Locally:* Post-release community supervision and parole revocations will be served in local jails (by law maximum revocation sentence is up to 180 days), with the exception of paroled 'lifers' who have a revocation term of greater than 30 days. The Courts will hear revocations of post-release community supervision while the Board of Parole Hearings will conduct parole violation hearings.
 - *Alternative Custody:* Authorizes electronic monitoring for inmates being held in county jail in lieu of bail. Eligible inmates must first be held in custody for 60 days post arraignment, or 30 days for those charged with misdemeanor offenses.
 - *Community Based Punishment:* Authorizes counties to use a range of community-based punishment and intermediate sanctions other than jail incarceration alone or traditional routine probation supervision.
3. Shifting responsibility for juvenile offenders to counties:

- Limits future juvenile court commitments to state juvenile detention (Division of Juvenile Justice).
- Counties must have an MOU with the state and it is anticipated that the MOU will outline contracting back options.
- The anticipated realignment of the state's juvenile justice system is scheduled to occur in FY 2012-13 in the second phase of AB 109 implementation.

Assembly Bill 109 also:

- Expands the role and purpose of the *Community Corrections Partnership*, established in SB 678.
- Requires the CCP to develop and recommend to the Board of Supervisors an implementation plan for 2011 public safety realignment.
- Creates an Executive Committee from the CCP members with voting authority to approve a plan to be presented to the Board of Supervisors. The Executive Committee is comprised of:
 1. Chief probation officer (Chair)
 2. Chief of police
 3. Sheriff
 4. County Supervisor
 5. Presiding Judge (or designee)
 6. District Attorney
 7. Department Head from among DSS, Mental Health or Alcohol and Drug (as determined by the Board of Supervisors)
- Provides counties with an opportunity to contract back with the state to send local offenders to state prison. Contracting back, however, does not extend to parole revocations.

Assembly Bill 117 (Public Safety Realignment #3)

Part of the State Budget package approved in June, Assembly Bill 117 enacts several changes to AB 109. These include:

- Delaying the implementation date of AB 109 to October 1, 2011.
- Delaying court responsibility for handling the parole revocation process for state parolees until July 1, 2013
- Requiring counties to inform CDCR by August 1, 2011 as to the designated supervising entity for inmates discharged from prison and placed in the post-release community supervision program.
- Revising the composition of the CCP and its Executive Committee (that will develop and present an AB 109 implementation plan to Board of Supervisors). CCP Executive Committee will now include the following seven members:
 1. Chief Probation Officer, Chair
 2. Presiding Judge or designee
 3. DA
 4. Public Defender
 5. Sheriff
 6. A Chief of Police

7. One of the following—head of county department of social services, mental health, or alcohol and substance abuse programs to be appointed by the Board of Supervisors.
 - Requiring a 4/5 vote of the Board of Supervisors to reject the implementation plan.
 - Providing the Board of Supervisors exclusive authority for allocating funds and making the CCP and its Executive Committee subject to the Brown Act.
 - Creating and funding a Community Corrections Grant Program making operative the provisions of public safety realignment.

Assembly Bill 118 (Public Safety Realignment #2)

The second budget trailer adopted in June 2011, AB 118 creates the funding framework for public safety realignment. Key elements of the bill include:

- Requiring county treasurers to create the County Local Revenue Fund 2011 for the purposes of receiving revenues and continuously appropriating funds from that account to counties.
- Counties are also directed to create the following local accounts and subaccounts to receive funds and for the following purposes:
 - Local Community Corrections Account—funds the provisions of AB 109, including the funding of housing of parolees in county jails, and funds Post-release Community Supervision.
 - Trail Court Security Account—funds trail court security provided by the county sheriff.
 - District Attorney and Public Defender Account—funds costs associated with revocation proceedings involving persons subject to state parole and the Post-release Community Supervision Act of 2011.
 - Juvenile Justice Account—includes two subaccounts:
 - Youthful Offender Block Grant Subaccount—funds enhancements of county probation, mental health, drug, and alcohol, housing and supervision services to youthful offenders
 - Juvenile Reentry Grant Subaccount—funds local program needs for youth discharged from the custody of the Department of Juvenile Justice.
 - Health and Human Services Account—includes nine separate subaccounts:
 - Adult Protective Services Subaccount—funds adult protective services.
 - Foster Care Subaccount—funds the administrative costs and cost of foster care grants and services.
 - Child Welfare Services Subaccount—funds the costs of child welfare services.
 - Adoptions Subaccount—funds the costs connected with providing adoptive services, including agency adoptions.
 - Child Abuse Prevention Subaccount—funds the costs of child abuse prevention, intervention, and treatment services.
 - Drug Court Subaccount—funds the costs of drug court operations and services.

- Nondrug Medi-Cal Substance Abuse Treatment Services Subaccount—funds the costs of nondrug Medi-Cal substance abuse treatment programs.
 - Drug Medi-Cal Subaccount—funds the costs of the Drug Medical Program.
- Local Law Enforcement Services Account—funds various local public safety grant programs (such as the Citizens’ Option for Public Safety Program, juvenile justice grant programs, and booking fees) that are now shifted directly to local governments.
- The realignment package includes \$6.3 billion in 2011-12 to local governments to fund various criminal justice, mental health, and social service programs. The budget reallocates \$5.6 billion of state sales tax and state and local VLF revenues for purposes of realignment in 2011-12. Specifically, the Legislature approved the diversion of 1.0625 cents of the state’s sales and use tax rate to counties. According to the Administration, this is projected to generate \$5.1 billion in 2011-12, growing to \$6.4 billion in 2014-15 (at full implementation). In addition, Senate Bill 89 (the Main Budget Bill) redirects an estimated \$453 million from the base 0.65 percent VLF rate for local law enforcement grant programs.
- Statewide, public safety realignment will be funded in 2011-12 at the following levels:

Statewide Expenditures for 2011 Realignment

(In Millions)	
Adult offenders and parolees	\$1,587
Local public safety grant programs	490
Court security	496
Existing juvenile justice realignment	97
Early and Periodic Screening, Diagnosis, and Treatment	579
Mental health managed care	184
Drug and alcohol programs—substance abuse treatment	184
Foster care and child welfare services	1,567
Adult protective services	55
CalWORKs/mental health transfer	1,084
• CalWORKs	(1,066)
• Mental Health	
Total	\$6,322

- Establishes various formulas to determine how much revenue is deposited into each account and subaccount. The bill does not contain any provisions allowing counties flexibility to shift funds among these programs
- Clearly stating that formulas apply only to the first year of realignment: methodologies for 2012-13 and beyond are open to review and revision and that it is the intent of the Legislature that sufficient protections be put in place to provide ongoing funding and mandate protection for the state and local governments.
- Moving the funding for community mental health programs from 1991 realignment into the 2011 realignment.

AB 109 Realignment Funding Formula

Working through the County Administrative Officers Association of California (CAOAC), a statewide allocation formula for distributing AB 109 programmatic funds was developed in June. The weighted formula, which will be in effect for FY 2011-12 for the adult population shift only, is based on:

- 60 percent Average Daily Population (ADP)
- 30 county population (18 to 64 years)
- 10 percent SB 678 success rate

The funding formula is subject to renegotiation in FY 2012-13 and beyond.

County Impact: *San Mateo County is expected to receive 1.1919 percent of statewide realignment funding, or \$4,222, 902 in FY 2011-12. This figure has been adjusted to reflect nine months of operation given the October 1 start date. The funds are intended to cover all aspects of the adult population shifts: 1) the transfer of low-level offenders to the County; 2) the County's new supervision responsibilities for state prison inmates released to post-release community supervision; and 3) sanctions (to include incarceration) for those on post-release community supervision. Using the same funding formula designed for the programmatic aspects of AB 109, the District Attorney/Private Defender will receive a separate allocation of \$151,371 to pay for costs associated with the local revocation process for those on Post-release Community Supervision.*

One-Time Start-Up Costs

Senate Bill 87, the main budget bill, provides a one-time statewide appropriation of \$25 million (distributed using the AB 109 allocation formula) to counties to cover costs associated with hiring, retention, training, data improvements, contracting costs, and capacity planning pursuant to each county's AB 109 implementation plan. Each county will also receive an additional one-time grant (based on county size) for the purposes of supporting the CCP in developing its implementation plan.

County Impact: *San Mateo County will receive \$150,000 in a CCP Planning Grant. The County will also receive an additional \$297,975 allocation to cover the costs associated with hiring and retention purposes.*

FY 2011-12 County Allocations for Public Safety Realignment

<i>AB 109 Programmatic funds</i>	<i>\$4,222,902</i>
<i>DA /Private Defender</i>	<i>151,371</i>
<i>CCP Planning Grant (one-time)</i>	<i>150,000</i>
<i>PRCS Hiring/Retention Grant (one-time)</i>	<i>297,975</i>
Total	\$4,822,248

Projected Population

According to the Department of Finance, it is expected that at full rollout in the fourth year of realignment (2014-15), the County will have an additional average daily population of approximately 209 short- and long-term inmates in the its jail. The postrelease community

supervision population is estimated at 351 and the return-to-custody due to release revocation at 33.

Health and Human Services Public Safety Realignment

Under Realignment, counties will also assume full fiscal and operational responsibility for administering various health and human service programs currently funded and/or administered in part by the state. The following identifies which programs realign in which fiscal year:

2011-12	2012-13
Foster Care	Mental Health Managed Care
Community Mental Health (1991 Realignment)	Early Periodic Screening, Diagnosis and Treatment
Child Welfare Services	
Adoptions	
Adoption Assistance Program	
Adult Protective Services	

The health and human service realignment is effective July 1, 2011.

Assembly Bill 118 contains provisions that move the funding for community mental health programs from 1991 realignment into 2011 realignment. The funds that would have otherwise been deposited into the 1991 Mental Health Subaccount are now directed to be deposited into a new Social Services Subaccount. AB 118 specifies that these new funds will be used to pay for an increased county share of CalWORKs grants.

Allocations for realigned health and human service programs will be based on what the state would have otherwise expended for these programs in FY 2011-12. The state advanced cash to counties for administration and grants for many of the health and human service programs slated for realignment on July 1.

County Impact: It is unclear how much flexibility counties will have in utilizing this funding source and whether, in economic downturns, sales tax and VLF revenues will be sufficient to support program costs. Still to be determined is the financial flexibilities counties will be given the second year of public safety realignment to transfer funds between accounts to meet local needs. Finally, programmatic implications of this shift are still unclear.

ADDITIONAL RESOURCES:

Detailed information on public safety realignment is provided in this binder and includes:

1. Senate Bill 678 legislative analysis
2. Assembly Bill 109 legislative analysis
3. Assembly Bill 117 legislative analysis
4. Assembly Bill 118 legislative analysis
5. CDCR
 - Three-Judge Panel and California Inmate Population Reduction Fact Sheet

- Actions CDCR Has Taken to Reduce Overcrowding Fact Sheet
 - Timeline: The Three-Judge Court and California Inmate Population Reduction
 - AB 900 Construction Update Fact Sheet
 - "A Status Report: Reducing Prison Overcrowding in California," Legislative Analyst's Office, August 2011.
6. CSAC
- 2010 CSAC Realignment Principles
7. 1991 Realignment
- "Road Map for Realignment: County Planning for AB 109 and AB 117," Joan Petersilia, Draft July 15, 2011.
 - "Realignment Revisited: An Evaluation of the 1991 Experiment in State-County Relations," Legislative Analyst's Office, February 6, 2011.
8. Press
- "California spending billions to build new prisons," Marisa Lagos, SFGate.com, August 14, 2011.
 - "California's Goal to Reduce Prison Overcrowding Hinges on Counties," Raj Jayadev (New America Media), California Progress Report, August 12, 2011.
 - "Viewpoints: 'Realignment' to local prisoner control carries a high safety risk," Assemblyman Jim Nielsen, Sacramento Bee, March 17, 2011.
 - "Viewpoints: Leadership, incentives needed to realign state-local roles," Daniel Hancock, Sacramento Bee, February 20, 2011.

C: Members of the San Mateo County Community Corrections Partnership