

**A REPORT BY
THE 2013-2014 CONTRA COSTA COUNTY GRAND JURY**

725 Court Street
Martinez, California 94553

REPORT 1410

AB 109 IN CONTRA COSTA COUNTY

So Far So Good

APPROVED BY THE GRAND JURY:

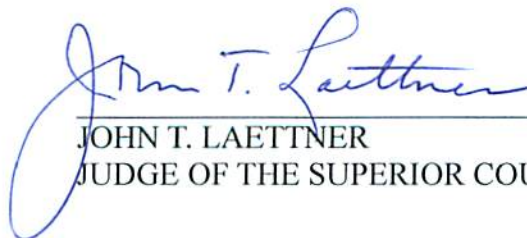
Date: 5/29/2014



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ACCEPTED FOR FILING:

Date: 6/4/14



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AB 109 IN CONTRA COSTA COUNTY

So Far, So Good

TO: Contra Costa Board of Supervisors
Contra Costa County Sheriff

CC: Contra Costa County District Attorney
Contra Costa County Chief Probation Officer
Contra Costa County Public Defender

SUMMARY

AB 109, also known as *Public Safety Realignment*, is a state law that attempts to deal with overcrowding in the state prison system and recidivism of state convicted felons by moving the responsibility for less serious crimes from the state to the county level. Contra Costa County's response to this challenge has been effective and laudable.

METHODOLOGY

Grand Jury jurors interviewed representatives from The Probation Department and The Sheriff's Office, and attended meetings of the Community Corrections Partnership, the Community Advisory Board, and the Public Protection Committee of the Board of Supervisors.

Reviewed Reports and Documents Concerning AB 109:

- Penal Code Sections 17.5; 3450-3465;
- Contra Costa County: A Model for Managing Local Corrections, prepared by James Austin, Ph.D., Robin Allen and Roger Ocker, January 2014;
- Assembly Bill 109: How Will It Impact our Jail? Report of the 2012/2013 Marin County Grand Jury, Public Release Date-May 28, 2013;
- SB 1022 Grant Proposal for Proposed West Contra Costa County Reentry and Detention Facility Expansion, By Sheriff David O. Livingston, October 9, 2013;

- CPOP Issue Brief: Realignment Perspective, by the Chief Probation Officers of California, July 2012;
- California Department of Corrections and Rehabilitation Fact Sheet: 2011 Public Safety Realignment;
- Public Safety Realignment and Crime Rates in California, Public Policy Institute of California, December 2013.

BACKGROUND

Origin of AB 109

For many years concern about crime has led to changes in the law that lengthen prison sentences, provide for longer sentences for prisoners convicted of subsequent offenses (as in the 3-Strikes Law), and criminalize behavior that is widespread, such as the use of various drugs. The result has been chronic overcrowding in the state prison system, the California Department of Corrections and Rehabilitation (CDCR). This, in turn, has led to numerous successful lawsuits in the federal courts concerning the quality of health services available in state prisons and pervasive overcrowding. Financing the prison system has required increasingly large sums of money at times when poor economic conditions have reduced state revenues.

In January 2011, Governor Jerry Brown, Jr. declared a state of fiscal emergency, called the Legislature into special session and offered a number of proposals to address the State's economic crisis. Among the proposals was AB 109. The purposes of AB 109 were to reduce recidivism of prisoners released from the prison system and to reduce overcrowding and the costs of maintaining the system.

AB 109, implemented in October 2011, shifted responsibility for housing or supervising individuals convicted of certain non-violent, non-serious, non-sexual offenses (referred to as the "triple-nons") from the State to counties. Prisoners convicted of such crimes were released from state prisons to county custody and parolees were transferred from the supervision of the state parole system to county probation systems. This legislation was intended to move approximately 30,000 offenders from state to county custody. Under this legislation, those convicted of the same classifications of crimes in the future will remain in the county criminal justice system, rather than being sent to state institutions. Some state funding was made available to counties to assist them in assuming these new responsibilities. Despite this fact, there was a great deal of concern that AB 109 would shift overcrowding problems to the counties and result in higher crime rates. Indeed, in some counties there has been overcrowding and this has resulted in lawsuits similar to those brought against the State.

Contra Costa County's Pre AB 109 Incarceration Practices

There are two basic philosophies regarding detention of those convicted of criminal acts. One, the incarceration model, emphasizes keeping inmates off the streets through incarceration for the protection of the public and to punish them for their crimes. The other, the rehabilitative model, emphasizes using the time the prisoners are in custody to assist them in overcoming addictions and psychological problems, teaching them to think and act differently, and providing for educational, living and employment skills that may assist them to avoid future criminal behavior once they are released.

Incarceration requires little more of detention facilities than cells and facilities for services such as food and laundry. Rehabilitation requires places where classes and individual counseling may take place. Certain outside organizations, offer rehabilitative services for a fee, while others provide these services for free out of religious or humanitarian values. The detention facility must be configured to permit these services to be rendered outside of the strict confinement of a cell.

Contra Costa County, through the work of its criminal justice agencies, the Superior Court, the Sheriff, the Probation Department, the District Attorney, and the Public Defender, has been committed to the rehabilitative model. Wherever possible it has offered a wide range of programs and services to its inmates and to those on probation. The County's Superior Court is more likely than those in other counties to rely on probation rather than incarceration. Before the advent of AB 109, the County sent only 13% of those convicted to state prison, as compared to 20% for the state as a whole.

Courts in Contra Costa County are far more likely to impose split sentences, meaning the sentence is split between a period of incarceration and a period of probation, than are courts in the rest of the state. The percentage for split sentences in the County is 90%, while the State percentage is 28%. These policies have been successful. Before AB 109, the County experienced a 20% recidivism rate for those placed on probation following conviction for a felony. The comparable recidivism rate for the state was 60%.

In addition, the Superior Court in Contra Costa County tends to impose probation sentences that are significantly shorter than those imposed in many other counties. Research indicates that such a policy may actually reduce recidivism since probationer's lives are disrupted by the probation process for a shorter time.

Contra Costa County's Response to AB 109

As required by AB 109 the County formed a Community Corrections Partnership (CCP) to draft proposed spending plans concerning the allocation of AB 109 funds. The proposed spending plans are submitted to the Board of Supervisors for their consideration and, if approved, transmitted to the State. The executive voting committee of the CCP consists of the Chair, the County's Chief Probation Officer (required by AB 109), the Sheriff, the Public Defender, the

District Attorney, a Behavioral Health representative, a city police chief (currently the Police Chief of Richmond) and a court administration official.

By all accounts the members of the CCP have acted effectively and harmoniously to fashion a policy to implement AB 109 and expend funds made available by the State to do so. Sixty percent or more of AB 109 funds have been designated to support programs and services designed to help individuals convicted of crime return to society successfully. Thus, the County has continued its reliance on the rehabilitative model as it did before the passage of AB 109.

In December 2012, the CCP Executive Committee established the Community Advisory Board (CAB) to provide input on community needs, assess implementation of the realignment plan, review data on realignment outcomes, advise the CCP on community engagement strategies, offer recommendations for ongoing realignment planning, advise county agencies regarding programs for implementation in the County, and encourage outcomes that are consistent with the County's Reentry Strategic Plan.

The CAB is comprised of 12 members who have expertise in adult education within a correctional setting, domestic violence prevention, workforce development, behavioral health issues, post-release reentry services, services for reentering women, criminal and drug court, and law and policy related to issues of the formerly incarcerated and crime survivors.

A key accomplishment of the CAB in cooperation with the CCP was the establishment of a full-time reentry coordinator position within the Probation Office.

The interaction of community representatives with the Sheriff's Office and the Probation Office, and their commitment to the rehabilitative model are directly responsible for the successful implementation of AB 109.

The Consequences of AB 109 in Contra Costa County

So far all state prisoners who have been transferred to the County have had the remainder of their sentences served on probation under supervision of the County Probation Department. None of these individuals have been housed in County detention facilities. Some prisoners who have been convicted of the triple-non crimes that would have caused them to be incarcerated in State prisons prior to AB 109, are serving their sentences in County detention facilities. This has not led to an overcrowding problem because their numbers have been largely offset by a decline in the number of prisoners who are being held for trial. The decline in pre-trial prisoners is due, at least in part, to the Probation Department's adoption of an evidence-based risk assessment instrument that estimates the likelihood of further criminal activity by those awaiting trial.

Although the most recent crimes committed by State prisoners who have been released to serve the remainder of their sentences on probation under the supervision of the County Probation Department fit under the triple-nons category, their previous offenses may have been more serious. They are often potentially more dangerous than are the probationers normally supervised by the County Probation Department. Challenges posed by this change has led the Probation Department to make some policy modifications, such as the arming of Probation Officers in the County.

The Sheriff's Office had always worked with a number of private entities seeking to offer rehabilitative services to prisoners. The advent of AB 109, with its increased funding and the urgency of dealing with a larger number of individuals, intensified the need for this collaboration, resulted in more entities offering a wider array of services to inmates in the County's detention facilities.

AB 109 funding has underwritten some of these programs, as well as funded an expansion of the nursing staff at the West County and Marsh Creek Detention Facilities and added a mental health clinician. Funding has also been provided for one additional police officer each for Richmond, Concord, Pittsburgh and Antioch. Research has shown that spending available funds for putting more law enforcement personnel on the streets cuts crime more effectively than longer sentences for those who are apprehended. This is a result of the long accepted principle that certainty of punishment (apprehension) is more of a deterrent than severity of punishment.

The effect of AB 109 on the crime rate appears to be mixed. The trend throughout the state including Contra Costa County, shows no increase in murder and rape. There may be a slight uptick in robberies throughout the State and County. With regard to property crimes, the evidence shows an increase throughout the State and County, particularly with regard to auto theft. The societal cost of such crimes is less than the cost of lengthier incarceration generally, although certainly not so for the individual victims.

The rehabilitation philosophy followed by the criminal justice establishment of Contra Costa County saves the County a great deal of money by reducing the length of incarceration and probation. If more of the saved funds were directed toward increasing the presence of law enforcement personnel on the street, the increase in crime could be reduced.

Principal Challenges

The County's rehabilitation model appears to be very effective but is limited in its application by the deficiencies of one of its principal detention facilities. The Martinez facility is 32-years old and was constructed before the rehabilitation model was adopted. It contains no space for classes or meaningful counseling programs. The inmates at the Martinez facility cannot be moved to the less restrictive West County or Marsh Creek facilities, which abound with rehabilitation programs. Medical problems of a physical or mental nature, gang membership, enemies at the other facilities or a history of very dangerous behavior all make it impossible to move these inmates to the less restrictive facilities.

An effort to win state funding to expand the West County facility to house some of these prisoners has so far failed but a second round of funding is expected in 2015.

The financial challenges in recent years led, in many areas, to the reduction in the number of law enforcement personnel. The increase in property crimes throughout the County may or may not be related to AB 109 but the most effective response may be increasing law enforcement personnel on the street when the funds become available.

FINDINGS

1. County law enforcement agencies have implemented an effective program to avoid overcrowding for coping with the additional convicted offenders who have been directed to the County by the State.
2. County law enforcement agencies have avoided overcrowding primarily by continuing to implement the rehabilitative model of detention.
3. The lack of space for classes or meaningful counseling programs at the Martinez detention facility may prevent full implementation of the rehabilitative model of detention.
4. Implementation of AB 109 does not appear to have resulted in a large increase in crime in the County.
5. Although it is difficult to be certain as to the cause of any increase in crime that has taken place since the implementation of AB 109, such increase has been isolated to property crimes, especially car thefts.
6. Most jurisdictions throughout the County cut back on their police forces prior to the adoption of AB 109.
7. Hiring additional law enforcement officers for street patrol is the most efficient use of money to curtail crime.
8. The close cooperation between the Sheriff's Office, the Probation Office, and the active participation of community advocates has been a key factor in the successful implementation of AB 109 in Contra Costa County.

RECOMMENDATIONS

1. The criminal justice agencies of the County should consider continuing their policies of emphasizing rehabilitative services and programs over lengthy incarcerations for convicted criminals.
2. In the next round of funding by the State, the County should consider making a strong case for the funds for the construction of county detention facilities.
3. To the extent that additional funds become available for law enforcement operating funds, the County should consider making the addition of law enforcement officers for routine street patrol the highest priority.
4. The County should consider continuing to involve community advocates and service providers in the implementation of AB 109 initiatives.

REQUIRED RESPONSES

	<u>Findings</u>	<u>Recommendations</u>
Contra Costa County Board of Supervisors	1-8	1-4
Contra Costa County Sheriff	1-8	1-4

COPY FOR INFORMATION ONLY – NO RESPONSE REQUIRED

	<u>Findings</u>	<u>Recommendations</u>
Contra Costa County District Attorney		
Contra Costa County Public Defender		
Contra Costa County Chief Administrative Officer		
Contra Costa County Chief Probation Officer		