

November 19, 2012

Board of State and Community Corrections
SB 1022 Criminal Justice Facilities Construction Program
Executive Steering Committee
600 Bercut Drive
Sacramento, CA 95811

Dear Fellow Committee Members:

As you know, the Public Safety Realignment Act of 2011 (hereinafter "AB 109") ushered in an era of profound and unprecedented change in our criminal justice system. AB 109 shifted thousands of state housed offenders to county jails at a time when many counties were already struggling with overcrowding. With the enactment of SB 1022 as part of this year's budget, an additional \$500 million in lease revenue bonds has been authorized to assist counties in addressing on-going jail bed space, programming space, and design needs. As we begin preparing Requests For Proposals ("RFP") from counties seeking construction funding, I submit this letter to my fellow Executive Steering Committee Members to recommend inclusion of the matrix explained below for use in our award decisions.

The Board of State and Community Corrections ("BCSS") is required by statute to oversee and approve the scope and cost of proposed adult local criminal justice facilities, and establish minimum standards for funding that are both cost effective, and include space for treatment and programming. (Gov. Code § 15820.921-15820.925.)

Criminal justice facilities are defined as custodial housing, reentry, program, mental health, or treatment space necessary to manage the adult offender population. (Gov. Code § 15820.92; See also Pen. Code § 17.5, subd. (a); and Pen. Code § 3450, subd. (b)(1-8).)

The text of SB 1022 and related Realignment legislation grants the BSCC, and by delegation the Executive Steering Committee, broad latitude in drafting an RFP that emphasizes the importance of funding construction that manages population in a safe and cost effective manner. Emphasis should also be placed on promoting evidence based practices ("EBP") to reduce recidivism; implement seamless reentry services; respond to demand for in-custody mental and medical health care; and construct safe and accessible facilities. (Gov. Code § 15820.92; See Gov. Code § 15820.923, subd (b).)

As stewards of the public funds authorized by SB 1022, it is both an opportunity and our responsibility to promote the use of proven alternatives to incarceration as an antecedent to new jail bed construction. Requesting counties should be encouraged to promote the use of correctional space that is cost effective and better manages jail populations through the use of recidivism reduction tools, including: validated risk assessment instruments; programs developed using EBP; and other least restrictive alternatives to incarceration, like day reporting centers. We must avoid the past history of allocating funds based on stated need for more jail beds, without a demonstrated commitment to effective population management that includes the use of effective alternatives to incarceration. There are programs and practices nationwide, as well as in California, with empirically established rates of success in managing lower risk offender inmate populations. Yet, these effective strategies remain under-applied in most of our state.

Allocating funds based on a claimed need for more jail beds, without a commitment to effective population management, will likely perpetuate a reliance on unnecessary and expensive jail expansion over time. Implementation of programs, utilizing data-driven and researched-based practices, costs less than building expanded housing, and will reduce recidivism over time, saving counties untold amounts of money that may be re-directed to other agencies. (Vera Institute, *Performance Incentive Funding: Aligning Fiscal and Operational Responsibility to Produce More Safety At Less Cost*, November 2012, pg. 7.)

Moreover, we should be mindful that high rates of incarceration has historically born little correlation to crime rates within a county. Rather, county incarceration rates are traditionally influenced by a county's political and social culture. According to W. David Ball, Professor of Law at the Santa Clara School of Law, incarceration rates have rarely been a response to crime rates, and are often highest in counties with lower rates of felony arrest.

Ball further states,

California is one state; it is also fifty-eight counties. When it comes to criminal justice and the state prison population, localities are where the action is. County criminal justice budgets are much larger than prison budgets, county officials make most of the key decisions, and county responses to crime --not crime itself-- drive new felon admission rates.

The state should, instead, tie realignment benchmarks to the violent crime coverage rate. This would allow for flexibility in letting counties imprison greater numbers in response to local outbreaks of reported violent crime, while tying state subsidies for prison usage to its most persuasive justification: crime. (Ball, *Tough on Crime (on the State's Dime): How Violent Crime Does Not Drive California Counties' Incarceration Rates - And Why it Should* (2012) ,available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1871427)

Consistent with Ball's recommendation to tie local incarceration subsidies to crime, a comparison of felony crime rates and local incarceration rates will assist in providing a picture of a county's handling of their criminal justice populations. This will provide a fair metric that can be applied across applicant counties to evaluate whether additional jail space is necessary, or if alternatives within the county may better promote cost effective public safety practices. Therefore, our RFP rating criteria should also be based on an examination of felony arrest rates within the requesting county in relationship to its daily jail population. If a requesting county has a felony arrest rate that is noticeably lower than its incarceration rate, said county should be given less priority. The SB 1022 Criminal Justice Facilities Construction Program Executive Steering Committee should recommend the use of a needs based matrix that focuses on the requesting county's incarceration rates, and considers the following factors:

- 1) Felony crime rate in comparison to the felony adult daily population rate (providing an accurate measurement of local incarceration rates above and below the state average). The total jail population and the percentage in pretrial as compared to sentenced status. The percentage of pretrial (charged) felons to misdemeanants in pretrial status on a daily basis and the percentage sentenced (convicted) of felons to misdemeanants on a daily basis. Based on these data, preference should be given to counties that house higher percentages of felons.
- 2) Current use or proposed implementation of research-based alternatives to incarceration, including: the types and total number of alternative programs; the average daily population of inmates in each alternative program who have been diverted from jail; the percentage of individuals in each alternative program as compared to the total county jail population; and the use of objective risk-based decision making. Preference should be given to counties that have implemented the use of a validated risk assessment instrument, pretrial release, electronic monitoring, day reporting centers as an alternative to incarceration, and other research-based alternatives to incarceration.
- 3) An evaluation of the cost effectiveness of the proposal that calculates the total cost of the project divided by the total numbers who will be served on a daily basis in the proposed correctional facility. Additionally, the ratio of requested dollars that will be applied to jail bed space as compared to program space costs should be provided. This will help promote the construction of cost effective jail space that emphasizes programming and reentry, resulting in effective jail management.
- 4) The enhancement of the county's delivery of medical and mental health services.
- 5) Safety and/or ADA compliance needs in relationship to incarceration rates. Emphasis should be placed on how the requesting county's claims of crowding are affecting the unique needs of specialized inmate populations, such as: disabled inmates, mentally ill offenders, women inmates, including the needs of pregnant inmates, and/or women with specific medical needs, and LGBT inmates.

By viewing submitted county proposals through the prism of this matrix, we will ensure that counties most in need of SB 1022 funds will receive funds and that each county receiving an award will design and build smart, needs-based, space that will reduce recidivism over time. Additionally, it should be made clear in the RFP process that counties may request funds for programming space only, where there is a need for improved confinement conditions and space for recidivism reduction programs. This matrix will also allow BSCC to fulfill its mission to promote successful, effective criminal justice programs that save money while keeping communities safe.

It is critical that counties not just repeat the State's mistakes, but do what the Department of Corrections and Rehabilitation was unable to do – effectively manage its inmate population, with safe and effective confinement conditions, and an eye toward research-based programming, while ensuring public safety. **We must be wary of awarding funds based solely on levels of overcrowding, without thoroughly evaluating the requesting county's efforts to implement effective alternatives to incarceration.** After all, the costs associated with county jail expansion are not just in construction. According to the Public Policy Institute of California (PPIC), construction costs only account for ten percent (10%) of overall jail operations costs. (Lofstrum & Kramer, *Capacity Challenges in California's Jails* (Sept. 2012), available at http://www.ppic.org/main/publication_quick.asp?i=1034 .) Thoughtful action by our Committee today, will promote best practices, while saving both county and state dollars over time.

As a fellow member, I greatly appreciate the ESC's time and attention to this matter and I look forward to working together as we seek to build a new and successful criminal justice edifice that may serve as a model to all others.

Sincerely,



Scott MacDonald

SB1022 Executive Steering Committee Member

Cc: Patty Mazilli, Director BSCC