



Probation Department Sierra County



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Public Safety Realignment
2011 Implementation Plan (AB 109/117)

Community Corrections Partnership (CCP) Executive Committee

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John Kennelly, Presiding Superior Court Judge
Larry Allen, District Attorney (vice chair)
J Lon Cooper, Public Defender
John Evans, Sheriff
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I. Background

The Public Safety Realignment program as constituted in AB 109 and 117 has considerably changed the criminal justice system. This is likely the most far reaching change to the criminal justice system since the elimination of indeterminate sentences in the middle 1970s.

The first area of concern is that many offenders who would have previously served time in the state prison will now be serving their “prison term” in the county jail. This particular population is now being described as the “non-non-nons.” This stands for non-violent, non-serious, non-sex offense. In addition to this category, there is also a long list of exceptions – of which there is something over 70 different offenses listed. It should also be pointed out that nothing about AB109/117 has changed sentencing rules or probation eligibility. The new laws only effect the implementation of prison terms after probation is denied or permanently revoked.

In summary, if an offender is convicted of a violent or serious felony, has a prior conviction of a serious or violent felony, if they are required to register as a sex offender, or if they have been convicted of one of the listed exceptions, they will serve their “prison term” in the state prison. If the offender does not fit in one of the above listed categories, the new law requires them to serve their “prison term” in the county jail. Depending upon the sentencing scheme imposed by the court, they will either be supervised by probation upon release, or be released without supervision, formal or otherwise. It is important to note that there is no upper limit to how long a term can be served in the county jail. Some counties have already experienced cases where the

possible jail term was in excess of 20 years.

At this point, it may be useful to inform the board of some recent statistics in order to illustrate the type of numbers and situations that the county will be dealing with as a result of the new laws. These numbers are based on cases that have existed on or after April 01, 2009, as statistics were not kept by probation prior to that date.

The first table is a breakdown of all individuals who are currently on probation or had their case terminated on or after April 01, 2009. It is broken down into two sections, based on whether their case would have been a potential “prison term” (CDCR) or a prison term to be served in county jail (AB109) had that law been in effect at the time of their termination.

		Category	CDCR	AB109
57		Closures & current felony probationers	58%	42%
	23	Current Felony probationers	48%	52%
	34	Former probationers	65%	35%

This second table is a breakdown of all the closed cases, whether they were initially granted probation or sentenced to prison without probation. According to our records, in Sierra County only 16% (5/32) are initially sentenced to state prison. According to a statement made at AB109 training where Governor Brown was present, the state average is 20%. According to CDCR statistics, in 2010, Sierra County imposed the fewest prison terms in the state (3); Alpine had four; Modoc had six and Mono had seven.

			CDCR	AB109
39		Total case closures	25	14
	5	Initial State Prison	3	2
	24	Granted Probation (excludes drug court)	17	7
	10	Drug Court	5	5

This table is a breakdown of the manner in which cases were closed:

39		Closures		
	11	Probation terminated unsuccessfully with prison term, Or sentenced to prison without probation	7	4
	3	Probation terminated unsuccessfully with jail term	2	1
	8	Case transferred to a different county	5	3
	17	Normal or early termination	11	6

This table is somewhat similar to the one above, but does not include those cases that were transferred out. Of the eleven cases that went to prison, five were sentenced initially, five went on a technical violation of probation and one was committed for a new law violation while on probation. A “Normal Termination” is a completed probation term, whether it is dismissed early or on schedule. “Jail/CDCR”

means their probation was terminated unsuccessfully and a jail or prison term was imposed. The state average for a positive probation termination is 68%, based on those counties reporting information to the Chief Probation Officers of California (CPOC). According to CDCR records, almost 68% of parolees are returned to custody on a parole violation or new conviction within three years.

	CDCR		AB109	
	Pos term	Jail/CDCR	Pos term	Jail/CDCR
Probationers (-Drug Court)	7(58%)	5(42%)	2(50%)	2(50%)
Drug Court	4(80%)	1(20%)	4(80%)	1(20%)
Total	11(65%)	6(35%)	6(67%)	3(33%)

There are currently 23 individuals on felony probation. Only eight of them actually live in county. Of these 23, 12 of them would be AB109 cases, whereas 11 would be traditional prison terms. Out of the 12 AB109 cases, only four of them actually live in Sierra County. The AB109 laws took effect on October 01, 2011. Sierra County is yet to receive our first parolee. We had one scheduled for early December, but that the case was transferred to Plumas County before release.

As previously mentioned, in the last two years, Sierra County has sentenced 11 people to prison. Seven of those will be under the jurisdiction of the state (some of whom will not be living in this county). Of the remaining four, one is being transferred as mentioned above, two appear to have been paroled to other counties already, which leaves only one individual likely to be paroled to Sierra County Jurisdiction anytime soon. Judging by his pre-sentence credits, I would estimate his parole date to be around April of 2012.

In addition to everything else quoted above, there have been changes to how parole operates as well. Of these 11 prison commits, it appears only three will be supervised by parole upon release, eight will be supervised by probation under PRCS (Post Release Community Supervision) rules. PRCS release mandates a termination of supervision if the offender has not been returned to custody for any reason after one year. The maximum violation period is 180 days, which translates to 90 real days and 90 days of conduct credits.

The rate of prison commitments has not been steady over the last two and one half years, as can be seen by the chart below. The main reason for the increase is the improvement of supervision of offenders by the probation department. The important thing to note is that even though there has been a significant increase in the number of individuals sentenced to prison for technical probation violations, 80% of those fall within the category of violent or serious felons. This is an indication that probation is following the intent of the new legislation and spending their resources on the more serious felons.

	Total	CDCR			AB109		
		Initial	VOP/Law	VOP/Tech	Initial	VOP/Law	VOP/tech
2009	2	1	-	-	1	-	-

2010	3	1	-	1	-	1	-
2011	6	1	-	3	1	-	1

The four individuals that would have fallen under the category of AB109 were sentenced to a combined term of 124 months in state prison. Normally, after considering the appropriate credits, that would equate to 62 months of actual time. However, there are some deductions to that calculation. The VOP/Law violation noted above was served concurrent to a prison term in another county. Further, at least one of the individuals served in a fire camp, meaning he was awarded double credits (essentially only serving 1 year out of a three year term). Finally, we need to deduct about six months from our total to compensate for the individual who won't likely be paroled until next April or later. This gives us a reasonable estimate of about 40 months of real custody time over the period 4/01/09 – 11/18/11 (31 months). I realize this is a somewhat confusing calculation, but I believe it demonstrates that, for the most part, AB109 will likely result in only having one extra individual in the county jail at any given time. On rare occasions there might be two.

The newly enacted section 2057 of the Penal Code allows counties to contract with the state prison to house individuals who would otherwise have to serve their term in the county jail. CDCR has announced that the rates for this plan are \$46.19 a day for inmates eligible for fire camp, and \$77 a day for healthy Level II/III inmates (these rates are subject to review each year). Further, there is a special arrangement for the four smaller counties, in that they will only charge us those rates until such time as we expend 50% of our annual award, at which time it becomes free. This means that even on those occasions where there are individuals serving a "prison term" in the county jail, the state has provided a way to house those individuals at CDCR and therefore not burden the county jail. It should be pointed out that this deal only applies to fresh law violations, not any type of parole violation.

On November 18, 2011, there were five individuals in custody at Sierra County Jail. Two of these individuals were pre-trial, two others are serving their initial sentence, and one was being held on a probation violation. The latter is for a serious felony, which means if revoked and sentenced to prison he will not do his time in county jail.

The main purpose of all the statistical information provided above is to demonstrate the following:

- Over the last two and a half years, most of the prison commits have been for offenses that would still have been served in the state prison.
- Even those individuals who would have had to serve a prison term in the county jail can be contracted to be housed at state prison for minimal cost.
- Although probation will be supervising some of these individuals who had previously been supervised by parole, the numbers will be quite small and can be easily managed by existing personnel.
- Although there may be other valid reasons for increasing the amount of jail staff, there would not appear to be a necessity based solely on the predicted increase of zero or one additional individual at any given time because of AB109.

It is important to realize that there is much more to AB109 and realignment than simply housing prison inmates in the county jail. The legislative intent is for there to be a strong proactive component as well. The newly enacted section 17.5 of the Penal code explains the intent of the legislature in that regard, which reads in part:

(2) Despite the dramatic increase in corrections spending over the past two decades, national reincarceration rates for people released from prison remain unchanged or have worsened. National data show that about 40 percent of released individuals are reincarcerated within three years. In California, the recidivism rate for persons who have served time in prison is even greater than the national average [edit: 68%].

(3) Criminal justice policies that rely on building and operating more prisons to address community safety concerns are not sustainable, and will not result in improved public safety.

(4) California must reinvest its criminal justice resources to support community-based corrections programs and evidence-based practices that will achieve improved public safety returns on this state's substantial investment in its criminal justice system.

(5) Realigning low-level felony offenders who do not have prior convictions for serious, violent, or sex offenses to locally run community-based corrections programs, which are strengthened through community-based punishment, evidence-based practices, improved supervision strategies, and enhanced secured capacity, will improve public safety outcomes among adult felons and facilitate their reintegration back into society.

The same section also describes what the legislature had in mind by the term "community based punishment." Some examples of the code can be summarized as follows:

- (A) Short-term ...incarceration in jail for ...of not more than 10 days.
- (B) Intensive community supervision.
- (C) Home detention with electronic monitoring or GPS monitoring.
- (D) Mandatory community service.
- (E) Restorative justice programs such as mandatory victim restitution and victim-offender reconciliation.
- (F) Work, training, or education...
- (G) Work ... release program pursuant to Section 4024.2.
- (H) Day reporting.
- (I) Mandatory ...treatment programs.
- (J) Mandatory random drug testing.
- (K) Mother-infant care programs.
- (L) Community-based residential programs...

Sierra County could probably continue with business as usual, and the impact of AB109 would likely be small. However, there is also an opportunity to improve. The county operates a successful drug court program. Over the last two years the success rate has been 80% - regardless as to whether the individual would have been a CDCR

or AB109 case. Other probationers have a considerably lower success rate: 58% for CDCR cases and 50% for non-drug court probationers.

There has been a suggestion by the CCP that part of the plan include the expansion of our current drug court program to include some other individuals who wouldn't otherwise qualify. If such an expansion could be created, it is highly likely that the current 50-58% success rate of non-drug court probationers could be improved. The end result would be lower incarceration costs, less recidivism and enhanced community safety. The CCP believes that is exactly what the legislature had in mind in passing the realignment laws.

II. Home detention/Electronic Monitoring

A significant part of AB109 calls for an expansion to a county's electronic monitoring program. The authority for this expansion is found in 1203.016 PC. This section allows that the "correctional administrator" may authorize certain sentenced inmates to participate, voluntarily or involuntarily, in a home detention program in lieu of confinement in the county jail. Penal Code section 1203.016(h) defines the "correctional administrator" as either the chief probation officer or the sheriff.

For information only, it is noted that 1203.018 authorizes the board to implement a home detention program for misdemeanants being held in jail on bail who have not yet been convicted. That particular situation would not seem to be a significant problem in this county as the vast majority of low or medium risk misdemeanants are invariably released on their own recognizance very early in the process, usually before their initial court appearance.

It is the intention of the CCP to use home detention/electronic monitoring to serve two purposes. In keeping with the philosophy of AB109, the first is to assist individuals with their reintegration into society as a means of reducing recidivism. The second would be to help manage the jail population, when necessary, particularly when it involves inmates with serious health issues that would pose a significant financial risk to the county. It is not the intention of the CCP to utilize home detention/electronic monitoring in every situation; some individuals will continue to serve their sentences in physical custody at the jail. Keeping those factors in mind, it is the intention of the CCP to use home detention/electronic monitoring in any of the following situations, when appropriate:

- Inmate sentenced to a term in county jail as a condition of probation
- Inmate serving a term in county jail as a result of a probation violation
- Inmate sentenced to county jail as a "prison term" per 1170(h)(5)(A) PC
- Inmate sentenced to county jail as a "prison term" with a portion of the sentence suspended, pursuant to 1170(h)(5)(B) PC ; whether those individuals are serving the initial portion of their sentence or a portion of the stayed sentence which is being imposed after a violation of a court order.

- Inmates released from CDCR as PRCS (Post Release Community Supervision) who are serving local time for violating PRCS orders.

Penal Code Section 1203.016(b) authorizes the board of supervisors, in consultation with the correctional administrator, to prescribe reasonable rules and regulations under which a home detention program may operate. Subsection(d)(1) of that same section requires that the rules and regulations and administrative policy of the program shall be written and reviewed on an annual basis by the county board of supervisors and the correctional administrator. The full list of rules and requirements of the home detention/electronic monitoring program will be submitted in a separate proposal which will be attached to this report, in order to make the future annual review more convenient for the board. Some of the highlights are listed below (in no particular order):

- The program can be either voluntary on the part of the inmate, or be involuntarily imposed by the correctional administrator.
- The correctional administrator may authorize any peace officer to retake an individual on home detention and deliver them to the jail without further order of the court, in the event of a violation of the home detention rules.
- The correctional administrator, or his or her designee, shall have the sole discretionary authority to permit program participation as an alternative to physical custody.
- The court may recommend or refer a person to the correctional administrator for consideration for placement in the home detention program. The recommendation or referral of the court shall be given great weight in the determination of acceptance or denial. At the time of sentencing or at any time that the court deems it necessary, the court may restrict or deny the defendant's participation in a home detention program
- The board of supervisors may prescribe a program administrative fee to be paid by each home detention participant that shall be determined according to his or her ability to pay. Inability to pay all or a portion of the program fees shall not preclude participation in the program, and eligibility shall not be enhanced by reason of ability to pay.

Penal Code Section 1203.016(j)(2) requires that all individuals on home detention be supervised. The formation of the CCP was authorized by the Sierra County Board of Supervisors Resolution number 2011-094. As part of that resolution, the four board members who were present unanimously designated the probation department as the county agency that is to provide Post Release Community Supervision, in that the probation department is the agency best suited to provide that supervision as the department has the policies, procedures, training and experience currently in place to fulfill that mission. The CCP believes this same reasoning applies to the home detention program. Consequently, In keeping with the spirit of that resolution, and as authorized by §1203.016(h) PC, the CCP is requesting that the board designate the Sierra County Chief Probation Officer as the “correctional administrator” insofar as the proposed

county home detention/electronic monitoring program is concerned.

III. Funding - Background

The legislature has provided some funding in order to assist counties in implementing their realignment plan (see below). However, there is presently no guarantee that we will receive the same funds next year. Although the governor has promised to work diligently on a constitutional amendment to guarantee these funds, at present, local officials have no guarantees that the state won't shift, raid or redirect these funds in future years. Consequently, without a guarantee, the majority of the CCP believes it prudent to proceed cautiously.

The current allotment consists of four separate components, which will be listed below. Two of these are currently intended (though not presently guaranteed) to be annual amounts and two are one time allotments.

The passage of SB678 in 2010 and the subsequent section 1230 [et seq.] of the Penal Code authorized the formation of the CCP. The CCP was to be formed in order to allocate "678" money through the probation department in order to reduce the number of prison commitments state-wide. However, because of our small size, and coupled with the fact that Sierra County already had a rate of prison commitment below the state average and a somewhat high prison commit for probation violations, the county was not eligible for these funds. Even with the passage of SB678, the Federal Courts concluded California needed to do more to reduce prison populations and recidivism. Consequently, AB109 & AB117 were passed.

The section quoted below is from 1230 PC, and although primarily intended as part of the SB678 program, it would appear to mirror what the legislature intends for AB109 as well, as the two programs go hand in hand:

(3) Funds allocated to probation pursuant to this act shall be used to provide supervision and rehabilitative services for adult felony offenders subject to probation, and shall be spent on evidence-based community corrections practices and programs, as defined in subdivision (d) of Section 1229, which may include, but are not limited to, the following:

(A) Implementing and expanding evidence-based risk and needs Assessments.

(B) Implementing and expanding intermediate sanctions that include, but are not limited to, electronic monitoring, mandatory community service, home detention, day reporting, restorative justice programs, work furlough programs, and incarceration in county jail for up to 90 days.

(C) Providing more intensive probation supervision.

(D) Expanding the availability of evidence-based rehabilitation programs including, but not limited to, drug and alcohol treatment, mental health treatment, anger management, cognitive behavior programs, and job training and employment services.

(E) Evaluating the effectiveness of rehabilitation and supervision programs and ensuring program fidelity.

This is confirmed by section 1230.1(d) PC which requests that the realignment plan include:

(d) Consistent with local needs and resources, the plan may include recommendations to maximize the effective investment of criminal justice resources in evidence-based correctional sanctions and programs, including, but not limited to, day reporting centers, drug courts, residential multiservice centers, mental health treatment programs, electronic and GPS monitoring programs, victim restitution programs, counseling programs, community service programs, educational programs, and work training programs.

IV. Funding – Specifics

There are four funding allotments categories. The first two categories are intended to be annual allotments; the last two are one time awards. Both of the first two have been prorated because of the delayed start date of October 01. Consequently, it is anticipated that next year's allotment (if any) would be about 25% more. The legislative intention for each of the categories is listed below:

1. Program Allocation (\$76, 883)
 - These funds are intended to cover all aspects of the adult population shifts: the transfer of the low-level offender population, counties' new supervision responsibilities for state prison inmates released to post-release community supervision (PRCS), and sanctions – to include incarceration – for those on PRCS who are revoked.
2. District Attorney/Public Defender (\$2756)
 - These funds, allocated on the same formula as the AB 109 programmatic costs, are to be divided equally between the local district attorney and public defender offices to cover costs associated with revocation hearings
3. Training (\$5, 425)
 - These funds are intended to help cover counties' costs associated with hiring, retention, training, data improvements, contracting costs, and capacity planning pursuant to each county's AB 109 implementation plan
4. Start-up (\$100,000)
 - This funding shall be used to help cover the costs associated with the hiring, retention, training, data improvements, contracting costs, and capacity planning pursuant to each county's approved AB109 implementation plan.

The CCP is tasked with composing a realignment plan, including a budget based on the allocations described above. The plan is to be submitted to the county board of supervisors, where it is deemed approved unless rejected by a 4/5ths vote. None of the money above can be released until the plan is approved by the board. There is no

requirement on what the plan must contain or when it must be presented to the board. There is also no mandate on how often the CCP should meet or how the process should look.

The CCP has met several times and so far has identified the following needs, concerns and possible proactive plans:

- Maintain a reserve of at least 50% of the annual allotment, so that when necessary individual would serve long terms in the state prison rather than in the county jail.
- Maintain a reserve of an as of yet undetermined amount in case any of these individuals develop significant health problems and/or medical bills while in custody.
- Develop a home detention/electronic monitoring program as an alternate form of custody for certain individuals who could not be housed at CDCR and would also pose a significant risk to the county in terms of medical bills and liability if they served their term in the jail.
- Provide additional funding for a drug court type program for individuals who don't meet the drug court requirements, but would benefit from a similar program.
- Reserve funding for treatment related issues such as residential programs, transportations, counseling, education and similar programs when such funding is either not available from other sources or if the other funding sources become exhausted during the year.
- Reserve funding in the event that the legislature does not renew the allotment for next year (unspent funds may be carried over).
- The sheriff has requested that a large portion of the funding be used on various construction projects at the jail. However, there is as yet no agreement from the CCP that this should be approved.

V. Summary.

1. No specific agreement from CCP on entire plan yet.
2. No real need for haste
3. The CCP is contemplating submitting a very general plan to the board, in order to obtain approval from the board so that some funds could be released if/when appropriate. The plan would include the following:
 - a. All requests for funding would have to be approved by the majority of the CCP
 - b. Any requests for funding in excess of an as of yet to be determined amount (similar to the department head ceiling) would not only have to be

approved by the CCP, but the county board as well, until such time as a complete plan can be presented to the board.