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2011 Public Safety Realignment Key Provisions in AB 109/AB 117: Adult Offender Population Transfers to Counties

This document is intended to provide information about key aspects of AB 109 and AB 117, two bills that, taken together, carry out the transfer of responsibility for certain adult offender populations from the state to counties. These materials may be updated or expanded in the future as additional implementation details are clarified or to reflect statutory revisions.

General

The 2011 public safety realignment contained in AB 109/AB 117¹ specifies new local responsibilities for managing certain adult offenders. The intent of realignment is to allow maximum local flexibility within the statutory framework for the adult population transfers set forth in these two pieces of legislation. As counties start the monumental task of planning for the impacts of the realignment the three associations — CSAC, CSSA and CPOC — wanted to outline the basics of the statutory framework and address some key issues and concerns that have been shared by our members.

IMMEDIATE ACTION: Designation of County Entity for Post-Release Community Supervision (PRCS) Responsibilities

AB 117 requires counties to notify the Department of Corrections and Rehabilitation (CDCR) *on or before August 1, 2011* as to the county agency designated to supervise offenders released onto PRCS. (Recall that this population is prison inmates who, beginning October 1, 2011, will be released from state detention onto county-level supervision rather than onto state parole.)

The statute does not require a county to have an approved plan from the Community Corrections Partnership (CCP) prior to the designation of the supervising entity nor does any other decision related to realignment need to be made prior to the designation. The intent for having the designation made prior to the October 1 effective date of the legislation is to allow for the transmittal of the release packets for the PRCSs in advance.

By August 1, each county is asked to identify the PRCS supervising entity and provide contact information for a **single point of contact** (name, title, agency, address, email address and phone number) to CDCR. Those details should be emailed to:

Erin M. Sasse
Chief, External Affairs
California Department of Corrections and Rehabilitation
erin.sasse@cdcr.ca.gov

Please note “[County name]: PRCS supervising entity” in the subject line of the email.

¹ [AB 109](#) (Chapter 15, Statutes of 2011) as subsequently amended by [AB 117](#) (Chapter 35, Statutes of 2011).

Effective Date

AB 117 delayed the operative date of the public safety realignment elements contained in AB 109 to October 1, 2011. The provisions of the public safety realignment are prospective and, therefore, as people are sentenced on or after October 1 or released to supervision on or after October 1, they will be the responsibility of the counties – if they meet the criteria for the realigned population. No one in prison on October 1 will transfer to county jails, and no one currently on parole will transfer to local jurisdiction.

Realigned Populations

AB 109/AB 117 does not result in the early release of any currently sentenced felons. It changes the jurisdiction of specified populations from state to local control to complete their sentences, as outlined below.

I. Sentenced Locally (Non/non/non felons)

- Revises the definition of felony to include specified lower-level (i.e., non/non/non) crimes that would be punishable in jail or another local sentencing option.
- Does not change length of sentences.
- Does not limit the felonies eligible for sentences of three years or less, but instead determines eligibility by qualifying crimes, as specified. Therefore, some sentences now served locally can exceed three years. However the time served may be done in a variety of settings: jail, probation, alternative custody or a combination of these settings.
- Felonies ineligible for state prison (non/non/non): Non-violent, non-serious, and non-sex offenders as defined in the Penal Code. There are 60+ felonies that would otherwise fall into the non/non/non category that are excluded and therefore continue to be eligible for state prison. *(See attached list of additional felonies that are expressly excluded from the non/non/non category.)*
- Felonies eligible for state prison: Any person being convicted of a serious or violent felony as described in Penal Code (PC) Sections 1192.7 (c) or 667.5 (c), the person would be required to register as a sex offender pursuant to PC 290, or they had a previous serious, violent or sex offense in their history that requires sex offender registration.
- Options at sentencing of a non/non/non felony: Jail instead of prison for the entire sentence; felony probation; alternative custody; split sentence (imposed sentence of combined period of jail custody with the remainder on mandatory probation)
 - Imposed sentences (everything but felony probation) prison prior attaches to the sentence
 - Split sentences cannot exceed the original sentence when combining custody and supervision time
- Options in custody: Sheriffs continue to have all the existing tools at their disposal to manage this population as they do with their current population. In addition, counties may use new alternative custody options for electronic monitoring and home detention (PC 1203.018), contract with other nearby counties, or contract with public community correctional facilities. Finally, there is authorization for counties to contract back with the state for housing inmates. The state has not yet set a rate or provided specifics on who or how many they could

accommodate, especially in light of the prison overcrowding case. However, the Administration has indicated there may be different rates set depending on the type of inmate. We also expect to have a proposal from the state as to how to address the need to incentivize continued placement of inmates into fire camps.

- Non/non/nons sentenced locally do not have post incarceration supervision time. Specifically, there is no parole tail for these offenders.
- Credits for all offenders serving time in jail will prospectively apply day-for-day starting October 1, 2011, similar to what prison inmates currently receive.

II. Post Release Community Supervision

- Who will be under local supervision: Starting October 1, 2011 any offender who was convicted of a non-serious, non-violent felony and is not deemed a high risk sex offender will be placed on local supervision.
- Who remains on State Parole: Anyone on parole before October 1, 2011 remains under state jurisdiction until they are discharged. In addition, any individual who is serving a term for a current serious or violent offense, a third striker, high risk sex offender, or a mentally disordered offender (MDO) will remain in state parole's jurisdiction.
- Supervision and case plans are not specified in statute. There are general conditions in statute as a minimum that are given to the PRCS at release. The supervising entity may add conditions pursuant to the risk and needs of the offender.
- Statute requires CDCR to notify the county within at least 30 days of an impending release onto PRCS. However, we understand that it is CDCR's intent to provide the release packet much further in advance on most offenders.

III. Parole Revocations/PRCS Violations

- All parole revocations for state parolees (except those with a life term) will be served in county jail but capped at 180 days and receive day-for-day credit.
- After parolees have completed their revocation time, they will return to state jurisdiction to complete any remaining parole time.
- PRCS violations will also be served in county jail and subject to the same 180 day cap and receive day-for-day credit.
- Parole revocation hearings (for state parolees only) will continue to be done by Board of Parole Hearings (BPH) until July 1, 2013 when that responsibility will be moved to the local courts.
- PRCS final violation hearing will be conducted by courts beginning October 1, 2011. Courts may appoint hearing officers for this workload. The supervising entity must establish a review process for assessing and refining conditions consistent with the statutory authority to impose sanctions up to and including flash incarceration (up to 10 days).
- Contracting back with CDCR is not an option for either state parolees or PRCS violators who are revoked.

CCP and the Planning Process

- Purpose: Expands the current role of the Community Corrections Partnership (CCP), which was previously established in PC 1230 as an advisory committee on the implementation of SB 678, to be a policy planning body for the public safety realignment.
- Requires: The CCP is to develop and recommend to the board of supervisors an **implementation plan** for 2011 public safety realignment.
- Establishes an Executive Committee: The executive committee is charged with voting on the plan that will be put before the Board of Supervisors and is composed of members from the larger committee. The statute indicates the entire CCP develops the implementation plan, but gives the following members a vote to approve a plan to be presented to the Board: Chief Probation Officer (Chair); Sheriff; Presiding Judge (or designee); District Attorney; Public Defender; Police Chief; and **one** other department head selected by the board of supervisors from among DSS, Mental Health, or Alcohol and Drug.
- What it doesn't say: 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 group should meet or how the process should look. Given the October 1, 2011 effective date, some counties may want to have a complete plan in place by then, but it is not required. However, considering the timeframe, some counties may want to address their plan in phases, with both short- and long-term recommendations. The CCP planning process is intended as a tool to assist counties in the monumental task of preparing for the impact to the county system, but it preserves the true spirit of realignment, which is local flexibility.
- How is the plan approved? The implementation plan voted on by the CCP Executive Committee is deemed accepted by the county Board of Supervisors unless the Board rejects the plan by a four-fifths vote. In that case, the plan goes back to the CCP.
- How is the plan funded? Allocation/budgetary authority remains with the Board of Supervisors. Further details regarding AB 109 funds and allocations are discussed below.
- Application of the Brown Act: County counsel indicate that the Community Corrections Partnership (Penal Code Section 1230(b)(2)) and its Executive Committee (Penal Code Section 1230.1) are subject to the Brown Act. Government Code Section 54952 (a) sets forth the definition of a legislative body within the Brown Act. That definition includes "any other local body created by state or federal statute." Since the CCP and its Executive Committee are established by statute, each is considered a legislative body under the Brown Act, and the requirements of the Act are therefore applicable. We advise counties to seek guidance of counsel as the meetings of the CCP and its Executive Committee are convened.

Allocations and Funding

The attached Excel spreadsheet details 2011-12 county-by-county allocations for four distinct aspects of 2011 public safety realignment:

1. **AB 109 adult population shifts** – COLUMN 1 in the attached spreadsheet shows the per-county allocation associated with the programmatic aspects of AB 109. The estimated funding level for these activities statewide in 2011-12 is \$354.3 million, adjusted to reflect nine months of operation given the October 1, 2011 implementation date specified in AB 117. 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. (Note that programmatic allocations for AB 109 implementation do not rely on a “daily jail rate” model, but instead are intended to fund the range of programmatic and detention options that best meet local needs, as specified in each county’s AB 109 implementation plan.)

2. **District attorney/public defender revocation costs** – COLUMN 2 in the attached spreadsheet details the per-county allocation associated with the revocation hearings for those on PRCS in 2011-12.² 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 (Government Code 30025(f)(5)).
3. **One-time allocation for AB 109 start-up costs** – COLUMN 3 in the attached spreadsheet details the per-county allocation associated with a one-time state General Fund appropriation of \$25 million. 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. Funds are allocated on the same formula as the AB 109 programmatic costs.
4. **One-time grant for CCP planning** – COLUMN 4 in the attached spreadsheet details each county’s one-time grant, awarded based on population “bands,” for purposes of assisting each county’s CCP in developing its AB 109 implementation plan³. Grants will be administered through the Corrections Standards Authority and will be awarded in full within 30 days of the enactment of the 2011-12 state budget. CCP planning grants are distributed as follows:

County population	Grant level
Up to 200,000	\$100,000
200,001 to 749,999	\$150,000
Over 750,000	\$200,000

Requirement to establish County Local Revenue Fund 2011 (and other accounts)

AB 118, the budget trailer bill that creates the funding framework for all aspects of 2011 Realignment, requires the county or city and county treasurer to create the **County Local Revenue Fund 2011**. (See Government Code Section 30025(f)(1)). Within the County Local Revenue Fund 2011, each county must also establish a:

- Local Community Corrections Account
- Trial Court Security Account
- District Attorney and Public Defender Account
- Juvenile Justice Account
- Health and Human Services Account,
- Supplemental Law Enforcement Account

² Recall that pursuant to changes enacted in AB 117, the revocation process for state parolees will remain with the Board of Parole Hearings through June 30, 2013. On and after July 1, 2013, the entire revocation process – including for state parolees – will become a local responsibility.

³ Furthermore, each county must provide the Corrections Standards Authority with a copy of its approved AB 109 implementation plan within 60 days of its approval by the county board of supervisors.

It is imperative that the County Local Revenue Fund 2011 and specified accounts are created as quickly as possible so that counties are able to receive 2011-12 allocations.

Conclusion

We hope this broad overview will assist you in your collaborative planning efforts and budget discussions locally. The three associations intend to also work collaboratively to provide the most up-to-date and useful information and will offer other joint communications as the need presents itself. If you have any questions on these items, feel free to contact us.

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