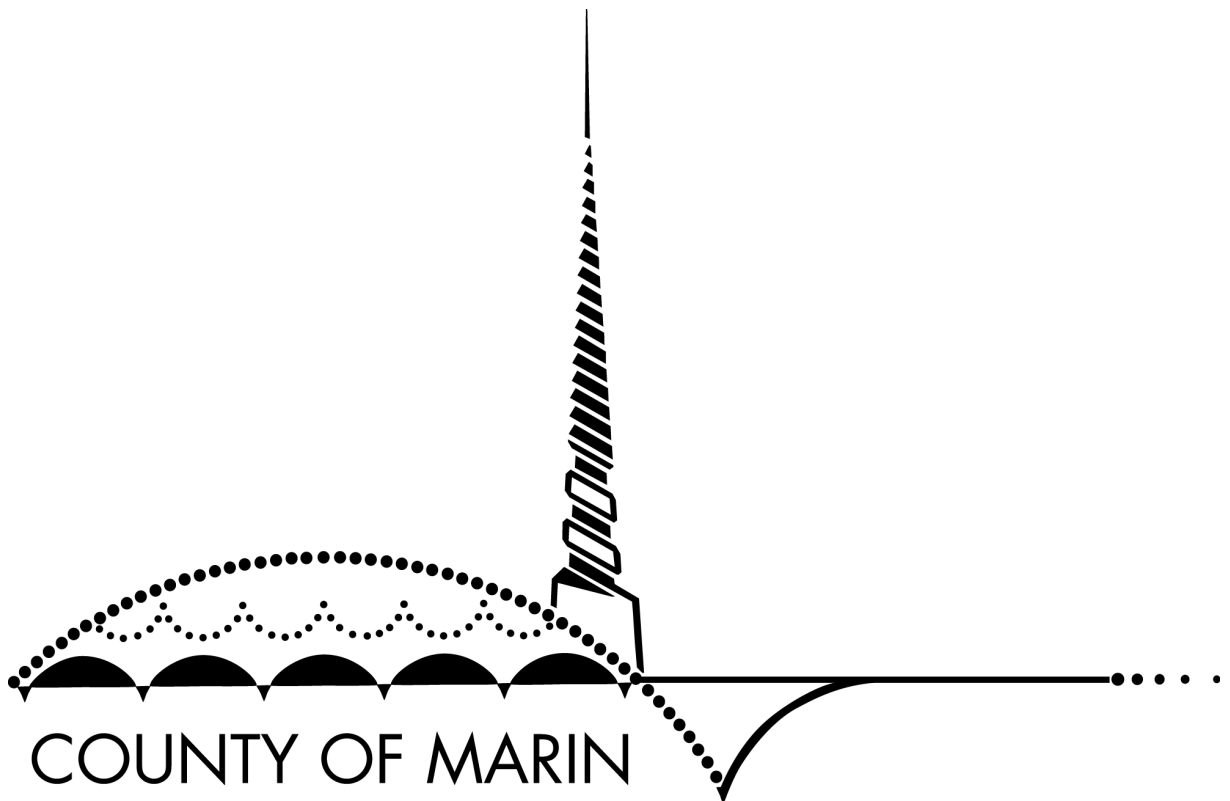

2012/2013 MARIN COUNTY CIVIL GRAND JURY

Assembly Bill 109: How Will It Impact Our Jail?

Report Date – May 20, 2013
Public Release Date – May 28, 2013



ASSEMBLY BILL 109

HOW WILL IT IMPACT OUR JAIL?

SUMMARY

On Oct. 1, 2011, the State of California's Public Safety Realignment Act of 2011, Assembly Bill 109, went into effect. We commonly refer to this law as AB 109.¹ AB 109 changes state criminal laws, allowing some felons to be sentenced to county jail instead of state prison. It saves money for the State, but the question is: does it expose Marin County to future lawsuits related to medical, dental, and mental health care, and overcrowding in the Marin County Jail?

In January 2011, Governor Jerry Brown Jr. declared a state fiscal emergency. Much of the State's budget deficit was attributed to the high cost of the State prison system, which is known as the California Department of Corrections and Rehabilitation (CDCR). The Governor called the Legislature into a special session to address the State's continuing budget deficit. AB 109 and related laws are the Legislature's response to the State's worrisome fiscal future. The State enacted AB 109 with a stated purpose of increasing public safety, and reducing criminal recidivism. Additionally, there was an unstated goal of reducing overcrowding, and medical, dental, and mental health care costs.²

On Oct. 1, 2011, as a result of AB109, , each county was required to accept the responsibility and funding for the incarceration (housing) and the supervision of several groups of convicted felons. Prior to October 1, 2011, these same convicted felons were housed with CDCR and, upon release from prison, supervised by state parole agents³. / Since October 1, 2011, every California county began to house



¹ AB 109 was over 480 pages long; not surprisingly, it required "cleanup" legislation. AB 116, AB 117, and AB 118, constitute such "cleanup" legislation of another 152 pages. In this report, AB 109 refers to the totality of all these bills.

² Penal Code section 17.5(b) states: "The provisions of this act (The Public Safety Realignment Act) are not intended to alleviate the state prison overcrowding." The fact AB 109 reduces overcrowding is portrayed as a fortuitous coincidence. However, it should be noted that a law intended to alleviate state prison overcrowding might have violated the California Constitution, Article I, Section 28 (f) (5), which bans the reduction of prison sentences to relieve prison crowding, and requires adequate prison funding.

these felons in county jail, and county probation officers began to supervise them upon their release.

AB 109 has already led to lawsuits against jails in several other counties. These lawsuits allege overcrowding, and inadequate medical, dental, and mental healthcare in the county jail. The Grand Jury believes Marin County should take affirmative steps to assure that such conditions are prevented, and thereby, avoid lawsuits from being filed regarding the Marin County Jail. The Grand Jury's concern is based on:

- the increasing number of inmates housed in the Marin County Jail
- the greater criminal history and sophistication of these inmates
- the multi-year sentences that might be served by these jail inmates
- the different and greater needs of this new population of long-term jail inmates

BACKGROUND

In past years, CDCR, Marin County Jail, and many other jails in the State, were sued for allegations of inmate overcrowding, inadequate medical, dental, and mental health care, and other claimed violations of inmates' legal rights. Such lawsuits continue to this day. Currently, such suits remain active against CDCR, and since the passage of AB 109 prisoner rights organizations have filed additional lawsuits regarding jail conditions in Fresno, Riverside, and Alameda counties.

Background Regarding CDCR

In 1977, California enacted the "Determinate Sentencing Law" (DSL). DSL provided for a triad of prison term options for sentencing on almost every felony offense.⁴ The judge who presided over the court case determined the length of the prison sentence. Presumptively, the middle term was the proper sentence. However, specific mitigating or aggravating facts about the crime or the defendant could raise or lower the length of the prison sentence. As years passed, the State Legislature, and the voters created numerous sentence enhancements, which if applicable, could greatly increase the length of the prison sentence.⁵

As a result of these sentencing changes, California began to see an increase in both the number of persons sentenced to prison and the length of their prison sentences. These

³ The State provided money for each county to develop a plan to comply with AB 109 requirements. The Governor also assured the counties of on-going AB 109 implementation funds during the course of his governorship. Additionally, the month after AB 109 was enacted, the State's voters passed Proposition 30, which raised taxes and guaranteed State tax funds for the ongoing costs of AB 109 in future years

⁴ There were exceptions for a number of crimes, e.g. death penalty offenses, and those requiring life sentences with or without parole possibilities.

⁵ Example: the "Three Strikes Law," (Proposition 184, "Three Strikes and You're Out," enacted in 1994).

increases led to a costly expansion of the CDCR facilities, as shown in the following Exhibit 1 summary of information from CDCR.

Exhibit 1

Year of Opening	Facility Name	Designed Prisoner Capacity
1984	California State Prison [CSP] Solano	2610
1986	CSP Sacramento	1828
1987	Avenal State Prison [SP]	2920
1987	Mule Creek SP	1700
1987	Northern California Women’s Facility	[closed in 2003]
1987	R.J. Donovan Correctional Facility	2200
1988	Corcoran SP	3116
1988	Chuckawalla Valley SP	1738
1989	Pelican Bay SP	2380
1990	Central California Women’s Facility	1994
1991	Wasco SP	2984
1992	Calipatria SP	2308
1993	CSP Los Angeles County	2300
	North Kern SP	2697
	Centinela SP	2308
1994	Ironwood SP	2200
	Pleasant Valley SP	2308
1995	Valley State Prison for Women	1980
	High Desert SP	2324
1996	Salinas Valley SP	2452
	Substance Abuse Treatment Facility and SP,	
1997	Corcoran	3424
2005	Kern Valley State Prison	2448
Total Capacity		50219

However, California’s expansion of CDCR facilities and escalating CDCR costs were not sufficient to accommodate the medical, dental and mental health needs of both the burgeoning population of new prisoners and previous prisoners who were returning due to parole violations.⁶

CDCR offender population data show a marked increase in the prison inmate population, peaking at 173,312 in 2007. However, the CDCR offender population data also shows a

⁶ Approximately 65% of all prisoners released from CDCR custody return to prison within three years of their release because of parole violations

marked population decrease during the first year of AB 109. During that first year of AB 109, CDCR reduced its in-custody inmate population by 27,000, returning that population to near the 1995 level.

Prisoner advocacy groups alleged the living conditions within CDCR deteriorated as the CDCR inmate population climbed. Several class action lawsuits filed in the federal courts claimed CDCR was violating the legal rights of prisoners.⁷ The suits claimed the prison system provided inadequate medical, dental, and mental health care to inmates. The inmates claimed their care fell below the minimum level required by the United States Constitution. In sum, they alleged CDCR violated the inmates' Eighth Amendment right to be free of cruel and unusual punishment. In an effort to address the concerns regarding inadequate care, the courts fashioned a remedy that included a required reduction in the number of CDCR inmates. The United States Supreme Court (USSC) ultimately decided the issues. On May 21, 2011, the USSC agreed with the lower federal court orders to further reduce the CDCR inmate population to 137.5% of its designed capacity of 79,858 prisoners. USSC found inmate population reduction was an appropriate part of an overall plan to increase the availability of medical, dental and mental health care of the CDCR inmates.

Public sentiment, a high rate of criminal recidivism, state budgetary concerns, and court rulings together highlighted the need for changes to CDCR and the State's entire criminal justice system. AB 109 became the main instrument of change. However, to move felons from overcrowded prisons with inadequate medical, dental, and mental health care facilities and services to county jails facing those same problems is not an adequate solution.

Background Regarding the Marin County Jail

In 1969, Marin County dedicated a new jail facility located in the Civic Center Hall of Justice. The facility had a design capacity for 110 inmates. The Marin County Sheriff administered the Marin County Jail. Additionally, Marin County operated a Minimum Security Facility (Honor Farm), administered by an independent Corrections Department. The Honor Farm opened in 1972 and had a design capacity for 153 inmates. Between 1972 and 1994, the Honor Farm was expanded to accommodate a maximum of 225 inmates.⁸

In April 1982, a court case⁹ alleged overcrowding in the Marin County Jail. In addition, the suit alleged the jail lacked adequate medical facilities, and improperly mixed sentenced and non-sentenced prisoners, all in violation of the inmates' constitutional rights. Initially, the court found no violation of inmates' constitutional rights. However, the court ordered the Marin Sheriff to take steps to ensure the jail inmate population did not exceed the jail's designed capacity of 110 inmates, to improve the medical facilities, and to resolve overcrowded conditions in holding cells.

⁷ The lawsuits included *Coleman v. Schwarzenegger* (regarding mental health care), *Plata v. Schwarzenegger* (regarding medical care), and *Perez v. Cate* (regarding dental care).

⁸ National Institute of Corrections report, "Marin County Jail," February 27-March 1, 1989.

⁹ *Miller v. Howenstein*.

The County responded to the court by increased use of alternatives to jail incarceration, including promises to appear in court, own recognizance releases, diversion programs, alternative service programs, work furloughs, and grants of county parole.

In 1984, the court held further hearings about continued violations of the earlier court order. As noted by then County Administrator, John Barrows:¹⁰

“ . . . In March 1985, Judge Breiner ordered the Sheriff to initiate policy changes and structural modifications to the jail to relieve overcrowding and to improve conditions. The court limited the number of inmates who could be housed in each cell and directed that ventilation be improved, the medical facilities be modified, and other sanitary and comfort modifications be made to the jail. The Court also directed that the County proceed with planning for a new jail facility.”

Marin County responded to the need for both improved and enlarged jail facilities, and continued concerted efforts to utilize alternatives to incarceration. Consideration was given to many options for a new jail, including a jail on the grounds of San Quentin State Prison. Ultimately, the current jail was constructed, at a cost of about \$25,000,000, within a hillside location next to the Civic Center Hall of Justice. This current Marin County Jail opened in November 1994, with a design capacity of 376 beds.¹¹

The initial occupants of our current jail were all the inmates from the Honor Farm and from the old jail. On its opening day, the current jail accepted 140 Honor Farm residents, and approximately 112 inmates from the old jail. Soon after opening the current Marin County Jail, the Honor Farm was closed. Since 1995, Marin County has had only one detention facility, the Marin County Jail. The Marin County Sheriff administers the operation of the jail.

The Marin County Jail was constructed to hold inmates awaiting trial and persons convicted of misdemeanor crimes and sentenced to jail. Common misdemeanors are: driving while under the influence of alcohol or drugs, public drunkenness, assault, theft of an item valued less than \$500, or trespassing. These inmates typically served jail terms significantly less than one year.

AB 109's Impact on Marin County Jail

California has three classes of crimes: infractions, misdemeanors, and felonies.¹² Prior to AB 109, felony convictions resulted in a sentence to state prison. After AB 109, a number of lower level felonies can only result in a sentence to the local county jail. This law diverts felons from the state prisons to the county jail, increases the county jail inmate population and the costs to operate the jail.

¹⁰ Quoting memo of John Barrows to Marin County Board of Supervisors (memo date unknown).

¹¹ The Marin CCP Plan states, “The State Corrections Standards Authority (CSA) reports the Board Rated Capacity (BRC) of the Marin County Jail as 349 beds.” This bed count is lower than the bed count reported in 1994 due to different methodology for the count.

¹² Penal Code section 17(a).

Beginning October 1, 2011, AB 109 shifted responsibility from the State to the counties for three distinct criminal populations:

1. Low-level offenders. These persons have committed new felony offenses, but offenses that are non-violent, non-serious, and non-sexual. These crimes are known as “3-nons.” Examples of such crimes are: commercial burglary, forgery, and possession of marijuana for sale. These offenders may have committed prior offenses that were violent, serious, or sexual. Since October 1, 2011, all low-level offenders (3-nons) who are sentenced to incarceration will serve that sentence in county jail, not in prison.
2. Felons on post-release community supervision. These persons are the above-mentioned low-level offenders who committed 3-nons offenses, served their term of incarceration and been released from jail or prison. They are not subject to a period of supervision by State Parole Agents. Beginning October 1, 2011, these persons are assigned to Post-Release Community Supervision (PRCS). The Probation Department in each county administers the PRCS program.
3. Parole violators. Changes regarding parole violations occur in two steps. Since October 1, 2011, all persons subject to PRCS, and the great majority of remaining parolees, will serve any revocation term in the county jail. The county courts will hold these violation hearings. After July 1, 2013, violation hearings for state parolees will also be held in the county courts, and no longer be heard by the State Board of Parole Hearings.¹³

AB 109 is not simply a transfer of criminals from state prison to county jail. AB 109 also mandates a wide-ranging effort to decrease criminal recidivism by use of alternative sentencing, adjustment programs, and other assistance to avoid future criminal behavior.¹⁴ As noted by the Sheriff’s Department, “The transfer of state prison inmates to county jail will cause an increase in necessary services provided to inmates by the county jail. It will also impact other county government agencies including, but not limited to, the Probation Department and the Department of Health and Human Services.”¹⁵

Marin County’s Plan to Implement Changes Required by AB 109

California law had previously established, in each county, an advisory committee for public safety issues, the “Community Corrections Partnership” (CCP). Each county CCP was required to develop and recommend an AB 109 implementation plan to the county Board of Supervisors. The planning process is designed to foster local flexibility and creativity. There is no required format or content for a county CCP realignment plan. In July 2011, the Marin CCP met and established four working committees (Probation, Jail, Court, and Treatment). The committees began to identify the new issues presented by

¹³ As with many matters involving law, there are a few exceptions such as persons who are subject to a life sentence..

¹⁴ Penal Code section 17.5(a).

¹⁵ Marin Sheriff’s Department “Five-Year Department Vision Plan 2012-2017.”

AB 109. The CCP Executive Committee approved the final plan and on October 11, 2011, the Marin County Board of Supervisors adopted it.^{16 17}

APPROACH

The Grand Jury reviewed documents, conducted interviews, and attended relevant meetings.

Documents reviewed included:

- AB 109 (Criminal Justice Alignment 2011-2012)
- AB 116 (Criminal Justice Alignment (technical changes) 2011-2012)
- AB 117 (Criminal Justice Alignment (“cleanup”) 2011-2012)
- AB 118(Criminal Justice Alignment (funding) 2011-2012)
- SB 678 (Community Correction Multidisciplinary Teams (planning) 2011-2012)
- Marin County Budget 2011-2012
- Marin County Public Safety Realignment Plan of October 2011
- Marin CCP Staff Reports of July and December 2012
- Marin CCP presentation of October 7, 2012 “Public Safety Realignment 2011-2012”
- Marin County Sheriff FY 2012-13 Performance Plan

Additionally, we reviewed AB 109 summaries and position papers prepared by the following: Grand Juries of other California counties, Legislative Analyst’s Office, California State Sheriff’s Association, Chief Probation Officer’s of California, and the California Department of Corrections and Rehabilitation.

Interviews included: members of the Community Corrections Partnership Executive Committee, Marin County Jail staff (both Deputy Sheriffs and jail healthcare staff), representatives of Marin County’s local law enforcement agencies, staff of the Marin County Probation Department, Marin County Administrator’s Office, and a member of the Marin County Board of Supervisors.

Miscellaneous information sources: review of related articles appearing in the Marin Independent Journal newspaper, selected review of relevant newspaper articles from other California counties, meetings of the Marin County Board of Supervisors, and a general Internet research.

¹⁶ The Marin CCP Executive Committee is the Chief Probation Officer, Sheriff, District Attorney, Public Defender, Court Executive Officer, San Rafael Chief of Police, and the Director of Health and Human Services.

¹⁷ The complete plan is available for review at the Marin County Board of Supervisors website entry for their meeting of October 11, 2011, at agenda item six.

DISCUSSION

Any discussion of AB 109 and its impact on Marin County must note that AB 109 is State law. Its implementation is mandatory and not optional. The larger focus of AB 109 is on the utilization of successful alternatives to incarceration whenever possible. The purpose of this report is a more focused review of the impact of AB 109 upon the Marin County Jail.

Historically, Marin County sends the lowest percentage of its adult residents to prison than any other county in California. Additionally, Marin County has a long and continuing history of proactive efforts to deter criminal recidivism. The Marin County Superior Court, Sheriff’s Office, Probation Department, Health and Human Services Department, and other County agencies have all been previous supporters of evidence-based correctional practices. This commitment is demonstrated by the existence of specialty courts such as the STAR Court, Family Violence Court, Adult Drug Court, counseling and educational programs available in the Marin County Jail, alternatives to jail confinement such as work programs, a strong probation oversight of criminals, and similar efforts. These two factors: low rate of imprisonment and high rate of rehabilitative efforts, bode well for a successful implementation of AB 109; the number of additional offenders will be relatively small, and there is an experience base for different approaches to reduce criminal recidivism.

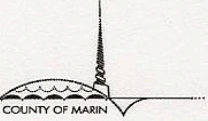
With the implementation of AB 109, the State estimated the number of additional felony offenders each county would receive, and provided funding based on that estimate. The State estimated Marin County would receive 155 additional convicted felons each year (as indicated in Exhibit 2 below from the CCP realignment plan).

Exhibit 2

THREE POPULATIONS OF REALIGNED OFFENDERS		
Offender Type	Options for Management	Estimated Number in Marin County Per Year
POST RELEASE COMMUNITY SUPERVISION (PRCS)	Supervised by Probation in community for up to three years	53
	Can be discharged after 180 days	
	If no violations, shall be discharged after one year	
	Subject to flash incarceration of up to 10 days	
	Subject to revocation	
	If revoked, can be ordered to serve up to 180 days in jail (90 days with credit)	
3-NONS	Sentencing option 1: felony probation with or without jail	40
	Sentencing option 2: jail (recorded as a prison sentence); no supervision upon release	
	Sentencing option 3: 'split' or 'hybrid' sentence of jail and community supervision	
STATE PAROLE VIOLATORS	Revocation of State parole served in county jail	62
	Revocation custody capped at 180 days (90 days with credit)	
	Return to state jurisdiction after jail	

The State allocated AB 109 funds to Marin County to absorb the costs associated with the additional criminal justice burden and the CCP allocated those funds (as indicated in Exhibit 3 below from the CCP realignment plan).

Exhibit 3



AB109 Funding

FY 11-12 Program Allocation			\$ 1,304,178
Budget Category	Final Budget	Actuals	Balance
Probation	395,945	(395,150)	795
Sheriff	269,951	(250,000)	19,951
Health and Human Services	78,321	-	78,321
Novato PD	31,483	(31,483)	-
Total	775,700	(676,633)	99,067

FY 11-12 Reserves	\$ 528,478
FY 12-13 Program Allocation	\$ 4,563,074
FY 12-13 Total Funding Available	\$ 5,180,420
FY 12-13 Approved Budget	\$ 2,843,581
FY 12-13 Reserves	\$ 2,336,839

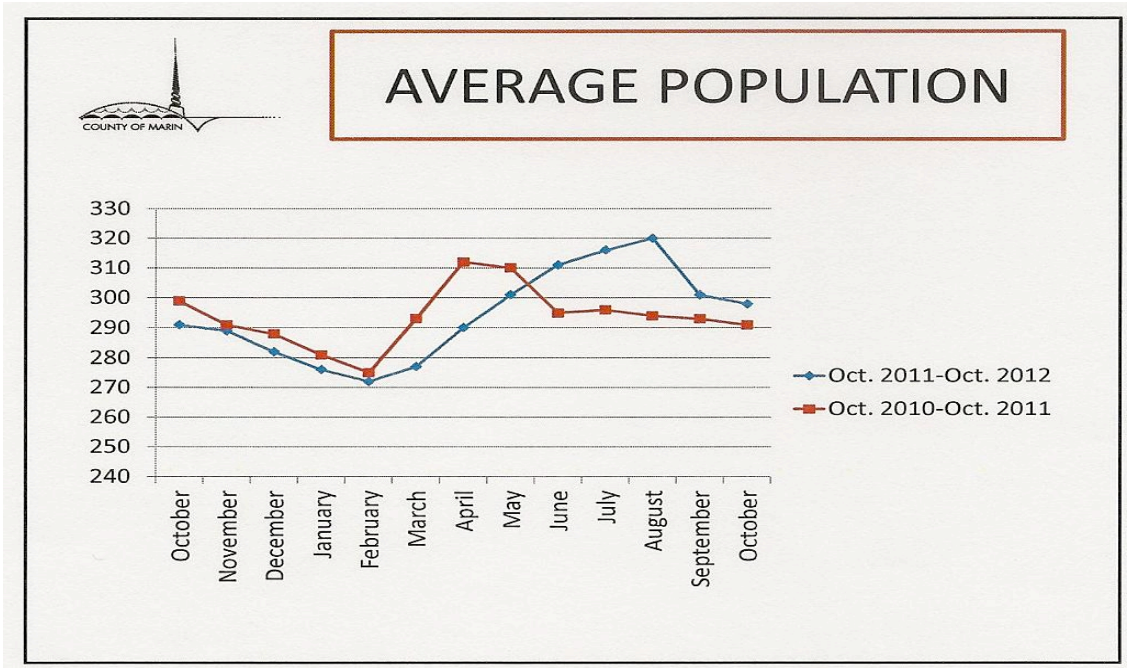
Financial data provided on a fiscal year schedule to align with County budget and reporting process

Community Corrections Partnership (CCP) Report

In November 2012, Marin County’s Community Corrections Partnership (CCP), through its Executive Committee, presented to the Marin Board of Supervisors a report on Marin County’s first year under AB 109. The presentation included the below information on the average daily inmate population in the Marin County Jail (MCJ) for the last year before AB 109, and for one year since AB 109.

The “Average Population” Exhibit shows the initial decrease in jail population was offset by an increase during the later portion of 2012. The increased inmate population confirms the CDCR prediction that AB 109 will place additional burdens upon our jail facility (as reported in Exhibit 4 below from the November 7, 2012 CCP report to the Marin County Board of Supervisors).

Exhibit 4



The CCP report recognizes MCJ is impacted not only by the total number of inmates, but also by the types of inmates. The same CCP report notes, as indicated below in Exhibit 5, MCJ has changed due to a higher level of stress and conflict among the inmates, a higher level of criminal sophistication possessed and fostered by AB 109 inmates, and need for more detailed classification of inmates to separate incompatible groups and thereby, minimize violence and intimidation.

Exhibit 5

INMATE CULTURE AND SOPHISTICATION

- Conflicts
- Sophistication
- Weapons
- Classifications (Housing, Special Housing)
- Medical

Lastly, the report notes below in Exhibit 6, items of future concern to CCP, including facility limitations of the Marin County Jail.

Exhibit 6



LOOKING AHEAD

What will the future look like?

- Medical Care?
- Court Ordered Early Releases?
- Aging Inmates?
- State Parole Hearings?
- Enhanced in custody programs?
- Additional out of custody programs?
- Our jail building limitations.

Information Garnered from Grand Jury Interviews

Our discussions with representatives of the Board of Supervisors, the Sheriff’s Department, Health and Human Services, Probation Department, and persons working with MCJ inmates, confirm that all parties are aware that AB 109’s impact on the jail is not limited to an increased number of MCJ inmates. AB 109 brings a different type of criminal to MCJ, and that criminal is in the jail for a longer time. This, in turn, influences the jail culture, and increases the services needed for all inmates. Each of the Marin County agencies appears to be working together for the successful implementation of AB 109. All parties seem sensitive to the possibility that county jails throughout the State may be future targets of lawsuits regarding inmate jail services, overcrowding, and healthcare issues.

Impact of Possible Lengthy Jail Sentences

In any discussion of the Marin CCP Plan and its impact on the Marin County Jail, it is notable that the jail opened in 1994. At that time, no one thought the new jail would need equipment, facilities and staffing to accommodate the needs of felony inmates serving sentences that may be several years in length. The passage of AB 109 has changed the purpose of our jail and now there will be the need for:

- changes in designed bed capacity
- flexibility in housing groups of inmates
- availability of ancillary services such as medical, dental, and mental health care

- exercise facilities
- educational or job training capacity

To the extent such issues exist, they are compounded by the fact AB 109 has no upper limit on the felony sentence that may be served in a county jail. Soon after the passage of AB 109, incidents of multiple year jail sentences began to appear. Currently, Marin County Jail’s longest AB 109 sentence is three years and four months.

In the absence of a law imposing a maximum time that a person may be committed to a county jail, these felons might be committed to jail sentences of multiple years. Such sentences have already occurred in other counties. Among the reported lengthy jail terms: 18 years in the Merced County Jail for drug related offenses and enhancements, 5 years in Contra Costa County Jail, 10 years in the San Bernardino County Jail, 14 years in the Riverside County Jail, and one inmate sentenced to 23 years in the Santa Barbara County Jail.¹⁸

The jail sentences imposed under AB 109 are in stark contrast to the much shorter jail sentences prior to AB 109. The Sheriff reports that prior to AB 109 the average jail stay per pre-sentenced inmate was 12.5 days in fiscal year 2010-2011; the average jail stay for sentenced inmates was 32.8 days, as noted below in Exhibit 7.¹⁹

Exhibit 7

Sheriff-Coroner FY 2012-13 Performance Plan					
DETENTION OPERATIONS					
Department Goal	Goal IV: Provide Quality and Efficient Detention Services to individuals requiring incarceration in Marin County				
Objective: Reduce overcrowding in the county jail					
MEASURES	FY 2008-09 Actual	FY 2009-10 Actual	FY 2010-11 Actual	FY 2011-12 Target	FY 2012-13 Target
Workload Measures					
Average daily population housed in the jail of pre-sentenced inmates	248	231	234	270	270
Average daily population housed in the jail of post-sentenced inmates	82	57	61	65	65
Efficiency Measures					
Average daily cost per inmate housed	\$150	\$149	\$149	\$145	\$145
Effectiveness Measures					
→ Average length of stay in days per pre-sentenced inmate	12.2	9	12.5	10	10
→ Average length of stay in days per post-sentenced inmates	35	40	32.8	40	40
Percent of inmate population awaiting sentencing	75%	80%	76%	75%	75%

→ Indicates a Key Measure

¹⁸ California Health Report, April 5, 2012.

¹⁹ Marin County Sheriff, FY 2012-13 Performance Plan.

The Grand Jury has been told that inmates with lengthy jail sentences will need greater ancillary care and services rather than less. Ironically, the best services for long-term inmates appear to be found in those institutions specifically built to house longer-term inmates, we call those facilities state prisons.

Need for Educational and Exercise Facilities

The possibility of lengthy jail terms creates needs for exercise, rehabilitative and educational facilities, and training opportunities not contemplated in 1994. It is common for the inmates to have led an unhealthy lifestyle prior to their incarceration. We are told the sedentary life of a jail inmate is not conducive to good health. Exercise is needed to attain or maintain reasonable health. The MCJ does have exercise areas, and inmates are allowed up to one hour in such areas each day. However, these areas are small and not adequate given the new mixture of felony inmates who share the facility

MCJ is built into a hillside; not surprisingly, it has limited exercise spaces. Those exercise spaces consist of concrete floors, primarily concrete walls approximately 20 feet high, and an open-air but secure ceiling structure. There is no field, no basketball court; in fact, there is no space adequate to play any sport, nor do the areas contain any exercise or recreational equipment. While jails do not have an obligation to provide exercise or recreational equipment for their inmates, they do have an obligation to provide an exercise opportunity.

Interviews of persons working inside the Marin County Jail confirm increased difficulty in providing needed exercise due to the requirement of maintaining separation between certain inmates. Jail staff is alert to the fact AB 109 inmates may have a long history of criminal activity, and many times must be separated due to pre-existing gang membership, prison affiliations or other experiences. While AB 109 inmates are currently in jail as non-violent, non-serious, and non-sexual offenders, AB 109 allows them to receive jail sentences despite the fact they may have past history of crimes that are very violent, very serious, and sexually motivated. Some AB 109 jail inmates are considered dangerous. All exercise and training opportunities are provided with that increased danger in mind. To the extent exercise and recreation opportunities are increased to accommodate the more dangerous and longer-term inmates, the concern for the safety of all is also increased.

Need for Healthcare Treatment and Facilities.

As noted above, the Marin County Jail serves a population of prisoners that was not contemplated when the jail was planned and constructed.

Jail medical staff said MCJ is held to the same standard of healthcare services as the state prison system. Staff is concerned about the adequacy of the exercise area, and healthcare services and facilities for the changing inmate population.

Prior to AB 109, the average inmate stayed at MCJ less than two months. The medical goal for such short-term inmates was to stabilize their medical condition. With the

arrival of longer-term AB 109 inmates, there is a need to address chronic healthcare issues, such as cardiac diseases, diabetes, dialysis, dental needs, and the general needs of an aging population. Not only will there be an increase in pharmacy costs, but also some conditions may require additional resources. The jail does not have an infirmary, and can provide only limited medical services. For example, the jail is not able to provide intravenous medications, nor can it administer involuntary anti-psychotic medications.

Currently any procedure, if beyond the limitations of the jail, requires transportation of the inmate by sheriff's deputies to a hospital or to another detention center. If there is a need for hospitalization, a deputy sheriff will normally be required to remain with the inmate. If there is a need to administer anti-psychotic medications to an unwilling inmate, present practice is to transfer the inmate to another Bay Area jail licensed to provide such care. The cost for this service is \$1,500 for each day.

It has been suggested that the advent of telemedicine and the use of videoconference equipment might ease the personnel burdens of some medical appointments and jail admission evaluations. Physicians and nurses might perform some medical functions from locations away from the jail. Such services would require less security for the medical personnel, and provide more timely service for the inmate, at a lower cost to MCJ.

While not strictly a medical issue, as stated previously, better exercise facilities are needed and would help support better health.

Diversion of Inebriates from Jail to Other Facilities

In February 2013, this Grand Jury issued a report on the impact upon public services of public inebriates, "A Sobering Center in Marin – One Small Step in Solving a Big Problem." The report notes that during 2011 various law enforcement agencies in Marin County encountered 1198 incidents of public inebriation. Of those 1198 inebriates, 1102 were booked into the Marin County Jail.

The Grand Jury report finds Marin County lacks sufficient non-medical sobering resources. In 2012, the county sobering center, The Vine (also known as the Helen Vine Detox Center), served an average of fewer than two clients per week. At that same time, an average of 21 public inebriates was booked into the Marin County Jail every week.

In responding to that Grand Jury report, the Sheriff notes the use of a sobering center would have little impact on the number of beds available for housing other inmates. Only inebriates who have committed additional crimes remain in custody beyond an initial sobering time. However, each inebriate booked into the jail requires the time of jail staff who might be otherwise engaged in matters of a higher priority.

The CCP has recognized the existence, but not the size, of this issue. In July 2012, the CCP received Board of Supervisors approval of its request for funding a half bed (183 days) at The Vine. The staff report states: ". . . This is a dedicated bed that can be accessed by Probation Officers and Police Departments to place a person in lieu of

booking into jail. These minor offenses will help offset the realignment impacts on jail bed space.” In a December 2012 report to the Board of Supervisors, CCP received its requested funding for an additional bed to help meet demand for detoxification services.

The Cost of Change

Any modification to MCJ facilities will, no doubt have a financial cost. In the past the State of California has provided financial assistance for counties to expand, modify, or update their jail facilities. Additionally, as noted in the CCP chart above Marin County currently receives state funds for the implementation of AB 109. Marin County should examine the feasibility of using such state funds to address the physical shortcomings of our current jail facility.

FINDINGS

- F1. The current law allows for jail sentences of unlimited length. Such long-term commitments are ill suited to the current Marin County Jail facility.
- F2. The Marin County Jail staff will continue to face more sophisticated and possibly dangerous inmates. These inmates will present dangers to themselves, to other inmates, and to jail staff. Therefore, long sentences for this new kind of inmate increase the need for educational and rehabilitative programs, exercise opportunities, and the facilities to enable all such efforts.
- F3. In the absence of future limitations upon the length of possible jail sentences, the Marin County Jail will face an aging and sedentary inmate population. These persons may initially enter the jail with compromised health. Therefore, long-term jail sentences will increase the need for healthcare services and the facilities to provide such care.
- F4. A recent Marin County Grand Jury report, “A Sobering Center in Marin – One Small Step in Solving a Big Problem,” found a need for further resources to combat public inebriation. Sobering centers need greater capacity. If additional sobering center resources become available, then the ability of the criminal justice system to focus personnel and jail facilities on more dangerous criminals will increase

RECOMMENDATIONS

- R1. The Board of Supervisors must advocate for state laws to establish a maximum county jail sentence for AB 109 inmates.
- R2. The Board of Supervisors must increase jail funding, enabling the Sheriff to upgrade the Marin County Jail’s current educational and rehabilitative programs, exercise opportunities, and the needed facilities to enable all such efforts, in order to satisfy the needs of long-term AB 109 inmates and enhance staff safety.
- R3. The Board of Supervisors must increase jail funding, enabling the Sheriff to upgrade the current healthcare treatment, and healthcare facilities of the Marin

County Jail to meet the mental health, medical, and dental needs of long-term AB 109 inmates.

R4. The Board of Supervisors must expand sobering center services in Marin County.

REQUEST FOR RESPONSES

Pursuant to Penal code section 933.05, the grand jury requests responses as follows:

From the following individuals:

Marin County Sheriff: F2 and F3, and R2 and R3

Marin County Chief Probation Officer: F1 through F3, and R2 and R3

From the following governing bodies:

- Marin County Board of Supervisors: F1 through F4, and R1 through R4,

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted subject to the notice, agenda and open meeting requirements of the Brown Act.

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury.
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GLOSSARY

Community Corrections Partnership (CCP): The group appointed to oversee the services of felony supervision and other aspects of AB 109 implementation.

District Attorney: The District Attorney is the public prosecutor responsible for attending courts and conducting all prosecutions for public offenses on behalf of the people.

Felony: A serious crime that traditionally could result in a prison sentence. Sentences typically are more than one year, and can be as long as the life of the prisoner. Felony crimes include murder, assault with great bodily injury, rape, kidnapping.

Flash incarceration: A period of jail incarceration imposed due to violation of a PRCS agreement. The incarceration may not exceed ten days. It requires the consent of the inmate, but can be imposed without a court hearing.

Health and Human Services Department (H&HS): The Health and Human Services Department administers a wide range of programs to address the county's health and welfare needs. Programs include Social Services, and Mental Health and Substance Abuse Services (MHSU). The MHSU program offers age, linguistically and culturally competent mental health services to adults, children, and youth throughout the county. The Social Services program administers public assistance, and employment and work training programs.

Holding cell: A secured area in a detention facility that is not a housing unit. It is a temporary stop, such as awaiting release paperwork, bail bonds, or the sobering effects of the passage of time.

Infraction: An infraction is the least serious criminal violation. It is punishable only by a fine; a jail sentence is not available. The most common infractions are Vehicle Code violations such as speeding.

Jail: A criminal detention facility operated by a local government. It usually houses convicted misdemeanants. Prior to AB 109, jail sentences were normally less than one year.

Local law enforcement: Local law enforcement agencies, commonly known as police departments, provide patrol and investigative services for those areas of the county which are incorporated towns and cities or otherwise not under the jurisdiction of the Sheriff.

Misdemeanor: A less serious crime that can result in a jail sentence, but not a prison sentence. The sentence for a misdemeanor is a maximum of one year. Typical misdemeanors include public drunkenness, driving under the influence of alcohol or drugs, assault, and disturbing the peace.

Parole: A prisoner release agreement. The prisoner is released from imprisonment before serving a full term of imprisonment. The prisoner is returned to prison if he fails to comply with the agreement.

Post-release Community Supervision (PRCS): The AB 109 label for the oversight provided by county probation departments for felons subject to AB 109.

Prison: A criminal detention facility operated by the state or federal government. It usually houses convicted felons. Prison inmates are typically sentenced to a minimum of one-year incarceration. Sentences can last a lifetime.

Probation: An inmate release agreement. The inmate is released before serving a full term of jail confinement. The inmate is returned to jail if he fails to comply with the agreement.

Probation Department: The Probation Department's core functions include providing supervision and treatment to adults and juveniles under court-ordered probation and managing the Marin County Juvenile Hall facility. In addition to all other tasks, the department provides supervision to approximately 2,500 adults placed on court probation.

Public Defender: The Public Defender provides legal representation for indigent persons charged with felony, misdemeanor, juvenile and family support crimes, as well as for indigent persons against whom the County Counsel seeks mental or disability commitments, conservatorships and dependency declarations.

Revocation Hearing: A hearing to determine whether a criminal has breached his parole or probation agreement. A breach can result in additional incarceration or other changes to the conditions of the parole or probation agreement.

Sheriff: The Sheriff is the lead county law enforcement official. The Sheriff provides patrol and investigative services, court security, county jail operations, management of the emergency operations center, and as Coroner, investigates the cause and manner of all sudden or unexpected deaths within the county, or natural deaths where the person has not been under the close care of a physician.

State Board of Parole Hearings: The state agency that receives evidence regarding release dates for inmates in CDCR. It hears requests for a grant of parole, also requests to revoke parole and impose additional incarceration.