
**AB109 OFFENDERS:
ARE CURRENT PROBATION
STRATEGIES EFFECTIVE?**



GRAND JURY 2014-2015

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EXECUTIVE SUMMARY

AB109 placed local offenders who were formerly in state prison under the supervision of the Orange County Probation Department (OCPD). A review of several studies found that while AB109 offenders do not appear to pose an increased danger to the community, they nonetheless pose a high risk of re-offending, especially as it relates to property crime. This 2014-2015 Grand Jury investigation examined the effectiveness of the strategies utilized by the OCPD in the supervision of AB109 offenders to reduce recidivism and maintain public safety.

The Grand Jury concluded that the OCPD could take specific actions to improve the supervision and treatment of AB109 offenders. At intake, each offender receives a risk assessment. The score for AB109 offenders is substantially higher than it is for the traditional OCPD probationer. The investigation found that risk assessment scores are not associated with specific supervision guidelines, AB109 offenders require more intense supervision, and some caseloads for AB109 high-risk offenders are not set at manageable numbers.

Regarding treatment and supervision, the Grand Jury found several issues concerning current drug treatment and testing policies that are inadequate. A shortage of residential drug treatment beds limits options for the probation department and offenders. A review of the OCPD's drug testing programs for AB109 offenders reveals that there is a need to enhance the integrity of drug testing.

BACKGROUND

Effective October 1, 2011, the Public Safety Realignment Act (California Assembly Bill 109, known as AB109) redirected prison inmates whose last conviction was for offenses considered non-serious, non-violent, and non-sexual (referred to as "non-non-non") from state prison to local county jails. This legislation implemented one of the most dramatic changes in California criminal justice history. California had for years been under federal court oversight to significantly reduce their prison population, while simultaneously shifting correctional philosophies from the punitive practices of the past 30 years to a more rehabilitative, evidence-based model. The goal of AB109 realignment was to encourage local government, specifically counties, to develop evidence-based practices as a way to reduce crime and victimization. The supposition of AB109 is that offenders are more likely to respond to rehabilitation programs provided in their own communities, which in turn, will enhance successful re-integration.

Previously, any crime punishable by more than one year was a felony, which required that the sentence be served in state prison. The courts are now able to sentence convicted offenders for non-non-non crimes to serve their time in county jail, even if the sentence was over one year. Offenders whose last conviction was for serious, violent, and/or sex crimes are required to serve their felony sentences in state prison. State parole agents will continue to supervise serious and violent offenders when they are released on parole from state prison.

Under AB109, the OCPD became responsible for supervising two additional categories of offenders: (1) post-release community supervision (PRCS, also known as

PCS by OCPD), and (2) mandatory supervision (MS). PRCS places prisoners released from state prisons under the direct supervision of county probation officers for up to three years. Under MS, the court would generally have sentenced these offenders to state prison, but instead they complete a period of incarceration in the county jail followed by a period of community supervision (Realignment Report, 2013).

Each of the 58 counties in California has designated its local probation department as the agency responsible for PRCS and MS cases. With the two new categories of supervision, the Deputy Probation Officer (DPO) can administer a range of sanctions: simple reprimand, additional special conditions, increasing reporting requirements, or “flash” incarceration. Flash incarceration is a new sanction that gives the DPOs the authority to arrest an offender and impose a short period of custody not to exceed 10 days (known as “flash” incarceration). The sanction of flash incarceration does not require court approval, and the probation department may impose it multiple times (Realignment Report, 2013).

It should be noted that to be eligible for AB109, an offender’s current, or most recent felony conviction must have been for a non-violent, non-serious, and non-sexual offense. Thus, a prior conviction for a violent, serious, or sexual offense does not disqualify a person for AB109 participation. The OCPD established specialized supervisory units for AB109 offenders in these categories: domestic violence, gangs, white supremacists, Mexican Mafia, and sex offenders.

REASON FOR THE STUDY

AB109 significantly altered the type of offender supervised by the OCPD. The release of state prison inmates to local supervision by county probation officers has raised concerns about greater risk to the community as well as the safety of probation officers who historically have not supervised state prison offenders. The scope of the study is limited to AB109 offenders within specialized units of the OCPD.

There are two aspects to the work of the probation department with AB109 offenders: supervision to protect the community from additional criminal activity, and rehabilitation to minimize recidivism. The Grand Jury wanted to know how the AB109 changes affected the OCPD in the strategies utilized to supervise these more sophisticated, “streetwise” state prison inmates. Although briefly introduced, this report does not include the more recent impact of Proposition 47 on AB109 offenders or the Orange County community.

METHODOLOGY

The Grand Jury pursued several methods of investigation in order to understand the various aspects of the impact of AB109 on the OCPD, the AB109 offenders themselves, and the community at large. The Grand Jury reviewed a significant amount of literature on the subject as well as several research papers and governmental reports.

The Grand Jury examined a random set of AB109 offender’s case files and the OCPD policies and procedures. Interviews were conducted with management and staff

of the OCPD AB109 units and several staff members from the Orange County Health Care Agency.

INVESTIGATION AND ANALYSIS

The Grand Jury examined OCPD policies and procedures dealing with specific supervision strategies utilized with AB109 offenders. These included surveillance as well as rehabilitative services. This discussion will include risk assessment instruments, classification systems, caseload sizes, field and office contacts, as well as drug testing methods.

A New Approach to Probation Supervision

The California legislature, with a great deal of specificity, redirected correctional philosophy, and thus policy, from one that emphasizes punishment and control to one that places a much greater emphasis on community-based alternatives to incarceration, such as residential programs and rehabilitation. The changes in policy are contained in California Penal Code section 3450 (See Appendix 1). In its mission statement, the OCPD supports the main concepts found in Penal Code section 3450 (See Appendix 2).

OCPD's AB109 Supervision Strategies

The OCPD's 2013 Update highlights a number of supervision methods, especially as it relates to rehabilitation. AB109 supervision strategies include:

- Incentives for favorable adjustment to supervision partnerships with local law-enforcement include the stationing of approximately 17 DPOs at various police departments and the OC Sheriff's Department.
- A "regional" approach wherein each city in OC has at least one liaison officer assigned to supervise AB109 cases in that city.
- Flash incarceration, which gives the DPO the discretion to incarcerate a non-compliant offender for up to 10 days without judicial order.
- Re-entry team: In this approach, a DPO and a healthcare caseworker identify individual issues and needs, and make appropriate referrals.
- AB 109 offenders may be eligible for the CORE (Center for Opportunity Re-entry and Education).
- Adult Day Reporting Center (DRC): The DRC was funded with AB109 monies, and its participants must be either PRCS or MS offenders. A significant number of services include:
 1. Life Skills and Cognitive Behavioral Therapy
 2. Substance Abuse Counseling
 3. Anger Management Counseling
 4. Parenting and Family Skills Training
 5. Job Readiness and Employment Assistance
 6. Education Services
 7. Community Connections
 8. Restorative Justice Honors Group
 9. Reintegration and Aftercare

If the offender is required to participate in the DRC, failure to comply may result in an additional community sanction, such as an increase in supervision that may include additional classes, increased reporting, increased treatment, or possible "flash" incarceration (Orange County, 2013).

General Needs for Probationers (Employment, Housing, Education, etc.)

One officer interviewed indicated that while there are many resources available for AB109 offenders, these resources tend to be located around central Santa Ana. Many offenders throughout the county do not have access to such resources due to distance and/or transportation problems. The officer suggested that resources distributed more evenly across the county are needed. An example cited was the Adult Day Reporting Center located on Civic Center and Flower Streets. The officer believed that although the Day Reporting Center provided many good services, including monthly bus passes, some AB109 offenders simply cannot access the services due to travel times and distance to downtown Santa Ana.

Several officers indicated there is a definite need for more housing for homeless offenders and for those who have unstable living arrangements upon release from custody. One officer felt that there was a significant need for additional sober-living facilities and a need for more beds for homeless sex offenders. The Grand Jury learned there are currently only two facilities to house sex offenders, having an approximate capacity of 20 beds each. The high need for employment resources and job placement was a constant theme among field officers.

Drug Rehabilitation Needs for Probationers

Eighty-eight percent of AB109 offenders are drug abusers (Orange County, 2013). The probation officer refers the AB109 offender to the HCA assessment social worker (SW) assigned to three probation offices, who then assess the AB109 offender. The SW attempts to evaluate the offender for the best program fit, be it for drug treatment, mental health, housing, employment training, or any number of other services. When released from jail or prison, an AB109 offender may need detoxification prior to placement in a residential drug treatment program. Placement in residential drug treatment is limited to 90 days in most cases, although on rare occasions an extension may be granted. If the offender completes a residential drug treatment program, continued outpatient drug counseling or a transition to a sober-living program usually follows.

A concern by several officers was the new policy instituted by the HCA limiting residential drug treatment to one time per year. If an offender leaves treatment, is discharged, or relapses after successful completion, he or she may not return for further residential treatment for one year unless ordered by the court. Several officers reported that if substance abusers are not ready to enter treatment, failure is likely to occur. Four examples from the cases reviewed are summarized in Appendix 3 to provide a clear view of the challenges faced in supervising AB109 offenders.

HCA staff reported that there are approximately 108 residential drug treatment beds. However, due to a high level of residential funding expenditures early in the fiscal

year, effective October 2014, residential referrals for AB109 offenders have been limited to 25 per month. The Grand Jury learned that four residential contract programs were equipped to accept dual diagnosis cases (drug and mental health histories). Unfavorable discharge of the offender results from substance use, verbal aggression, violence, or being defiant.

Consistently, throughout the HCA interviews, the issue of motivation came up. HCA staff indicated that motivation to seek residential drug treatment was a necessary factor in referring the offender. That is, if the offender did not exhibit sufficient motivation, he or she would likely not be referred. This was based on their belief that motivation was a necessary factor to demonstrate in order to be open to treatment.

Furthermore, HCA staff indicated that there were too many offenders with a high level of motivation seeking treatment to allow an unmotivated person to take up a highly valued treatment bed. Prior to the funding limitation, residential drug treatment was available to AB109 offenders practically "on demand." Information obtained from the HCA revealed that the cost for residential drug treatment is \$72 per day. This contrasts with \$30 for outpatient group counseling, \$60 for individual outpatient counseling, and \$70 for individual counseling for a mentally ill outpatient offender. Sober-living cost per day is \$38.

Therefore, residential drug treatment is the most intensive and most costly form of treatment for substance abusing offenders. Many, if not most, AB109 offenders, given the severity of their social, behavioral, cognitive, and psychological problems, would benefit from this more intensive form of treatment. Outpatient drug treatment alone is generally inadequate in addressing the severity of the problems experienced.

If an offender leaves treatment, is discharged unfavorably, or relapses, it is unlikely he or she would be readmitted for the remainder of the fiscal year. Instead, he or she may be referred to a county bed or the Salvation Army treatment program, but both have long waiting lists. Other treatment modalities available to substance abusers include methadone detox and maintenance, as well as Vivitrol, an opiate antagonist.

In most cases, substance abusers are given a "one shot" attempt at residential drug treatment. If they are terminated, walk out, and otherwise do not complete the program, they are not re-admitted into the four AB109 contract facilities for the remainder of the fiscal year. The research however, is quite clear that the process of treatment involves failure and relapse, ultimately leading to success.

Drug Testing and Supervision Procedures for Probation Officers

A large volume of research literature demonstrates that among criminally-oriented persons, illegal drug use intensifies criminal activity. According to a number of researchers, offenders who are criminally-oriented tend to commit more crimes and commit more serious crimes after they become drug dependent (McBride, 1981; McBride and McCoy, 1993; Speckart & Anglin, 1986). Among the criminally-oriented, drug use exacerbates other types of criminal activities, such as property crimes (burglary, car thefts, petty thefts, etc.) to support a drug habit.

The OC Public Safety Realignment 2013 Update Report indicates that a majority of offenders released from custody has substance abuse and/or mental health problems, and many of them commit crimes related to their disorder. The purpose of providing treatment services to offenders released under AB109 Realignment is to reduce recidivism and costly re-incarceration (Orange County, 2013). The empirical research on substance-abusing offenders also supports drug treatment as an effective means to reduce illegal drug use, crime, and recidivism among the offender population.

As noted, a major risk factor among almost all AB109 offenders is substance abuse: 90% of MS cases have a substance abuse history, and 86% of PRCS cases have a drug history. Combining these two categories, fully 88% of realignment cases have a drug abuse history. The two major factors in the risk-assessment instrument that are most correlated with the risk of new criminal conduct are: (1) prior probation violations, and (2) drug use problems within the past 12 months (Orange County, 2013).

In light of the high correlation between substance abuse and crime, it is critical that probation departments utilize *credible strategies* to detect drug use in AB109 offenders as early as possible to intervene before severe use increases the likelihood of criminal activity. Early intervention serves the public-safety interest of the community and potentially keeps the offender from the consequences of a new conviction. Community safety and early intervention thus require that policies and procedures be in place to facilitate early detection of drug use.

Lurigio, (1999), a noted researcher in substance abuse, presents several principles of effective treatment for drug-using offenders, which can serve as a guide (see Appendix 4 for details). These principles provided a framework and standard to review the OCPD drug-testing program. Among these principles is the establishment of drug-testing schedules based on the probationer's classification level and of sanctions for failing to show up at the scheduled time, or for attempting to subvert the testing process. Specific policies and procedures regarding classification levels for drug testing, failures to show up for testing, and diluted urine specimens were not contained in the OCPD policy and procedures manual.

The OCPD's Procedures Manual, Item 2-1-007, dated February 2, 2011 defines urinalysis and provides for the procedure in obtaining a urine sample. The policy, however, does not outline a system of testing frequency. Like supervision levels, the initial period on supervision is a time of higher risk, requiring close and more frequent monitoring generally, and drug testing specifically.

In addition, the method of obtaining a random drug test is not presented in the policy item. Among the most common methods to avoid a positive drug test are: (1) simply failing to report for a test, or attempting to defer a test until a later date when detectable levels of the drug are lower, and (2) drinking large quantities of liquids, known as "flushing," to reduce the concentration level below detectable standards.

The policy item does not address the "no show" manipulation of avoiding a drug test.

The policy item addresses "diluted" samples in the following manner:

1. A diluted sample *is not* considered a positive test if the official results are negative.
2. A diluted sample *is not* a tampered specimen nor is it proof an adulterant has been used.
3. A diluted sample with positive results from the lab *is* considered a positive test.
4. In extreme cases, a probationer who submits a series of diluted tests may be considered in violation for failure to submit to testing as directed (Urinalysis, 2011).

While a diluted sample cannot be considered a positive test unless the sample is returned positive, it is a potential indication of attempts to manipulate the testing procedure and should not be considered a "valid" sample. Technology exists to test the dilution (specific gravity) level of a collected sample by use of a refractometer and other devices.

During interviews, deputies often reported that they exercised a great deal of discretion in determining drug testing schedules and what action to take for positive tests and for failing to report for a test. A great deal of disparity existed among officers regarding the decision to impose a sanction as well as the nature of the sanction utilized. Many officers also reported that there were no set guidelines for monthly contacts based on classification level, explaining that each case was unique, different approaches to supervision were applied, and all visits were random.

No classification system for frequency of drug testing could be determined or located, and the frequency of drug testing was at the complete discretion of the supervising DPO. No specific policy was contained in the Policy and Procedures Manual on "no shows" for testing, and the stated policy for diluted specimens appears to encourage the manipulation of drug testing via flushing.

After reviewing the random sampling of case histories (see Appendix 3), the Grand Jury has concluded that given the significant drug histories of these offenders, the frequency of urine drug tests is inadequate for proper surveillance of the high-risk AB109 offenders.

There is a general belief among treatment providers, correctional workers, and the general public that a substance-abuser, especially an offender, will not benefit from treatment unless he/she is motivated to "get clean." About 50% of referrals to community-based treatment programs come from criminal justice system agencies (Price & D'Aunno, 1992). Research conducted by Anglin, Brecht, and Maddahian (1990) found that offenders coerced into drug treatment by legal mandates were just as successful in recovery as those who entered treatment programs voluntarily. Legally coerced participants often remained longer in drug treatment programs.

Much research on drug treatment, especially residential, finds that the longer one stays in treatment, the greater the chance of success. However, a study by Klag, O'Callaghan and Creed (Klag, 2004) found that in three decades of research into effectiveness of compulsory treatment, the results have been mixed and inconclusive. The vast majority of OCPD interviews indicated a strong belief in the positive benefits of

residential drug treatment. The Grand Jury concluded that residential drug treatment is more effective than outpatient treatment or incarceration.

On November 4, 2014, California voters passed Proposition 47, which reduced penalties for drug possession and other non-violent crimes. According to experts, the greatest effect will be in drug possession cases, which have been downgraded from felonies to misdemeanors. Other felonies that will also be downgraded include some forgeries, thefts, and shoplifting.

Prosecutors are accustomed to threatening drug offenders with felony convictions to coerce them into drug treatment programs. They will no longer have this option to use as leverage, due to the lenient sentences that accompany misdemeanor cases. A major question seems to be how the criminal justice system will persuade substance abusers to enter treatment when the consequences of a felony conviction are now removed. Without the threat of jail, there is little incentive to participate in drug treatment (Paige, 2014). The consequences to the community and for AB109 offenders and their willingness to participate in substance abuse treatment are uncertain at this time. Proposition 47 further complicates the ability to predict the impact of crime rates in Orange County

Risk Assessment, Classification, and Supervision Procedures

The Grand Jury requested copies of the procedures manual that addressed classification levels and the minimum supervision guidelines for each level (e.g., frequency of home visits, office contacts, work verification, collateral contacts, record checks, and frequency of drug testing). Such guidelines and standards do not appear to be included in the OCPD Policies and Procedures Manual. Furthermore, the vast majority of DPOs interviewed stated that supervision standards and guidelines did not exist and that the number of supervision contacts per month is at the discretion of the supervising officer.

The OCPD did provide the Grand Jury with a document labeled "Adult Model Instructional Booklet," (Orange County, n.d.), that states in part, "This booklet has been written as a desk reference to answer questions you may have about the completion of Adult Risk/Needs Assessment and Reassessment Packets." Sub-section 2 of this document states that "High supervision" classification cases will be contacted in person twice each month, or once per month if in custody. At no time during the review did any officer refer to this document or booklet when specifically asked about supervision standards, nor were such standards included in the Policies and Procedures Manual sections presented to the Grand Jury.

Since the mid-1980s, the OCPD has utilized a validated risk-needs assessment instrument as the foundation for implementing evidence-based practices to reduce recidivism. The risk assessment instrument is designed to differentiate the probability of offenders committing new law violations after placement on supervision. Based on risk of reoffending, supervision resources are allocated to provide the most intense supervision to high-risk offenders.

Upon revalidation of this instrument in 2011, a low risk score was adjusted to a range of 0-8, medium risk to a range from 9-20, and high risk to a range of 21+ (Orange County, 2011). As of September 2013, 91% of PRCS cases scored 26.9, and 90% of

MS cases had a score of 26 (Orange County, 2013). Hence, the majority of AB109 offenders are determined to be high risk.

Major risk factors among almost all AB109 offenders include a serious substance-abuse history. Ninety percent (90%) of MS and 86% of PRCS cases have a drug history. The two major factors that are most correlated with the risk of new criminal conduct in the risk assessment instrument are (1) prior probation violations, and (2) drug use problems within the past 12 months (Orange County, 2013).

The OCPD case files examined by the Grand Jury (see Appendix 3) reinforce the information contained in the Realignment Update Report of 2013, which is that AB109 offenders have significant prior records, 90% have a substance abuse history, most have two or more prior violations, and many have prior convictions for serious crimes. The cases reviewed demonstrate that indeed these are high-risk cases that (1) are labor intensive, (2) present multiple problems, (3) have serious substance- abuse issues, (4) have multiple violations, and (5) require supervision consistent with their high-risk classification level. In fact, given the risk scores substantially above the base 21 score for "high risk," a strong argument can be made that these cases justify "intensive supervision."

The American Correctional Association (ACA), in establishing standards for a Supervision/Service Plan states that an individualized supervision plan is developed for each offender, and that the plan should be reviewed and approved by a supervisor. In establishing standards for the supervision plan, the ACA reports that the appropriate level of supervision is determined by the offender's risk and needs (Performance-Based Standards, 2010, pp17). The Chief Probation Officer's Association also emphasizes that it is good public policy to use validated assessment tools to assign offenders to the correct level of probation monitoring and to match them with evidence-based programs that address the specific criminal risk factors of the individual (Assessing, 2013).

Probation and parole agencies routinely include supervision standards and guidelines in their policies and procedures manuals, establishing minimum monthly contacts based on risk assessment scores. For example, the District of Columbia Court Services and Offender Supervision Agency includes the following minimum monthly contacts based on supervision classification. (Table 1)

Table 1: Minimum Monthly Contacts by Classification

Supervision Level	Minimum Number of Face-to-Face Contacts	Frequency of Field Contacts*
Intensive	8 times per month	4 per month
Maximum	4 times per month	2 per month
Medium	2 times per month	1 per month
Minimum	1 time per month	1 per every 2 months

*Frequency of Field Contacts
 Important Note: at least 50% of the minimum number of face-to-face contacts for each classification level must take place in the field (i.e., outside of the office setting). In this context, face-to-face contacts are broadly construed to include purposeful contact between the offender and CSO/SCSO that is scheduled or unscheduled or between the offender and a CSO and other Agency staff and law enforcement partners not directly charged with the offender's supervision.

(District, 2011)

The Probation Case Classification and Workload Measures System for Indiana similarly established minimum contact standards for adult supervision as shown below. (Table 2)

Table 2: Indiana Contact Standards

ADULT SUPERVISION

FUNCTION	HIGH LEVEL	MEDIUM LEVEL	LOW LEVEL	ADMIN LEVEL
1. No. of FACE-TO-FACE DEFENDANT contacts per month	2	1	1 every 60 days	0
2. No. of residency visits or verifications	1 visit every 90 days	1 verification every 120 days	0	0
3. No. of field FACE-TO-FACE collateral contacts per month	1 every 60 days	0	0	0
4. No. of NON-FACE-TO-FACE contacts WITH DEFENDANT per month	1	0	1	1
5. Other NON-FACE-TO-FACE contacts/month (e.g. contacts with treatment service, etc.)	1	1 every 60 days	0	0

(Indiana, 1995)

A final example of contact standards is included from the New York Division of Criminal Justice Services, Office of Probation and Correctional Alternatives Citation (New York, 2012) as summarized in three areas below:

(1) For the Greatest Risk population, the probation department shall conduct a minimum of six probationer contacts, six collateral contacts, and one positive home contact per month.

The probationer contacts shall include one in-person contact per week and two probationer contacts per month. One positive home contact is required each month from case assignment. A positive home contact constitutes one of the required in-person contacts.

After the stabilization period of 3 months for juveniles and 3-6 months for adults has been completed, and if the probationer has complied with the conditions of probation and the case plan, he/she may be considered for Merit Credit. Up to one probationer contact per month may be credited.

(2) For the High Risk population, the probation department shall conduct a minimum of one in-person contact per week, six collateral contacts per quarter, and one home contact per month. One positive home contact is required during the first month from case assignment. Thereafter, three home contacts are required each quarter, one completed each month during the quarter, two of which must be positive home contacts. A positive home contact constitutes a required in-person contact.

After the stabilization period of 3 months for juveniles and 3-6 months for adults has been completed, and if the probationer has complied with the conditions of probation and the case plan, he/she may be considered for merit credit. Up to one in-person contact per month may be credited.

(3) For the Medium Risk population, the probation department shall conduct a minimum of two probationer contacts per month and two collateral contacts per quarter. The probationer contacts shall include one in-person contact per month. One positive home contact is required during the first forty-five (45) calendar days from case assignment and as needed thereafter. A positive home contact constitutes one of the required in-person contacts.

Without supervision standards and guidelines, each OCPD DPO is left to his or her own discretion in deciding how much supervision to provide to each offender. Risk/classification level becomes meaningless, and inconsistency prevails. AB109 offenders are at high risk for new criminal conduct and require a high degree of surveillance and services for the safety of the community. A small random sample of AB109 files were reviewed for this study. The review found there to be supervision contacts, home contacts, and collateral contacts inconsistent with the high-risk classification of AB109 offenders and accepted standards.

The Grand Jury concluded that the OCPD Policy and Procedures Manual does not provide adequate procedural guidelines to address the risk assessment process, the classification process, and the supervision plan criteria to provide consistent requirements for the DPOs. These procedures are not consistent with guidelines used by professional organizations such as the American Correctional Association and the American Probation and Parole Association.

AB109 Caseload Size for Probation Officers

Determining the right caseload size is complex and dependent on the diversity of size, structure, geographical area, organization, and clientele that characterizes probation and parole. According to the American Probation and Parole Association (APPA), there are key differences that produce significant variations. Not all offenders are alike, not all court orders are identical (or equal), and not all jurisdictions are the same. Thus, it is difficult to prescribe the ideal caseload size.

The importance of caseload size to the effectiveness of probation and parole supervision cannot be overstated. Prior experiments with small, intensive-supervision (ISP) caseloads were a dismal failure because ISP officers tended to be aggressive in their surveillance and punitive in their sanctioning. With a small number of exceptions, the ISP caseloads did not provide services or treatment. Thus, the promise of that smaller caseload approach was erased by a "get tough" approach that was not based on empirical research (Caseload, 2006).

A number of ISPs implemented a more balanced, evidence-based approach to supervision, which included an emphasis on working with offenders on the causes of their criminal behavior through counseling, services, and treatment. These ISPs have shown positive results in terms of reducing criminal activity and technical violations. These programs demonstrate that small caseloads combined with effective strategies can produce improved results.

The APPA concluded that the results are now clear: caseload size is important in probation and parole, noting that manageable caseloads, especially with high-risk, intensive supervision cases, are necessary for effective supervision, but they are not sufficient. Officers must provide supervision using the principles of evidence-based practice. Only with this potent combination can the potential of probation and parole be achieved (Caseload, 2006).

For the 35 AB109 field officers in Orange County, caseload sizes range from 20 to 83, with an average caseload of 55 cases. When one excludes an officer with a specialized caseload of transfer cases at 20, an arrest warrant caseload of 468, and a field management-administrative caseload, one is left with 32 officers with cases ranging from 30 to 83. This equates to an average of 60 cases per officer, although, as observed there is a significant variation in the number of cases each officer carries. Four officers have caseloads in the 30s, five are in the 40s, 12 are in the 50s, seven are in the 60s, two officers have 71 and 74 cases respectively, and one officer supervises 83 cases (Management Staff, Personal Communication, November 3, 2014).

Thus, excluding the three caseloads with a specialized AB109 unit, the average caseload is slightly over 60 cases. The APPA has set caseload standards for probation and parole supervision by classifying cases into several broad categories, based on key criteria such as are determined with a risk-needs assessment instrument. The APPA has developed caseload standards that are summarized in Table 3.

Table 3: APPA Caseload Standards

Classification Type	Cases to Staff Ratio
Intensive	20:1
Moderate to High Risk	50:1
Low Risk	200:1
Administrative	No limit

(Caseload, 2006)

While the frequency of contacts was generally considered inadequate for the high-risk classification level, AB109 cases generate a significant level of activity, and the high caseload size for these high-risk, intensive offenders impedes the greater frequency of contacts. AB109 officers devote a great deal of time to providing services, addressing technical violations, and conducting assessments and reassessments that are required. Despite these pressing responsibilities, the Grand Jury concluded that many of the AB109 caseloads were sufficiently manageable to have contacts more in line with the high-risk classification level.

There is a wide variation in caseload size. While some officers' caseloads were in the 20s, 30s, and 40s—desirable caseload sizes for these high-risk AB109 offenders—12 officers were in the 50s, 10 had caseloads in the 60s and 70s, and one officer supervised 83 cases. Considering the caseload standards of the APPA, the current caseload size for 23 of the officers may be considered manageable. However, the 10 remaining officers are supervising more than the APPA recommended for optimal service and community safety.

Conclusion

Historically, probation departments have two major roles: social work or the rehabilitation role, and the law enforcement role, assuring compliance with the conditions of probation, and holding the probationer accountable—all aimed at the ultimate goal of community protection. While most agencies tend to gravitate toward one end of the social work-law enforcement continuum (rehabilitation v. enforcement), ideally, departments will possess a proper balance, providing both treatment services, while assuring compliance with the conditions of probation.

The Grand Jury observed that the OCPD provides considerable drug treatment opportunities to its AB109 offenders. Treatment services can always be improved, and we observed a shortage of residential resources. Specifically, the Health Care Agency in October 2014, implemented a change in policy to reduce availability of residential treatment beds, thereby creating a waiting list. The number of beds for AB109 offenders was limited to 25 per month. Several of the OCPD staff indicated that this restriction prevented the reform of AB109 offenders who would greatly benefit by residential drug treatment. There were also indications of a need for more sober-living beds, and more housing for identified sex offenders.

The Grand Jury observed that the intensity of supervision for AB109 offenders fell short of recognized standards. The number of supervision contacts was inconsistent

with high-risk classifications, which further extends to a number of home visit and collateral visit (e.g., family, friends, and workplace) shortfalls.

The OCPD has been recognized as one of the few probation departments in the state that has made significant efforts to implement the letter as well as the spirit of AB109. The sponsoring of an AB109 Summit at Concordia University is an indicator of the positive efforts made by OCPD to continue improving the overall supervision of this challenging population. The Grand Jury concluded that changes by the OCPD could result in more optimal conditions for the reduction of recidivism and long term gains in community protection.

FINDINGS

In accordance with California Penal Code sections 933 and 933.05, the 2014-2015 Grand Jury requires (or, as noted, requests) responses from each agency affected by the findings presented in this section. The responses are submitted to the Presiding Judge of the Superior Court. Based on its investigation titled "AB109 Offenders: Are Current Probation Strategies Effective?" the 2014-2015 Orange County Grand Jury has arrived at eight principal findings, as follows:

- F.1.** Orange County Probation Department's Policies and Procedures Manual is consistent with professional standards for use of risk assessment tools and determination of classification levels for each AB109 offender.
- F.2.** Orange County Probation Department's Policies and Procedures Manual is not consistent with professional standards for development of supervision plans for AB109 offenders, including frequency and types of contacts.
- F.3.** Orange County Probation Department's Policies and Procedures Manual does not identify the maximum caseload size for Probation Officers supervision of AB109 offenders.
- F.4.** Orange County Probation Department's Policies and Procedures Manual does not provide adequate requirements for drug-testing classifications or frequency guidelines.
- F.5.** Orange County Probation Department's Policies and Procedures Manual does not provide adequate requirements to address the issue of drug-testing avoidance or recommend responses for AB109 probationers who attempt to avoid positive drug tests by failing to appear or by diluting their urine samples.
- F.6.** Orange County Probation Department does not incorporate current technology (refractometer) in its drug testing system. Including such technology may assist in the ability to quickly detect diluted urine samples provided by probationers.
- F.7.** The Orange County Probation Department and Health Care Agency have lost an opportunity to reduce recidivism by not increasing residential drug treatment options for AB109 probationers over outpatient treatment or incarceration.

- F.8.** There exists a need for increased housing availability for AB109 probationers who are homeless.

RECOMMENDATIONS

In accordance with California Penal Code sections 933 and 933.05, the 2014-2015 Grand Jury requires (or, as noted, requests) responses from each agency affected by the recommendations presented in this section. The responses are submitted to the Presiding Judge of the Superior Court.

Based on its investigation titled "AB109 Offenders: Are Current Probation Strategies Effective?" the 2014-2015 Orange County Grand Jury makes the following six recommendations:

- R.1.** Standards and guidelines for AB109 offender supervision, such as number of contacts, home visits, drug tests, and collateral contacts based on the risk-needs assessment should be included in the Orange County Probation Department's Policy and Procedures (F.1., F.2.)
- R.2.** The Orange County Probation Department should take steps to lower caseload sizes consistent with American Probation and Parole Association standards of no more than a 40:1 ratio caseload per officer for high-risk offenders. (F.3.)
- R.3.** Standards and guidelines should be included in the Policies and Procedures Manual to address failures to report for drug testing. (F.5.)
- R.4.** The Orange County Probation Department should implement standards and guidelines in its Policy and Procedures Manual to address the frequently used technique of "flushing" to avoid drug detection and a refractometer or other dilution-measuring device should be used to improve the integrity of the drug-testing program. (F.4., F.5., F.6.)
- R.5.** The Health Care Agency and the Probation Department should assess current funding priorities and options to seek additional residential drug treatment beds. (F.7.)
- R.6.** The Social Services Agency should address the needs of the AB109 offenders who are homeless or who experience instability in housing. (F.8.)

REQUIRED RESPONSES

The California Penal Code section 933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court). Additionally, in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such elected official shall comment on the findings and recommendations pertaining to the matters under that elected

official's control within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code section 933.05, subdivisions (a), (b), and (c), provides as follows, the manner in which such comment(s) are to be made:

(a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

(b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section 933.05 are required from:

Responses Required:

Orange County Board of Supervisors: Findings F.1., F.2., F.3., F.4., F.5., F.6., F.7., F.8. and Recommendations R.1., R.2., R.3., R.4., R.5., R.6.

Responses Requested:

Orange County Probation Department: Findings F.1., F.2., F.3., F.4., F.5., F.6., F.7., and Recommendations R.1., R.2., R.3., R.4., R.5.

Orange County Health Care Agency: Finding F.7., and Recommendation R.5.

Orange County Social Services Agency: Finding F.8. and Recommendation R.6.

COMMENDATIONS

The 2014-2015 Orange County Grand Jury would like to commend the Orange County Probation Department for its fine work in accepting the challenge of AB 109 offenders into its system. In spite of the Grand Jury's findings and recommendations for improvement, the Probation Department has made significant progress. This progress has even obtained State of California recognition.

"When Orange County is given a pill to swallow, even though some may see it as a bitter pill, they find a way to get it down. Orange County embraced Realignment, and the collaborative work around innovations in programs and sentencing have made it a leader in the state."

-Linda Penner, Chair of the Board of State and Community Corrections

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APPENDIX 1: PENAL CODE SECTION 3450

(Selected provisions, emphasis added.)

- National data show that about 40% of released offenders are re-incarcerated within three years.
- *Policies that rely on re-incarceration of parolees for technical violations do not result in improved public safety.*
- California must support community corrections programs and evidence-based practices that will achieve improved public safety.
- Realigning post-release supervision of certain felons to local community corrections programs through community-based punishment, evidence-based practices, and improved supervision strategies will improve public safety outcomes and facilitate successful reintegration. Evidence-based rehabilitation programs that increase public safety by holding offenders accountable will generate savings. (Evidence-based practices refer to supervision strategies that have been demonstrated by scientific research to reduce recidivism.)
- Community-based punishments means evidence-based sanctions and programs that include, but are not limited to the following:
 1. Short-term "flash" incarceration in jail for a period not to exceed 10 days.
 2. Intensive community supervision.
 3. Home detention, electronic monitoring, or GPS supervision.
 4. Community service.
 5. Restorative justice programs.
 6. Work, training, or education.
 7. Work, in lieu of confinement
 8. Day reporting
 9. Mandatory residential or non-residential substance abuse programs.
 10. Random drug testing.
 11. Community-based residential programs that provide a variety of services.

APPENDIX 2: OCPD MISSION STATEMENT

We are dedicated to a safer Orange County through positive change.

We believe:

- Community protection can best be achieved via a role that balances enforcement activities and supportive casework.
- Our employees constitute our most valuable resource for accomplishing our Mission.

We are committed to:

- Delivering quality services in an effective and fiscally responsible manner.
- Providing a positive, challenging and supportive work culture.
- Improving our services through teamwork and program innovation, consistent with current knowledge influencing the field of corrections.
- Advancing professionalism through participation in joint efforts to improve the effectiveness of community corrections.
- Delivering services with integrity and in a manner which respects the rights and dignity of individuals.

Mission Statement

As a public safety agency, the Orange County Probation Department serves the community using efficient and research supported corrections practices to:

- Reduce Crime
- Assist the Courts in Managing Offenders
- Promote Lawful and Productive Lifestyles
- Assist Victims

APPENDIX 3: REVIEW OF PROBATION FILES

The four cases presented here were randomly selected. A supervising probation officer accompanied the reviewer to several probation office cubicles. The cabinets were opened, and files were selected at random.

Case Example #1

A female AB109 offender was homeless, residing at the Orange County Civic Center, and admitted using methamphetamine since being released from jail. Although she was referred to a detox program to be followed by residential drug treatment, there was no evidence in the file that she entered either one. As in other cases, flash incarceration was used on one occasion. As of her last contact with the PO, the progress report indicates that she “continues to use drugs” and needs detox before she enters a program. The reviewer was unable to determine if a date had been established for either detox or residential drug treatment. Thus, at the time of the review, the AB109 offender, on active supervision, was homeless, addicted to methamphetamine, unemployed, with no identifiable admission date for detoxification. If unemployed and addicted to methamphetamine, one can reasonably conclude that this AB109 offender is continuing to be involved in criminal activity to support a drug habit, all while on Post-release community release supervision.

Case Example #2

The offender, an AB109 case with a substance abuse history, had made a sufficiently favorable adjustment to supervision and was transferred to a Field Management (FM) caseload, or what is commonly referred to as an “administrative” or “bank” caseload. These cases are considered such low risk that they have no need for active supervision by a PO. That is, there is no personal face-to-face contact with their PO. These caseloads can be in excess of 200 cases per officer. They usually do not report to a PO and merely report to a kiosk where they complete and submit their monthly supervision report.

In this FM case, the offender was on supervision for drug sales and drug use. The file reflected an extensive drug history, and a risk score of 29 and needs score of 27 were noted. It appears he was downgraded to FM during the most recent assessment period between January 10, 2014, and July 28, 2014. The case file indicates the offender was arrested for multiple health and safety code violations in early January 2014. He had also been arrested in late January 2014, for drug paraphernalia and possession of drug syringes. Previously, in May of 2013, he had been arrested by the PO and booked into county jail for a 10-day flash incarceration for submitting two positive urine tests. In December of 2013, the PO again utilized flash incarceration for drug use and submitting positive drug tests. The offender is subject to Penal Code section 290, narcotic registration. On or around November 2013, the offender was sentenced to 180 days in county jail following a drug conviction.

During a seven- month period between June 30, 2013 and January 9, 2014, the PO documented the following contacts: office, 9; home, 0; searches, 1; drug tests, 3;

PO arrests, 1. Despite this problematic supervision history, this offender was inexplicably placed on a FM, decreased-supervision caseload with no direct contact with the PO, and no drug testing. As expected, he was transferred back to a higher level of supervision when he was arrested for new law violations.

Case Example #3

The third case example provided a reassessment plan/evaluation prepared in early May 2014, appearing to cover the period from November 1, 2013, to April 30, 2014. The offender had a risk score of 26 and a needs score of 36, thus putting him at the higher end of high risk. His prior record included a significant history of alcohol related convictions, but no evidence of drug use. The reassessment report reflected multiple referrals to outpatient treatment, psychological counseling, as well as a residential program. The case file reflects that in 2013 the PO conducted two searches, one home visit, eight office visits, and four drug tests (once in February and three times in April). A scarcity of testing after April may have been due to residential treatment, multiple flash- incarceration periods, and a jail sentence of 90 days.

This case demonstrates the high level of activity generated by AB109 cases. In this case, there were multiple violations, multiple (3) flash incarcerations, a 90-day sentence, placement at the Phoenix House, and an extension at the Phoenix House followed by a discharge over a positive drug test. In addition, he sustained at least two arrests, was placed in alcohol detox, and was referred to outpatient and psychological counseling. An entry in the file indicates that after being discharged from Phoenix House, he went to "Treehouse in Orange" while waiting for a "bed" at "Opportunity Knocks."

Case Example #4

The fourth and last case example is an AB109 offender with the primary offenses being theft with three priors, burglary, and possession of a controlled substance. He has a risk score of 33 and a needs score of 32. The case file reflects that he is a chronic violator. He was required to report to a residential drug treatment program but failed to report. Since being released in December of 2011, he has had multiple violations. On one occasion, he was revoked and reinstated. He has also absconded and experienced an arrest for vehicle theft, receiving a 180-day jail sentence along with one for 360 days. The PO has utilized flash incarceration on two occasions. The offender has a serious drug history, but has refused drug treatment. While he has continued on PRCS and/or MS time after time, it is questionable whether he is a suitable candidate for further community supervision.

APPENDIX 4: PRINCIPLES OF EFFECTIVE TREATMENT

Arthur Lurigio PhD
Loyola University - Chicago

Lurigio (2000, pp. 514-520) presents several principles of effective treatment for drug-using offenders. These principles can provide a guide for the OCPD to improve the program integrity of their drug treatment program.

1. Drug Assessment & Treatment Matching

The use of a standardized assessment tool like the Addiction Severity Index and the Offender Profile Index measures the severity of drug use. The OCPD already utilizes a Risk/Needs assessment tool; however, the Addiction Severity Index could assist the officer in determining what level of testing is needed for the AB109 offender. The drug treatment literature generally finds that no single treatment modality fits all offenders.

2. Length of Participation

In referring the AB109 drug-abusing offender for treatment, behavior/addiction management rather than a total cure is generally more realistic. According to the research 3-9 months works best, and relapse is to be expected before abstinence is achieved.

3. Treatment Structure

For substance-abusing offenders, this principle is critical if success is to be achieved. In the early stages of supervision, treatment and surveillance should be highly structured. A strict urine drug-testing system should be implemented and maintained. Incentives of different types should be included as well as imposition of negative consequences to encourage offenders to remain "clean." The OCPD already utilizes a continuum of sanctions as well as incentives. However, what is needed is more consistency, and especially certainty that some action will be taken when drug use is detected. "Sanctions should be leveled against participants who fail to adhere to program regulations. To be most effective, sanctions must be clearly specified, tied explicitly to infractions, and imposed swiftly. They should also be progressive and commensurate with the severity of rule breaking (pp.516)."

4. Treatment Integrity

The integrity of the drug-testing program must be monitored at all stages of testing and treatment. AB109 officers need more training to improve their skill and effectiveness in controlling high-risk behavior like drug use. How to properly collect a sample, awareness of testing manipulations like no-shows, flushing, substitute samples, hidden devices, and examining the offender through "skin-checks" should all be utilized to allow the officer to detect and intervene at the earliest possible point. In order to be effective in the area of detection, intervention, and drug treatment, AB109 officers need to be specialists. As an alternative, given the additional time requirements for

implementing a credible drug-testing program, the OCPD should consider contracting with a provider for these services. Research reflects that having a credible drug-testing program that detects drug use early on and intervention with treatment and/or sanctions, will result in an increase in technical violations, but a decrease in new criminal conduct. In short, the safety of the community will be enhanced. No shows for testing must be addressed; diluted specimens should not be considered valid tests; and existing technology should be utilized to measure specific gravity (level of dilution). A high level of testing integrity is lacking in the OCPD as relates to AB109 offenders.

5. Aftercare Treatment

Residential drug treatment must be followed by continued outpatient treatment and/or 12-step participation. The continuity of treatment is critical if the offender is to sustain a drug-free lifestyle. Funding problems currently limit the number of drug abusing offenders who enter the most intensive form of treatment, the treatment modality that is most suitable for the substance-abusing offender.